10894

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
Formerly the Leasehold Valuation Tribunal

Case Reference	:	**LON/00AE/LSC/2014/0262**
Property	:	**Elliott Close, Wembley, Middlesex HA9 8JH**
Applicant	:	**Mr M. Wall and 6 other Leaseholders at Elliott Close, Wembley, Middlesex HA9 8JH**
Representative	:	**Mr M. Wall**
Respondent	:	**Network Stadium Housing Association Limited**
Representative	:	**Ms Jane Hodgson of Counsel**
Type of Application	:	**Reasonableness of Service Charges - Sections 27A and 20C Landlord and Tenant Act 1985**
Tribunal Members	:	**Mr L. W. G. Robson LLB (Hons)** **Mr I. Thompson BSc FRICS** **Mr J. Francis QPM**
Dates of Hearing	:	**10th October 2014, and 23rd February 2015**
Date of Decision	:	**8th May 2015**

DECISION

Decision Summary

(1) The final service charges for the service charge year commencing on 1st April 2013, and the estimated service charges for the service charge year commencing on 1st April 2014 are reasonable and payable as demanded by the Respondent

(2) The Tribunal made an order under Section 20C that the Applicants herein shall not pay any of the Respondent's costs in connection with this application otherwise chargeable to the service charge.

Preliminary

1. The Applicants seek a determination under section 27A of the LANDLORD AND TENANT ACT 1985 (as amended) of reasonableness and/or liability under a (specimen) lease dated 31st January 1985 (the Lease) to pay annual service charges for the service charge year commencing on 1st April 2013, and the estimated service charge for the year commencing 1st April 2014.

2. An initial hearing was held on 10th November 2014, at which it was ascertained that neither party was ready to proceed, due to confusion as to procedure, and the Tribunal thus issued further Directions dated 10th November 2014.

3. This particular development comprised 42 flats. The issues arose from a new Qualifying Long Term Agreement which had started part way through the service charge year commencing on 1st April 2013. The Respondent landlord had issued final service charge accounts for the year commencing 1st April 2013 a few days before the initial hearing on 10th October 2014, which exceeded the estimated charge. The Applicants did not challenge the original estimates for that year, but now wish to challenge the final accounts. Again it appeared that the new Qualifying Long Term Agreement had contributed to the increase in costs.

4. Pursuant to the further Directions, the current Applicants are now:

Mr M. Wall (Flat 12)	Mr & Mrs F. De Silva (Flat 8)
Mr S. Bourgeois (Flat 11)	Mr E. & Mrs V. Page (Flat 24
Miss J. King (Flat 19)	Mrs D. Grant (Flat 23)
Mr P. Moring (Flat 32).	

5. Extracts from the relevant legislation are attached as Appendix 1 below.

6. At the start of the hearing on 23rd February 2015 Mr Wall queried whether the Respondent was entitled to serve its statement of case which he only received on 19th February. The Tribunal ascertained that the further Directions had been varied and that as a result the Applicants served an amended statement of Case on 4th February 2015, and a further letter of clarification on 1th February 2015. The Respondent was required to serve its final statement of case on 16th February 2015. The witness statement of Ms Comer (which was effectively the Respondent's

case) had been signed and served on 16th February 2015. Mr Wall agreed that there was little new in the Respondent's statement. In the circumstances, the Tribunal decided to admit the Respondent's statement.

Submissions

5. The Applicants submitted in their amended statement of case that the main reason for their application was the very large increase in the service charge for the years in question. There was no precedent for such an increase. They raised the following points (which form the basis of the arguments and decision);

(1) The service charges for 2014/15 had risen by an average of 65% per resident, which was unreasonable.
(2) The lump sum payment of £270 per flat demanded following the final accounts for 2013/14 was unreasonable
(3) The criteria used by the Respondent to select the contractor for cleaning and ground maintenance were unreasonable
(4) The Respondent's Board acted unreasonably in awarding the cleaning and ground maintenance contract to Pinnacle Housing Limited
(5) The Respondent was failing to monitor the service delivery adequately
(6) The apportionment of the cost per resident within "Lot 1" was unreasonable
(7) The apportionment of the cost per resident contradicted the [methodology] set out by the Respondent on 4th March 2014
(8) The service charge should be reduced by a more equal apportionment of costs between Elliott Close and Wood Close, reduction of the increase in professional fees to 25%, and reduction of Health and Safety maintenance costs to zero
(9) The majority of residents considered that increases of service charge from 2013/14 between 10 and 18% were reasonable.

