



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

Case Reference : **MAN/OOCG/LIS/2013/0003**

Property : **355 RICHMOND ROAD, SHEFFIELD,
S13 8QE**

Applicant : **MR BERNARD DUNSTAN**

Respondent : **SHEFFIELD CITY COUNCIL**

Type of Application : **LIABILITY TO PAY AND REASONABLENESS
OF SERVICE CHARGES. THE LANDLORD
AND TENANT ACT 1985, SECTIONS 27A, 19
AND 20C.**

Tribunal Members : **MR C. P. TONGE, LLB, BA.
MR M. C. W. BENNETT, BSC, MRICS.**

Date of Decision : **26/07/13**

DECISION

Summary of the Decision

1. The district heating disconnection charges of £1229.48 demanded by the Respondent during service charge year 2010 are a service charge payable under the terms of the lease and are reasonable. They have already been paid by the Applicant.
2. The door entry system charge demanded by the Respondent during service charge year 2012 is a service charge that is payable under the terms of the lease. The Tribunal determines that the charge as currently demanded is unreasonable and the charge is reduced to £538.80 plus an administrative charge of £53.80. Total already overdue for payment by the Applicant to the Respondent £592.60. If this has not already been paid by the Applicant it is to be paid as soon as possible. If already over paid then the Respondent to make a refund to the Applicant or his service charge account.
3. The Tribunal does not make any order pursuant to section 20C of the Act.

Application and Background

4. This matter came before the Tribunal as a result of an application by Bernard Dunstan (the Applicant) received by the Tribunal on the 28th day of February 2013. The Respondent was Sheffield City Council (the Respondent).
5. The application related to 355 Richmond Road, Sheffield, S13 8QE (the property).
6. The Tribunal was asked to decide whether two specific service charges with administrative (cost of management) charges were payable and if so to what extent they were reasonable. These charges were firstly, in service charge year 2010, a District Heating Disconnection Charge of £1229.48. Secondly, in service charge year 2012, a service charge of £660 in respect of the installation of an electronic door entry system.
7. The Applicant holds the remainder of a lease of 125 years on the property purchased by him through the right to buy procedure on the 28th day of February 2007.
8. Directions were given on the 12th day of April 2013. The application form was ordered to stand as the Applicants case and the Tribunal served a copy on the Respondent. The Respondents served copies of a statement of case on the Tribunal and the Applicant. The Applicant served a response. The Respondent served a response.

9. Neither party requested a hearing. By letters dated the 28th day of June 2013, both parties were informed that the Tribunal would deal with the case on the 18th day of July 2013 with an inspection of the property but without a hearing.

Inspection of the Property

10. The Tribunal inspected the property at about 12.20pm on the 18th day of July 2013. The Tenant was present and was walking with the aid of a walking stick. On behalf of the Landlord Andrew Auckland, Leasehold Team Leader and Steven Parker, Home Ownership and Revenue Manager were present.
11. The property was a first floor purpose built maisonette situated in a medium sized complex of similar properties. The estate having a common boiler room that was capable of providing hot water to all the maisonettes on the estate, provided that the maisonettes were connected to the district heating system. This would provide each tenant with domestic hot water and heating.
12. There were four maisonettes sharing the same common entry door and staircase. The building was of conventional cavity brick construction under a pitched and tiled roof.
13. The property had one bedroom, thus being relevant to the division of costs in calculating service charges. The case was limited to the district heating system and the door entry system. As such the Tribunal concentrated on these two areas during the inspection.
14. The cylinder cupboard was found to contain a newly fitted wall mounted gas boiler. The parties confirmed that this was not connected to the district heating system and that the property had been disconnected from the district heating system.
15. The exterior door to the block appeared to be in good condition, but in need of painting. There was a door entry system fitted to an exterior wall to the side of the exterior door. This had a trade button and four buttons one of which was wired to each maisonette served by the common stair well. It was designed so that if the installation was complete a caller would press the individual button concerned and that would buzz at a hand set on the internal wall of that maisonette. The occupier of the maisonette could then speak to the visitor and chose whether or not to let the visitor in, permitting entry by activation of part of the handset.
16. The Applicant had refused to permit the hand set to be fitted to the inside of his maisonette. The wire that would otherwise have been utilised for that purpose was left unconnected at the exterior of the entrance door to

his maisonette. The Applicant had been provided with three entry fobs. These were waved in front of the exterior entry system panel and would activate the door lock opening the common exterior door. Persons inside the Applicants maisonette would not know that there were visitors at the common exterior door.

17. There was a "For Sale" sign displayed at the property.

The Law

Section 18 of the Landlord and Tenant Act 1985 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 purposes—
 - (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 20C "Limitation of service charges: costs of proceedings.

- (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 or leasehold valuation tribunal, or the Lands 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;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Lands 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."

Section 27A Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.
- (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 of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Relevant Provisions of the Lease

rights and easements specified in Part II of the said Schedule hereto and **EXCEPTING AND RESERVING ALSO** all cisterns valves tanks sewers drains pipes wires cables ducts channels and conduits either not used for the purposes of the demised premises or the user whereof is enjoyed jointly by the demised premises and other parts of the Building **TO HOLD** the demised premises unto the Lessee for the term of **ONE HUNDRED AND TWENTY FIVE YEARS** from the day of Two thousand and six

YIELDING AND PAYING therefor:-

(A) The yearly rent of **TEN POUNDS** in advance on the First day of April in every year the first payment (apportioned from the date of this Lease to the Thirty first day of March next hereafter) becoming payable upon the date hereof

(B) In addition to the rent a service charge (hereinafter called "the Service Charge") to be determined and levied in accordance with the provisions contained in Part III of the said Schedule hereto