The Tribunal has set out the parties' submissions and its decision under each of the above headings for convenience.

<u>Items (1) and (9) – a rise of 65% per resident was unreasonable; 10 – 18% was reasonable</u>

6. The Applicants based their figure of 65% on the increase of the 2014/15 budget over the service charge budget of 2013/14. The 18% figure was based on the increase from the 2012/13 budget to the 2013/14 budget.

7. The Respondent submitted that the costs incurred in a previous year were not a proper measure of what was "reasonably incurred". The real question was whether the services provided were reasonable value for money.

8. The Tribunal considered the evidence and submissions. The Applicants' submission seemed quite flawed. It assumed that the costs of property repairs and maintenance were entirely predictable. Unfortunately they are not. Also a percentage increase figure alone cannot of itself be reasonable or unreasonable. If the cost of repairs has actually gone down, any increase, or even the same charge as the previous year, would be unreasonable.

9. The Respondent's submission was more convincing. The measure of reasonableness in the context of Section 27A is whether the cost of any particular item in any particular year is reasonable, when compared with similar costs in that year, also whether the method used is reasonable, and whether it is reasonable to do the work at all. A useful example of this principle is the cost of patching an old flat roof covering, compared with replacing it. If the covering is old and at the end of its guaranteed life, patching it will be much cheaper, but is likely to be unreasonable as it is a waste of time and money, because the roof may start to leak again at any time. Replacing the roof covering with a covering which has a guaranteed life of, say, 10 years will be more expensive, but likely to be reasonable. It is also possible to buy an even more expensive roof covering, which is guaranteed for 20 years, or even 30 years. In that case, the landlord has an interesting dilemma. Should it buy the cheaper covering, which will be more expensive for the tenants in the longer term, or ask the tenants to pay more immediately? Such a decision will always be a difficult mixture of fact and degree.

10. The Tribunal thus decided to reject these challenges by the Applicants, as they did not sufficiently address the quality and cost of any particular item of charge for the Respondent or the Tribunal to investigate satisfactorily.

Item (2) - the lump sum payment of £270 per flat demanded following the final accounts for 2013/14 was unreasonable

11. The Applicants made no effective submission in support of this item.

12. The Respondent submitted that the additional charge came about as the result of the change in contractors, part way through the financial year.

13. The Tribunal decided that this item is intrinsically bound up with the challenges made later in items (3) – (8). If the Tribunal finds in favour of the Applicants relating to any of those items, that finding will call into question the reasonableness of the charge to some degree, and will be dealt with below if necessary. If the Tribunal finds in favour of the Respondent, the charge will be deemed reasonable.

Item (3) - the criteria used by the Respondent to select the contractor (Pinnacle) for cleaning and ground maintenance were unreasonable
and
Item (4) - the Respondent's Board acted unreasonably in awarding the cleaning and ground maintenance contract to Pinnacle Housing Limited

14. The Applicants submitted that the Respondent's methodology in its Tender evaluation was flawed. An employee of the Respondent marked the evaluation completed by each tenderer, much as a teacher marks an examination paper. The marks were then entered into a spreadsheet to produce a weighted average using the following criteria;

Criterion	**Weighting**
Service delivery around Specification	30%
Service Specific Questions	25%
Price	45%

15. The Applicants' criticisms of this method were;
a) No assessment of a contractor's previous performance was made
b) Most of the questions in the evaluation form were subjective
c) the price criteria were compared with the average price of all bids and reduced to [a statement] e.g. "(20% less than average)", or (0-5% greater than average)"
d) The relative or absolute prices per dwelling, or per size or surface area of the properties did not figure in the evaluation.

The Tender Evaluation produced a score called the Evaluation Rating which was used to rank the contractors. However the Evaluation Rating was only produced in part from objective or quantifiable data. Aggregating a number of factors does not produce an objective measure of performance.

16. At the Respondent's relevant Board Meeting on 24th January 2013 Agenda item 08 contained the following statement;
"The two contractors achieving the highest evaluation scores do so at a very different overall price. The difference between the best two contractors is around £100,000 or 19.65% of the average price". A table followed attributing percentages to each of the five contractors who tendered against the criteria noted in paragraph 14 above, to produce a ranking. The Applicants considered that the Board had paid more attention to the Evaluation Ratings and to the expected quality of service than to the price difference between the contractors. The Applicants considered that most residents would have decided on price rather than quality. Further, no comparison was made with the prices of previous contractors (which the Applicants considered had delivered a similar service for considerably less than the current contractors charged), or the "average price". No assessment was made of the cost per property, or per surface area, for each contractor. In answer to questions, the Applicants agreed that the contract had been consulted upon. The evaluation difference between the two contractors had been 1%, but the price difference was £100,000, which was too much.