(C) In addition to the rent the charge for the supply of hot water to the heating and domestic hot water systems of the demised premises (hereinafter called "the Heating Charge") to be determined and levied in accordance with the provisions of Part IV of the said Schedule hereto and

(D) In addition to the rent a charge (hereinafter called "the Estate Charge") being such reasonable contribution as the Council shall from time to time require (hereinafter referred to jointly as "Contributions" and individually as a "Contribution") to the costs expenses and outgoings lawfully incurred or to be incurred by the Council in respect of the upkeep or regulation for the benefit of the locality (that is to say the Housing Estate of the Council) of which the Building forms part or any part of such locality of any land building structure works ways or watercourse such Contributions to be made in respect of such of the benefits to the said locality or part thereof of the type described in the column headed "The Benefit Referred to" of the **SCHEDULE OF BENEFITS** hereto annexed as are indicated by means of a tick or the word "Yes" or other affirmative indication in the column headed "Where applicable or not" thereof as being applicable to such locality or part thereof and such Contributions to be determined in accordance with Part V of the said Schedule hereto and collected by the City Treasurer or other duly authorised officer of the Council

2. (1) THE Lessee HEREBY COVENANTS with the Council to pay to the Council on the first disposal of the demised premises or part thereof which is a relevant disposal within the meaning of sub-section (1) of Section 159 of the 1985 Act which is not exempted by Section 160 of the 1985 Act occurring within **FIVE YEARS** from the date of this Lease **THE DISCOUNT** reduced by an amount (if any) calculated in accordance with sub-section (2) of section 155 of the 1985 Act

(2) THE Lessee HEREBY FURTHER COVENANTS with the Council that until the end of the period of **TEN YEARS** from the date of this Lease there will be no relevant disposal which is not an exempted disposal unless the prescribed conditions in accordance with regulations under section 156A of the 1985 Act have been satisfied in relation to that or a previous such disposal

3. THE Lessee HEREBY FURTHER COVENANTS with the Council as follows:-

(1) (a) To pay the reserved rent at the time and in the manner aforesaid without any deductions whatsoever

(b) to pay upon demand being made therefor by the Council the Service Charge and the Heating Charge the Disconnection Charge and the Disconnection Loss Charge and the Estate Charge at the times and in manner hereinafter provided

(c) To observe and perform the provisions on the part of the Lessee contained in Part III of the said Schedule hereto (the Service Charge) and Part IV

of the said Schedule (the District Heating Provisions) and Part V of the said Schedule (the Estate Charge)

(2) To pay all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed on the demised premises or any part thereof or the owner or occupier thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the Building to pay the proper proportion as determined by the City Treasurer or other duly authorised officer of the Council of such rates taxes assessments charges impositions and outgoings attributable to the demised premises

(3) To keep the demised premises and every part thereof (except those parts of the demised premises which the Council are by virtue of the covenant implied by paragraph 14(2)(a) of Schedule 6 to the 1985 Act liable to keep in repair) and all fixtures and fittings therein and all additions thereto and all (if any) sewers drains cables pipes wires ducts radiators tanks cisterns and valves and channels within and serving the demised premises alone and all doors and windows (including the glass and frames thereof) floors ceilings internal walls and surfaces and skirtings therein in good repair AND where necessary to renew or replace all worn or damaged parts of the demised premises which the Lessee is liable as hereinbefore provided to repair

(4) To keep the interior of the demised premises in good decorative repair throughout the said term

(5) To keep the demised premises in a clean and tidy condition and to keep the glass in the windows and doors of the demised premises clean

(6) Not to use the demised premises or permit or suffer them to be used otherwise than as a single private dwelling except with the consent of the Council such consent not to be unreasonably withheld

(7) That no trade or business or profession or manufacture whatsoever shall be carried on in or upon the demised premises except with the consent of the Council such consent not to be unreasonably withheld nor shall the same be used so as to cause any nuisance or annoyance or damage or inconvenience to the Council or the owners tenants or occupiers of adjoining or neighbouring premises

(8) That no animals or birds (including domestic pets or other livestock) shall be kept within the demised premises

(9) To use and ensure at all times that the demised premises are used in a quiet and reasonable manner

(10) That no plants clothes lines television or wireless aerials or receiving dishes or devised for the reception of satellite radio or television transmissions or other obstructions or projections shall be permitted to be placed on the exterior (including any balcony) of the demised premises

(11) Not to do or permit or suffer anything to be done to the exterior of the demised premises which will alter the external appearance of the Building

(12) Not to eject refuse or other objects or liquid substances from the windows doors or balcony of the demised premises or the balconies landings decks roofs or other parts of the Building or permit or suffer the same

(13) Not to shake or beat mats carpets or other similar objects from the windows or doors or upon the balcony (if any) of the demised premises nor upon the landings or stairways of the Building nor to permit or suffer the same to be done by any occupier of the demised premises

(14) Within one month after every transfer underletting mortgage or charge by way of legal mortgage vesting deed assent or other devolution of the title to the demised premises or any part thereof to give to the Assistant Chief Executive

equipment and materials to enter upon the demised premises at all reasonable times in the daytime (except in the case of emergency when immediate entry shall be granted) to inspect the state and condition of the demised premises (including any services passing through the same) and the structure and exterior of the demised premises and the Building and to make repairs thereto

(34) To permit the Council and their duly authorised agents at any time or times during the said term at reasonable times in the daytime to enter upon and examine the state and condition of the demised premises and thereupon the Council may serve upon the Lessee notice in writing under the hand of the Director of Housing or other duly authorised officer of the Council specifying any repairs or decoration necessary to be done to those parts of the demised premises which the Lessee hereby covenants to repair and to keep in decorative repair and require the Lessee forthwith to execute or carry out the same and if the Lessee shall not within one calendar month after the date of such notice proceed diligently with the execution of such repairs and/or decorative repairs to permit the Council to enter upon the demised premises and execute such repairs and/or decorative repairs and the cost thereof shall be a debt due from the Lessee to the Council and be recoverable forthwith by action

(35) To pay all expenses (including solicitors costs and surveyors fees) incurred by the Council incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court

(36) To observe and perform any regulations from time to time made by the Council for the regulation and control of any communal areas facilities and services in respect of which the Lessee is hereby granted rights or the use and enjoyment thereof

(37) (i) That the hot water supplied to the demised premises through the common parts of the District Heating System shall be used only in the heating and domestic hot water systems of the demised premises

(ii) Not to adjust tamper with or damage in any way the Sampson Valve or any other valves or any main or other thermostat controlling the flow or temperature of the said hot water from the common parts of the District Heating System into the heating and domestic hot water systems of the demised premises or permit or suffer the same

(iii) Not to alter or damage or interfere with those parts of the common parts of the District Heating System situate within the demised premises or permit or suffer the same

(iv) Not to alter or add to or extend the heating and domestic hot water systems of the demised premises except after first applying in writing for and obtaining the written consent of the Director of Housing or other duly authorised officer of the Council to such an alteration or addition or extension PROVIDED that this sub-clause shall only have effect as long as the heating and domestic hot water systems of the demised premises shall remain connected to the District Heating System

(v) To prevent any loss or leaking of water from the heating and domestic hot water systems of the demised premises AND to keep the same in good and substantial repair and water-tight at all times

(vi) Not to disconnect or permit or suffer the disconnection of the heating and domestic hot water systems of the demised premises from the District Heating System without (a) obtaining the written consent of the Director of Housing or other duly authorised officer of the Council thereto and (b) paying the charges of the Council (hereinafter called "the Disconnection Charge") for carrying out the disconnection AND the Disconnection Loss Charge as hereinafter respectively

defined and in accordance with the provisions of Section II and Section III of Part IV of the said Schedule

(vii) (a) To notify the Council as soon as any defect in or lack of repair of those parts of the common parts of the District Heating System situate within the demised premises shall become apparent

(b) To insure and maintain an insurance policy covering the risk of loss or damage caused by those parts of the common parts of the District Heating System situate within the demised premises or any burst pipes thereof or by water leaking or escaping therefrom

(c) To indemnify the Council against any claims made against the Council arising from or caused by any defect in or lack of repair of those parts of the common parts of the District Heating System situate within the demised premises EXCEPT in the event of (i) the Lessee having previously notified the Director of Housing or other duly authorised officer of the Council of any aforementioned defect in or lack of repair of the aforementioned common parts of the District Heating System before the occurrence of any damage arising from such defect or lack of repair or (ii) any claim arising from the acts or omissions of the Council their agents or employees

(38) If the Council shall so require to take out and maintain throughout the said term such additional public liability insurance against third party claims as shall be required by the Council

(39) To pay to the Council upon demand the cost of disconnection and removal of any City Wide Alarm System apparatus within or upon and serving the demised premises if such removal is effected at the request of the Lessee

(40) At the end or sooner determination of the said term to yield up the demised premises and all additions thereto and all fittings and landlords fixtures therein in good repair (including decorative repair) in accordance with the covenants on the part of the Lessee herein contained

4. THE Council HEREBY COVENANT with the Lessee as follows:-

(1) That the Lessee paying the rent hereby reserved and performing and observing the several covenants on the part of the Lessee and the conditions herein contained or implied herein by statute shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Council or any person rightfully claiming under or in trust for them

(2) (Subject to the Lessee paying the Service Charge as defined in Part III of the said Schedule hereto) to permit the Lessee to use (in common with all others authorised by the Council or otherwise entitled thereto) any premises facilities or services as shall have been enjoyed by the Lessee as a secure tenant prior to the date hereof including (but not by way of limitation) the premises facilities and services listed or referred to in Section I of Part III of the said Schedule hereto PROVIDED that the Council shall not be liable to the Lessee for any interruption in the use of the said premises facilities or services for any reason beyond the control of the Council AND PROVIDED that the Council may (after giving reasonable notice to the Lessee) reduce or amend the said premises facilities or services and (after obtaining the consent of the Lessee thereto) may add to the premises facilities or services so provided for the use and enjoyment of the Lessee

(3) To keep in repair (the definition of repair where appropriate including decorative repair) and (if desirable in the opinion of the Council) to improve (a) the structure and exterior of the demised premises and of the Building (including drains gutters and external pipes) and to make good any defect affecting that structure PROVIDED that the obligation to repair includes an obligation on the part of the Council to rebuild or reinstate the demised premises or the Building if

(6) In this Lease unless the context otherwise requires:-

(i) the expressions "the Council" and "the Lessee" shall include in the case of "the Council" the owner of the reversion for the time being immediately expectant on the term hereby created and in the case of "the Lessee" the successors in title and assigns of the Lessee

(ii) if there is more than one person described as "the Lessee" then (a) such persons shall be deemed to covenant jointly and severally with the Council and (b) references to the Lessee in the singular shall be deemed to be references in the plural

(iii) any reference to the title of an officer of the Council shall include any person holding such office from time to time or such other officer of the Council as the Council may from time to time appoint to carry out the duties of the officer herein named