16. The Respondent made no specific submission relating to item (3) but effectively dealt with both matters in relation to Item (4). It submitted that the methodology used was in response to underperformance issues

with the estate services contracts previously in place. The previous contractor for this block was satisfactory, but was a small organisation incapable of delivering its service across the whole of Lot 1. It had been discovered that there had been no written performance specification for that contractor, thus the service provided was up to the contractor. Previously, the Respondent had retained 20 contractors to service Lot 1. There had been many complaints about service. It was decided to weight the evaluation of the invitations to tender towards quality as follows:
Quality and Service – 55%
Price – 45%
The Respondent was supported by Procurement for Housing, a national procurement organisation serving the social housing sector in procuring cleaning/grounds maintenance contracts. After a pre-qualification questionnaire stage, nine suppliers were invited to tender. Five suppliers tendered. Their scores were described in a table very similar to the one referred to by the Applicants (with some non-material differences relating to the position of the decimal point in the total rating percentages). The material differences between the two highest scoring contractors (Clean Green and Pinnacle) were that Clean Green had tendered the lowest price of all five tenderers for Lot 1, (£442,791.21) and Pinnacle the highest (£542,565.39). The overall evaluation percentage score for Clean Green was 73.57%, and for Pinnacle 74.16%. By way of comparison, the other tenderers (in reverse order) achieved 69.77%, 52.18% and 51.78%. The agenda item 08 for the Board meeting was included in the bundle. The Respondent had retained expert advisers to deal with the tender, and the project team, Network stakeholders and residents had unanimously decided to award Pinnacle the top score in the evaluation. The quality and improvement elements in the Pinnacle submission had been very strong. Pinnacle had even voluntarily agreed to a penalty clause of 10.1% on its quarterly fee if it failed to achieve a customer satisfaction level of 80%. This was the highest penalty clause offered. It is now well settled law that a landlord is not obliged to accept the lowest tender for work. The Respondent had calculated that a saving of £600,000 in staff time over 3 years would be made by letting the contracts for Lot 1 to a single reliable contractor.

17. The Tribunal considered the evidence and submissions. The Tribunal noted that there had been consultation and the statutory tender process appeared to have been carried out. The Respondent had taken expert advice and had gone to considerable trouble to make the tender process and its decision transparent. It was entitled not to take the lowest tender, but must act reasonably. To have taken the decision desired by the Applicants, it would have had to ignore the advice of its experts and stakeholders, as well as the legitimate expectations of those participating in the tender process. The Tribunal considered that the Applicants' criticism that the process was too subjective was overstated. With a complex contract like the one in issue, both objective and subjective assessments have to be made (e.g. customer satisfaction). The methodology used by the Respondent is not new. It is a tried and tested formula, which attempts to give the various factors a mathematical value, thus enabling the decision makers to make a more rational and

transparent decision. An examination of Agenda item 08 revealed that Pinnacle had scored highly under the headings of Continuous Improvement, Accountability, Resident/Community Understanding, Innovation, and References. The Applicants' assertion that a contractor's previous performance had not been taken into consideration appeared to have little basis in fact. Having weighed all matters, the Tribunal decided that the Applicants had failed to convince it on the balance of probabilities that the Respondent's methodology and decisions relating to the tender process were unreasonable.

Item (5) - the Respondent was failing to monitor the service delivery adequately

18. The Applicants submitted that they had only seen 5 inspection reports. No inspection reports had been made for the 5 month period between November 2013 and March 2013 [*in fact 2014*]. In three out of five inspections Pinnacle had failed to score 80%. Failure to monitor consistently meant that the Respondent and residents were unable to levy a financial penalty of at least five per cent. There should be monthly inspections, and there was a notice board in the hallway showing that monthly inspections should take place. The residents were the customers, but they had never been asked about performance or seen any evaluations, either from the Respondent or Pinnacle. In answer to questions, the Applicants described the cleaning and gardening processes they had seen. They had no particular complaints about these, and the Tribunal noted that the Applicants and the Respondent were not in disagreement over the scope of the work done. The Applicants noted that the contractors did not use water and soap to clean relevant items, and they could not remember a "deep clean" since July 2013. When asked about complaints, they understood that Mr Moring had made at least one complaint, but they had no supporting documents. They confirmed that they attended Estate meetings every few months.