(iv) The expression "the Building" shall (except where the Lease refers only to the structure and exterior of the Building) in addition to the said building being the block of dwellings hereinbefore referred to in recital (1) hereof include any outbuildings communal or grouped parking areas unadopted roadways or footpaths grassed areas or gardens and all communal areas thereto belonging and all services connected thereto and serving the said building alone (except any adopted sewers or drains or other services owned by any statutory body or other public authority providing such services)

(v) reference to any statute herein contained shall be deemed to refer to any statutory modification or re-enactment thereof

(vi) reference to a "demand" for any sum made by or on behalf of the Council shall include the submission of an account by the City Treasurer or other duly authorised officer of the Council addressed to the Lessee or any successor in title or assign of the Lessee and delivered to the demised premises by any means whatsoever

There shall be added to the sum demanded by any account rendered by the Council to the Lessee pursuant to the provisions of this Lease an additional sum to be paid by the Lessee towards the administrative costs and expenses of the Council in the determination of the amount of and collection of such account such additional sum being either TEN PER CENTUM of the amount of the account (before the addition of value added tax or any other tax thereon) or the sum of FIVE POUNDS (whichever shall be greater)

(vii) The expression "District Heating System" shall in relation to the demised premises be a reference to the whole of the heating and domestic hot water systems serving and connected to the demised premises and all other premises connected to a common boiler or other common heating source and comprises:-

(a) "the common parts of the District Heating System" that is to say the said common boiler or other common heating source the room or premises or part of the premises in which the said common boiler or other common heating source is situate (PROVIDED that this shall not apply to any common boiler or other common heating source where the District Heating System receives its supply of hot water from a third party and does not possess a common boiler or other common heating source) the main supply and return pipes respectively taking water therefrom (or from the premises of a third party) and returning water thereto the water supply pipes thereof the fuel supply pipes and tanks or fuel stores all tanks cisterns pumps valves thermostats wires and cables connected thereto and all the channels supports and brackets thereof all insulation materials and cladding thereof and any other apparatus or equipment connected to or used therewith the user whereof is common to the demised premises and any other premises (excepting from the foregoing any parts thereof which are in the

services serving the demised premises alone in the event of default in so repairing by the Lessee)

(iii) for the purpose of complying with any of their obligations contained or implied herein or otherwise affecting any part of the Building or the demised premises and not hereinbefore mentioned and

(iv) gaining access to and egress from the adjoining parts of the Building

(v) (in the case of premises connected to the City Wide Alarm System and/or Security System/Door Entry System) the inspection repair maintenance replacement and removal of any cord-pulls wires speech units cables landlines control boxes or other apparatus forming part of the City Wide Alarm System and/or Security System/Door Entry System within or attached to the exterior of the demised premises

(6) The right to use the Loft Hatch to gain access to the loft of the Building for maintenance purposes by the Council and their successors in title PROVIDED that any damage caused during the exercise of the above-mentioned rights shall be made good to the reasonable satisfaction of the Lessee by the person or persons causing the same

PART III
SERVICE CHARGE PROVISIONS

SECTION I

THE SERVICE CHARGE

1. The Service Charge payable by the Lessee shall be a fair proportion to be determined by the City Treasurer or other duly authorised officer of the Council (in accordance with such formula as the City Treasurer or other duly authorised officer of the Council shall determine) of all costs expenses and outgoings incurred or estimated to be incurred by the Council in respect of or for the benefit of the Building (such fair proportion representing that part of the said costs expenses and outgoings incurred or to be incurred by the Council in complying with their obligations contained or implied herein for the benefit of the Lessee insofar only as such costs expenses and outgoings may lawfully be recovered from the Lessee)

2. The aforementioned obligations on the part of the Council in respect of which the Service Charge shall be attributable and paid by the Lessee in respect of the demised premises are (but not by way of limitation) as follows:-

(A) Keeping in repair and improving the structure and exterior of the demised premises and the Building (including drains gutters and external pipes) and the making good of any defect affecting that structure

(B) Keeping in repair and improving any other part of the Building and any other property over and in respect of which the Lessee has been granted rights under or by virtue of the provisions herein contained

Provided that the foregoing sub-paragraphs (A) and (B) shall only apply insofar as such costs expenses and outgoings may be recovered from the Lessee in accordance with the provisions of the 1985 Act

(C) The obligation implied herein by virtue of Paragraph 14(2)(c) of Part III of Schedule 6 of the 1985 Act to ensure so far as practicable that any services which are hereby to be provided by the Council and to which the Lessee is hereby entitled (whether by the Lessee alone or in common with others) are maintained at a reasonable level and to keep in repair and (if desirable in the opinion of the Council) to improve any installation connected with the provision of those services

(D) The grant to the Lessee (in common with others) of the enjoyment of premises facilities or services by virtue of the provisions herein contained or implied on the part of the Council

WHICH aforementioned services may include (by way of illustration but not by way of limitation) the following:-

- (i) the upkeep of landscaping and play areas and the provision and running costs of other amenities that can be enjoyed by the Lessee and other residents of the Building
 - (ii) the maintenance lighting and cleaning of unadopted roadways footpaths communal or grouped parking areas staircases corridors and structures
 - (iii) the provision of caretaking and cleaning (including window cleaning)
 - (iv) the maintenance of entry phones and/or intercom security systems
 - (v) the repair and servicing of lifts (except in the case of occupiers of ground floor premises)
 - (vi) the maintenance of clothes drying rooms and drying areas
 - (vii) the provision and maintenance of refuse disposal apparatus bin stores and water pumps
 - (viii) the repair maintenance and lighting of communal areas of the Building and within its curtilage
 - (ix) the painting (including the application of preservatives) of the exterior of the Building
 - (x) the provision and maintenance of fire alarms and/or security alarms and/or the City Wide Alarm System
- (E) The administrative costs (including accounting audit and management costs) of managing the Building including the costs of employing and paying employees of the Council or professional advisers agents or contractors in and about the performance of any of the obligations on the part of the Council in this Lease contained or implied