19. The Respondent submitted that regular inspections of the scheme were taking place. Monthly inspections took place in August, September, October, and November 2013. As no issues were found or reported, inspections reverted to a six monthly cycle. Further inspections took place in April and May 2014. The contractor had failed to reach an 80% score on a number of occasions relating to inspections, but the Respondent was only entitled to apply a financial penalty if the result of its resident satisfaction surveys from time to time were less than 80%. At no point to date had a 5% penalty been applied. Also the Respondent employed Estates Monitoring Officers to monitor the services provided to the residents. The Estates Monitoring Officer for Elliott Close had no record of any complaints received since Pinnacle was appointed. In answer to questions, Ms Comer stated that there were resident focus groups, and the monitoring officers (dealing with nearly 300 estates) were paid for by the £600,000 saved by using one contractor. There was a system of oversight of the monitoring officers.

20. The Tribunal considered the evidence and submissions. There were some factual differences between the parties, and clearly some differences in emphasis. However, there seemed to be fewer complaints on the quality of the service, than it might have expected. It would have preferred to see more documentary evidence of the inspection and oversight scheme, but Ms Comer appeared to be a credible witness, and her factual evidence was not seriously in contradiction with that of the Applicants, rather it seemed to give an insider's view of what the Applicants were describing. The Tribunal decided that the Applicants had not convinced it on the balance of probabilities that the Respondent's monitoring system was inadequate.

Item (6) - the apportionment of the cost per resident within "Lot 1" was unreasonable

Item (7) - the apportionment of the cost per resident contradicted the [methodology] set out by the Respondent on 4th March 2014

Item (8) - the service charge should be reduced by a more equal apportionment of costs between Elliott Close and Wood Close, reducing the increase in professional fees to 25%, and reducing Health and Safety maintenance costs to zero.

21. The Tribunal found it appropriate to consider these linked items together.

22. The Applicants submitted that they had used Wood Court, Harlesden Road, London NW10 as a comparator. They calculated the surface area of the corridors and lift, excluding the staircase areas from a planning application to Brent Council in 2010. They calculated that the communal areas of each property were about 280 square metres. They accepted that the cost of a service was not directly proportional to surface area, but they found it hard to believe that Pinnacle charged 2.16 times the cost of Wood Court. All the other tenderers broadly estimated Wood Close and Elliott Close to be similar. The Applicants analysed the costs for cleaning and caretaking as follows:

	Elliott Close	**Wood Close**
Number of flats	42	38
Communal area (sq m)	286	290
Pinnacle Charge	£11,098.84	£5,131.62
Clean Green tender	£4,652.25	£5,787.60

23. The Applicants based their allegation of a contradiction by the Respondent on a statement made by it on 4th March 2014 [*In fact 2013, see below*]. The Applicants submitted that the cost of the work was not proportional to the size of the common areas, as stated there.

24. The Applicants' proposed revision to the service charge following the hypotheses of; equalisation of the cost of the two properties, professional fees and Health and Safety maintenance was:

(2014/15 budget)

	Base	Proposed	Ratio
Cleaning	13,451.79	7,015.11	52.2%
Grounds Maintenance	12,089.70	7,901.83	65.4%
Health & Safety maint.	2,100	0.00	
Professional Fees	840	1,050	125%
TOTAL	28,481.49	15,966.94	

- Difference 12,514.55
- Estimated effect on each unit;
  pcm 2 bed - Reduce from £105.26 to £81.02
  pcm 3 bed £117.94 to £90.78

The Applicants calculated their figure was a 27% increase. They had asked residents what increase in service charge they considered reasonable in the light of inflation and their current financial responsibilities. The majority of residents considered an increase of 10 – 18% from 2013/14 was reasonable.

25. The Respondent submitted that the cleaning costs allocated to Elliott Close were £11,098.34 p.a. (£924 per month), and for grounds maintenance were £9,975 p.a. (£813.28 per month). Those sums were then apportioned to the leaseholders in accordance with their leases. The amounts attributed to Elliott Close were calculated by the contractor by reference to the criteria set out in the ITT specification. After the tender was successful, the Respondent's advisers queried the amount attributed to Elliott Close. The contractor put forward a robust explanation of the figure allocated. The Respondent, in the light of all the information given to it did not consider that the charge allocated was excessive.

26. Commenting on the Applicant's comparator at Wood Court, the Respondent did not find it comparable with Elliott Close. Wood Court is 1 block with 1 entrance and 1 exit, while Elliott Close is made up of 7 blocks of 6 units, all of which have 1 entrance. The amount of cleaning required for Elliott Close was thus considerably greater.