SECTION II ADMINISTRATIVE PROVISIONS

3. Each payment of the Service Charge shall be determined by the City Treasurer or other duly authorised officer of the Council in manner hereinafter appearing and shall be payable by the Lessee IN ADVANCE in respect of the period (herein called an "accounting year") commencing upon the First day of October in each year and ending upon the Thirtieth day of September in the following year
4. Each payment of the Service Charge (except the first payment if apportioned as hereinafter provided) shall fall due upon the First day of October in each year
5. Each payment of the Service Charge shall be determined by the City Treasurer or other duly authorised officer of the Council before the commencement of each accounting year (except the first payment falling due on the date hereof) as a fair proportion of the said costs expenses and outgoings referred to in the foregoing paragraph 1 of Section I of this Part of this Schedule which the said City Treasurer or other duly authorised officer of the Council shall prior to each such determination estimate as having been incurred or to be incurred by or in respect of the Council in the forthcoming accounting year
6. Each of the foregoing estimates of the said costs expenses and outgoings shall be adjusted by adding thereto any under-estimate (the amount by which actual costs expenses and outgoings have exceeded estimated costs expenses and outgoings) or by subtracting therefrom any over-estimate (the amount by which estimated costs expenses and outgoings have exceeded actual costs expenses and outgoings) calculated by comparing the actual costs expenses and outgoings recorded in or appearing from the accounts prepared for each financial year of the Council the end whereof last precedes the commencement of the accounting year in respect of which each such estimate is being prepared with the estimated costs expenses and outgoings (apportioned on a daily basis) of the

accounting years so far as part or parts thereof are co-extensive with each such preceding financial year

7. The amount of the first payment of the Service Charge by the Lessee shall be determined as soon as possible hereafter in manner hereinbefore provided as a payment for the accounting year commencing on the First day of October immediately preceding the date hereof and shall be apportioned on a daily basis from the date hereof to the Thirtieth day of September next hereafter and shall be payable by the Lessee upon demand being made therefor by the Council at any time hereafter

8. The Council may from time to time by resolution prescribe further regulations rescinding or amending or supplementing the provisions contained in this Section of this Part of this Schedule

9. Time shall not be of the essence in respect of the observance by the Council of any limitation as to time contained in the foregoing provisions

PART IV
DISTRICT HEATING PROVISIONS
SECTION I
DISTRICT HEATING CONTRACT

1. The Heating Charge shall be paid by the Lessee to the Council IN ADVANCE as an annual charge payable on the First day of April or (if the Lessee so elects) by twelve equal monthly payments on the First day of each month in each year of account (that is to say the financial year commencing upon the First day of April in any year and ending upon the Thirty first day of March in the following year) the first payment apportioned from the date hereof to the end of the current year of account or (if the Lessee has elected to make monthly payments) to the end of the current month becoming payable forthwith upon demand being made therefor as soon as possible hereafter

2. The Heating Charge shall be a fair proportion to be determined in accordance with the formula hereinafter appearing by the City Treasurer or other officer of the Council from time to time authorised to make such determination of the estimate of the total of all the costs expenses and outgoings (including provision for anticipated future expenditure) incurred or estimated to be incurred by the Council during the forthcoming year of account in the production (or if heating is supplied by a third party in procuring the production) distribution and supply of hot water by means of the District Heating System to the heating and domestic hot water systems of the demised premises and all other premises served by the District Heating System and in the inspection servicing repair maintenance replacement improvement and renewal of the common parts of the District Heating System (each such estimated total hereinafter called "the Estimated Total Costs")

3. The Estimated Total Costs shall be calculated by the City Treasurer or other duly authorised officer of the Council annually in advance before the First day of April in each year in respect of the forthcoming year of account PROVIDED that any under-estimate or over-estimate of the Estimated Total Costs compared with the actual total of the said costs expenses and outgoings in respect of any such year of account shall be carried forward into the estimate or estimates for the subsequent year or years of account

4. The Estimated Total Costs for each year of account shall include (but not by way of limitation) estimates of:-

(i) Loan charges incurred by the Council for the installation of the District Heating System and any improvements or any other works thereto involving capital expenditure

(ii) All costs expenses and outgoings in respect of labour materials plant

Council shall estimate to have been incurred by the Council as a result of any waste or loss of hot water upon the demised premises arising from the breach non-observance or non-performance by the Lessee of the obligations of the Lessee herein contained

12. The Council may by resolution at any time or times hereafter rescind amend or supplement the administrative provisions herein contained

13. Time shall not be of the essence in respect of the observance by the Council of any limitation as to time contained in the foregoing provisions

SECTION II

THE DISCONNECTION CHARGE

1. If the Lessee shall in manner hereinbefore provided obtain the written consent of the Director of Housing or other duly authorised officer of the Council to the disconnection of the heating and domestic hot water systems of the demised premises from the District Heating System then the Lessee shall be responsible for the payment to the Council upon demand of the Disconnection Charge

2. The Disconnection Charge shall be payable by the Lessee before the disconnection of the heating and domestic hot water systems of the demised premises from the District Heating System shall be carried out by the Council their employees or agents

3. The said disconnection shall be carried out only by the employees or agents of the Council and not by the Lessee or any person acting on behalf of the Lessee

4. The Disconnection Charge shall be that charge which the City Treasurer or other duly authorised officer of the Council shall estimate to be sufficient to cover the costs and expenses of the Council in carrying out the said disconnection

SECTION III

THE DISCONNECTION LOSS CHARGE

1. The Disconnection Loss Charge shall become payable after the Lessee has obtained the said written consent of the Director of Housing or other duly authorised officer of the Council to the disconnection of the heating and domestic hot water systems of the demised premises from the District Heating System but before such disconnection shall be carried out by the Council

2. The Disconnection Loss Charge shall be a capital sum representing a fair proportion of the estimate to be prepared by the City Treasurer or other duly authorised officer of the Council of the continuing or recurring costs expenses and outgoings which will continue to be borne by the Council and which but for the disconnection of the heating and domestic hot water systems of the demised premises from the District Heating System would have fallen to be borne by the Lessee in the future. The said capital sum shall be calculated by the City Treasurer or other duly authorised officer of the Council having regard to such estimated continuing or recurring costs expenses and outgoings and shall be the total of

(i) A fair proportion of the loan debt outstanding in respect of the common parts of the District Heating System

The said fair proportion shall be calculated by the City Treasurer or other duly authorised officer of the Council as follows:

Factor A divided by Factor C (as defined in paragraph 5 of the District Heating Contract) multiplied by the amount of the loan debt outstanding in respect of the common parts of the District Heating System at the beginning of the financial year of the Council within which the date of this Lease falls AND

(ii) An amount equivalent to three times the Estimated Total Costs for the

year of account when disconnection takes place multiplied by Factor A and divided by Factor C (as defined in paragraph 5 of the District Heating Contract)

The Estimated Total Costs for the purposes of this sub-paragraph shall be those costs which cannot be reduced in direct or indirect proportion as a consequence of the disconnection of the heating and domestic hot water systems of the demised premises and shall include (but not by way of limitation) those items specified in sub-paragraphs (ii) (iii) and (v) of Paragraph 4 of the District Heating Contract

3. The Disconnection Loss Charge shall become payable by the Lessee (and in the case of a disconnection at the request of a Lessee must be paid) to the Council immediately upon demand and before such disconnection is carried out by the Council

4. The Heating Charge shall be apportioned on a daily basis up to the date of disconnection and (if unpaid) an appropriate proportion shall be payable to the Council with the Disconnection Loss Charge or (if already paid) an appropriate refund shall be made to the Lessee by deduction from the Disconnection Loss Charge

PART V ESTATE CHARGE PROVISIONS

Pursuant to Clause 3(1)(c) (hereinafter called "the said sub-clause")

The following provisions are those referred to in the said sub-clause

(i) Each Contribution shall be determined by the City Treasurer or other duly authorised officer of the Council in manner and subject as hereinafter appearing and shall be payable by the Lessee in respect of the period (hereinafter called an "accounting year") commencing upon the First day of October in each year and ending upon the Thirtieth day of September in the following year

(ii) Each Contribution (except the first Contribution if apportioned as hereinafter provided) shall fall due upon the First day of October in each accounting year

(iii) Each Contribution shall be determined by the City Treasurer or other duly authorised officer of the Council before the commencement of each accounting year as being a reasonable amount of the said costs expenses and outgoings referred to in Paragraph (D) of the recitendum of this lease which the said City Treasurer or other duly authorised officer of the Council shall prior to each such determination estimate to be incurred by the Council in the forthcoming accounting year

AND such reasonable amount shall be determined by the City Treasurer or other duly authorised officer on the basis indicated in the column headed "Basis of Charge" of the said SCHEDULE OF BENEFITS

(iv) Each of the foregoing estimates of the said costs expenses and outgoings shall be adjusted by adding thereto any underestimate (the amount by which actual costs expenses and outgoings have exceeded estimated costs expenses and outgoings) or by subtracting therefrom any over-estimate (the amount by which estimated costs expenses and outgoings have exceeded actual costs expenses and outgoings) calculated by comparing the actual costs expenses and outgoings recorded in or appearing from the accounts prepared for each financial year of the Council the end whereof last precedes the commencement of the accounting year in respect of which each such estimate is being prepared with the estimated costs expenses and outgoings (apportioned on a daily basis) of the accounting years so far as part or parts thereof are co-extensive with each such preceding financial year

(v) The first Contribution shall be determined as soon as possible hereafter in manner hereinbefore provided as a Contribution for the accounting year

REPAIRS AND IMPROVEMENTS CONTRIBUTIONS

Under the terms of your Lease you will have to pay for repairs and improvements carried out by the Council. However, during the first years of the Lease (the initial period) the Council's right to recover these charges is restricted.

The initial period begins on the date your Lease is granted to you and ends on 31 March which falls after the fifth year of your Lease. Eg if your Lease is granted on 1 June 2006, the initial period begins on that date and ends on 31 March 2012.

Limitations on Service Charges for Repairs and Improvements

In respect of costs incurred during the initial period for itemised work you will not have to pay more than the amount shown against that item in this Notice together with an allowance for inflation.

In respect of the costs incurred on non-itemised repairs you will not have to pay in any one year more than the estimated annual amount shown in this Notice together with an allowance for inflation.

For costs incurred during the initial period but outside the reference period for itemised repairs you will not have to pay more than the average annual cost of all work referred to in this Notice whether itemised or not together with an allowance for inflation.

You will not have to pay more for improvements which are shown in this Notice than the estimated amount of your contribution shown for that improvements together with an allowance for inflation and during that period you will not have to pay for any improvements which are not shown in the Notice

a) Repairs (not itemised)

Repairs which at the present time cannot be specified may be undertaken during the Reference Period for which an estimated **ANNUAL CHARGE** (at current prices) of £375.00 is given.

b) Repairs (Itemised Works)

The Landlord estimates the following amounts (at current prices) **FOR THE REFERENCE PERIOD.**

WORK	COST	YOUR CONTRIBUTION
Prior to Painting and Painting	£3,000.00	£ 750.00
UPVC Window Frames and Doors	£2,252.00	£ 563.00
Miscellaneous Roofing (Bins Store)	£1,600.00	£ 400.00
	£	£
	£	£
	£	£
	£	£
TOTAL	£6,852.00	£1,713.00

c) Improvements

The Landlord estimates the following amounts (at current prices) **FOR THE REFERENCE PERIOD.**

WORK	COST	YOUR CONTRIBUTION
Door Entry System	£3,500.00	£ 600.00
	£	£
	£	£
	£	£
TOTAL	£ 3,500.00	£ 600.00

Service Charge Loans

Service charges for repairs to flats/maisonettes can often be high. In some circumstances you may be entitled to a loan from the Council to help you pay them.

You may be entitled to a loan for repairs undertaken:-

- (1) during the first 11 years following the purchase of your flat/maisonette,
- (2) if the service charge for repairs for the year in question is £2,000 or more
(this figure is for 1992 and may be adjusted to allow for inflation).

Written Submissions

The Applicant

18. In the application, which stood as the Applicants statement of his case, the Applicant had made the following representations.
19. The Applicant stated that he was disabled and unwell, suffering from depression that had been made worse by the stress of this case.
20. In relation to the district heating disconnection charge in 2010, the Applicant pointed out that the first time this charge had been calculated by the Respondent it had been £1499.07, but had been reduced to the present charge of £1229.48 because the Respondent had made an error in calculating the first figure.
21. The Applicant indicated that he was aware that the largest element of this charge was in relation to a loan that the Respondent had taken out prior to the disconnection to pay for upgrading the district heating system.
22. The Applicant had requested disconnection from the district heating system because he was eligible for a grant for the installation of a domestic boiler.
23. In relation to the common door entry system installed in 2012. The Applicant pointed out that the full share of the cost as apportioned to him would have been £806.03. This was reduced to £600 because the terms agreed when he had purchased the long lease on the property, capping the cost to him at £600. The Applicant stated that the council had already agreed to reduce this further because he opted not to have a hand set fitted inside his property. He had been told that the cost of the handset would be taken off his bill.
24. Further, the Applicant stated that the Respondent had only obtained two quotes by way of competitive tender and he thought that they should have obtained more quotes with a view to getting a cheaper price.
25. The Applicant produced a copy of what he was saying was his lease, but upon consideration of that document it was not a copy of the lease. It was merely a copy of a draft lease that was not signed and had different paragraph numbers to the actual lease.
26. The Applicant also submitted a response to the Respondents case dated 16/6/2013.

27. In that response the Applicant made it clear that he was aware that the council had taken out a loan in relation to upgrading the district heating system prior to his disconnection from that system. He pointed out that the disconnection charge had included an element in respect of this loan and asked the questions, "What does a loan Department have to do with me?" "Why should I pay for something I have not had or used?" He asserted that there should be nothing to pay in relation to the loan that was outstanding at the time of the disconnection.
28. The Applicant asserted that the disconnection charge should be just the cost of the plumber attending to make the disconnection, with an administration charge for arranging for that to be done and V. A. T.
29. The Applicant indicated that the charges that he had been required to pay since he had exercised his right to buy the property were in his view scandalous. He could not go on like this and had therefore put the property up for sale. He was in receipt of benefits.
30. The Applicant indicated that at some stage prior to 2009 he had been told by a representative of the council that there was a standard fee throughout Sheffield for the disconnection of any property from a common heating supply of £250. He was fully aware that the Respondent was disputing that this had ever been said by a representative of the council.
31. The Applicant listed various illnesses that he was suffering from.
32. In relation to the door entry system the Applicant indicated that he had spoken to someone from the council on the telephone, who had indicated that the Applicant would not to pay anything towards the door entry system.
33. The Applicant attached two letters, both of which had been written by him to the Sheffield City Council.
34. In the letter dated 26th May 2009, the Applicant had indicated that he had been told that there was an offer being made by the council that any tenant could opt out of district heating systems free of charge. He also indicated that the year before a lady had been able to negotiate a £500 disconnection fee down to £250. He further indicated that, "I know the cost of switching off is to be accounted for".
35. In the letter dated 24th February 2012, the Applicant had pointed out that he had been told by a lady from the council who had visited his home that he would not have to pay anything towards the door entry system.
36. That letter went on to assert that at some point the Applicant had been quoted £500 to disconnect him from the district heating system.

The Respondent

37. The Respondent had served a statement of case dated 3rd May 2013, in which representations were made about the case.
38. The Respondent indicted the sections of the lease that were relevant to the two charges that were in issue in the case.
39. The Respondent stated that in a right to buy purchase that involves a district heating system the owner remains in that system and their lease contains contractual obligations that apply. The lease also provides for a long leaseholder who decides to disconnect and the charges that will then apply. These are a disconnection charge, a disconnection loss charge, an administrative charge and V. A. T. upon the administrative charge.
40. The Respondent indicated that when a long leaseholder is considering disconnection he will be provided with a written estimate of the cost. Alternatively, if the tenant simply writes in indicating he wants to disconnect he will be sent an invoice and breakdown of the charges. In either case, the process provides plenty of time for the tenant to change his mind and disconnection will not take place until after the disconnection charge has been paid.
41. The Respondent made it clear that verbal estimates are never given and that there is no record of an estimate of £500 being given to the Applicant.
42. In this case the Respondent indicated that the disconnection charge was £161.07, that being the cost of the work done by the plumber who carried out the disconnection. Added to this was the disconnection loss charge representing a fair proportion of the continued or recurring costs that will continue to be borne by the council for 3 years after disconnection and which would have been covered by the district heating charge had there not been a disconnection. This was £184.50. Added to this was a fair proportion of the debt existing at the time of the disconnection. This debt had been incurred 2 years before the disconnection to pay for an upgrading of the district heating boiler system. Some of the work had been grant funded and a proportion had been repaid. Had the Applicant not disconnected then his district heating charges would have contributed to paying off this debt. This element of the charge was £797.66. Added to that an administration charge capped by the lease at £75 plus V. A. T. on the administration charge. The total charge was £1229.48.
43. The Respondent pointed out that it was the Applicant who chose to disconnect in full knowledge of the cost that had been calculated in accordance with the lease. Correspondence was produced.

44. In relation to the door entry system. This work was part of a long term agreement and details of seven items of correspondence were given between the parties. The work was completed between 20/3/12 and 30/3/12.
45. The Respondent indicated that the cost to the Applicant had been estimated at £806.03, but the actual cost as apportioned to the Applicant should have been £881.67. This was capped at £600 because of an agreement made with the Applicant during the right to buy process. Added to that was 10% administration charge. The total being £660.
46. The Respondent indicated that pursuant to clause 6(vi) administrative costs of the council were covered by adding a 10% charge to charges levied to the leaseholder.
47. The Respondent supplied a copy of the lease between the parties.
48. The Respondent also produced exhibits that the Respondent thought were relevant to each service charge that was for consideration by the Tribunal. Where relevant these are now described.
49. The first invoice for the disconnection charge was dated 2/12/09 and was for £1499.07
50. A breakdown of the disconnection charge was given reciting the figures provided in the Respondents statement of case, with a total of £1229.48 being payable by the Applicant.
51. A schedule was provided detailing the loan outstanding as of the date of the disconnection and the estimated running costs. This demonstrated the arithmetic used in calculating the loss elements.
52. A refund credit note to the Applicant in the sum of £269.59.
53. An invoice in respect of the door entry system dated 9/8/12 for the sum of £660. This was accompanied with a breakdown of this cost. Further a summary of that cost indicated that upon calculating the proportion of cost to be borne by the Applicant it had been £819.70, but that this was capped to £600, plus an administration fee of £60.
54. General correspondence was enclosed at "C" in the bundle, dealing with the door entry system.

90. The Tribunal therefore decided that these service charges and administrative charges are payable under the terms of the lease.
91. The Tribunal considered the Applicants case that he had at some point been told that he would not be charged for this work. The Tribunal did not accept this evidence. The lease clearly provides for the Applicant to be charged a service charge for his proportion of the cost of installing a door entry system. A document attached to the lease caps the cost of this work in so far as charges to the Applicant are concerned at £600. It would be contrary to the interests of the Respondent and the other residents in this complex for the Respondent to indicate to the Applicant that he did not have to pay for something that otherwise he would have to pay for. None of the correspondence provided by the Respondent supports the Applicants case.
92. The Tribunal then considered how much of this charge was reasonable.
93. The Tribunal noted that at the time the Applicant purchased his long lease of this property there was an agreement made that capped the Applicants share of service charges in relation to the door entry system at £600, irrespective of the actual cost of the work.
94. The Applicant was told that he need not have the hand set fitted on the inside of his maisonette and as a result the Applicant indicated that he did not want the hand set to be fitted. He manages without a hand set and therefore without any knowledge as to who is visiting the communal front door.
95. There has been agreement between the parties that the cost of the handset be removed from the calculation of the service charge. The Tribunal refers to the letter in the Respondents bundle, dated 28/2/2013. The Respondent attached to that letter a document detailing the charge to the Applicant as £819.70, capping that figure down to £600 plus administration costs of £60.
96. The Applicants case is that it had been agreed that the Applicant should not pay for the handset. The Tribunal accepts that evidence.
97. The Tribunal decided that the Respondent has made a representation to the Applicant that the Applicant need not have a hand set fitted and that the charge to the Applicant will therefore be reduced. The Applicant has relied upon that representation to his detriment in that he does not now know when persons visit the exterior common door to the building. This is likely to reduce the resale value of the property. The Respondent is now bound to reduce the cost to the Applicant by the value of the handset, £61.97.

98. Alternatively, the Tribunal decides that in these circumstances it is fair and reasonable to calculate the service charge for the door entry system as starting at the capped figure of £600, less the cost of the handset that has not been supplied to the Applicant.
99. In either case the Tribunal calculates the service charge for the door entry system as £538.03.
100. The Tribunal considers it to be reasonable to add an administrative charge of 10%, £53.80.
101. The Tribunal then considered section 20C of the Landlord and Tenant Act 1985. The Applicant asking that the Tribunal make an order that the Respondent may not treat the costs incurred in connection with these proceedings as relevant costs in determining service charges in the future. The Tribunal decided that it would make no order because the Respondent had succeeded in the majority of its case.

The Tribunal Determination

102. The district heating disconnection charges of £1229.48 demanded by the Respondent during service charge year 2010 are a service charge payable under the terms of the lease and are reasonable. They have already been paid by the Applicant.
103. The door entry system charge demanded by the Respondent during service charge year 2012 is a service charge that is payable under the terms of the lease. The Tribunal determines that the charge as currently demanded is unreasonable and the charge is reduced to £538.80 plus an administrative charge of £53.80. Total already overdue for payment by the Applicant to the Respondent £592.60. If this has not already been paid by the Applicant it is to be paid as soon as possible. If already over paid then the Respondent to make a refund to the Applicant or his service charge account.
104. The Tribunal does not make any order pursuant to section 20C of the Act.