27. The Respondent submitted that the reference in the Applicants' submission to contradictions by the Respondent in the stated methodology, related to a summary of observations received from the leaseholders in response to the Notices of Intention served on 25th April 2012 *[in fact attached to a letter from the Respondent dated 4th March 2013, the summary is at p.101 of the bundle].* The relevant item was set out in full by the Respondent;

(consultee's statement)
"3. As a smaller scheme we don't wish to subsidise a larger scheme".
(Respondent's reply)

"Any prospective contractors will be required to enter an estimate for every scheme included in the contract. Consequently the cost for your scheme will be determined by the specific size and needs of the common areas and Leaseholders will be billed solely based on this."

The Respondent reiterated the submission previously made, that the contractor had calculated the amount based on the Specification.

28. Commenting on the Applicants' evaluation of a revised service charge, the Respondent submitted that the current costs had been reasonably incurred, and carried out to a reasonable standard. The amounts apportioned to Elliott Close were also reasonable. The market had been properly tested by reference to suppliers capable of complying with a contract of the size granted to Pinnacle. The market could not be defined by reference to suppliers of individual services to individual estates. The Respondent had appointed independent advisers to assist with the specification and tender. It had invited 9 contractors to bid and received 5 compliant bids before awarding the tender for Lot 1.

29. The Tribunal considered the evidence and submissions. Relating to Item (6), the Tribunal decided that Wood Court was not an appropriate comparator, based on the physical layout of the properties as reported by both sides. It was clear that Elliott Close would require more time to clean. The Applicants implicitly accepted that some extra cost might be incurred, but they considered that the cost of cleaning should not be more than twice the cost at Wood Court, which was a reasonable point. The Respondent submitted that it had queried this cost specifically with Pinnacle, but had received a convincing reply on the extent of the extra cost. As a result they considered the cost charged to be reasonable. Again, the Tribunal would have liked to see documentary evidence of this particular point.

30. The Applicants had noted in their evidence that the previous contractor had charged rather less at Elliott Court for apparently the same work. The Respondent considered that the contractor concerned had complete discretion on what work was done, which was unsatisfactory, and other contractors previously employed elsewhere were not doing work properly. The Respondent was making a saving of at least £600,000 over 3 years, which it was ploughing back to improve the service to residents, particularly through the use of Estate Monitoring officers. The Tribunal considered that although the price to the leaseholders had increased, there were benefits, in that the service was more secure, as it was being done by a larger organisation with more resources. Also, the Respondent (and thus the leaseholders) had more control and redress if work was not done properly, and the new contract provided a contractual basis for continuing improvements in service. While it seemed that the Applicants might well, in the short term, be getting rather less for the increase in cost than other estates in Lot 1, in the longer term the Respondent had a reasonable expectation of improved service. While the Tribunal had some sympathy for the leaseholders of Elliott Court, it decided that the new contract had additional benefits even for them, and thus the

Respondent was not unreasonable in making the decision to change the cleaning and grounds maintenance arrangements. All things considered, the Tribunal decided that the apportionment of the costs to Elliott Court made by the Respondent was also not unreasonable. Although not part of its decision, as one of the improvements in service sought, the Respondent might consider a dialogue with leaseholders and the contractor (per paragraph 5.1.2 of the Specification) to demonstrate that the objective in paragraph 3.1 (excellent value for money) of the Specification is being met relating to Elliott Close.

31. Relating to Item (7), clearly if the Respondent had intimated that the Estate costs would be calculated on one basis, and then used another, this would be prima facie unreasonable. However the Tribunal decided that the Applicants' criticism appeared to be based on an erroneous view of the statement made by the Respondent. The critical words are: "the cost for your scheme will be determined by the specific size and needs of the common areas". Clearly size must be a major factor, but the Applicants base this element of their case solely upon their view of the relative sizes of the two properties, to the exclusion of the needs of either property. The Tribunal considered that the cleaning needs of a property with 7 entrances must be considerably greater than a property with only one entrance, even if the surface areas to be cleaned are similar. Dirt tends to accumulate at entrances. While other factors may affect the amount of work needed, none were put to the Tribunal. Thus the Tribunal decided that there was no contradiction in the Respondent's statement, which might have misled the leaseholders.

32. Relating to Item (8), the Tribunal found the Applicant's submissions unconvincing. Their first point of departure was that the costs of cleaning Elliott Close should be similar to those of Wood Court. In support they referred to the tendered figures for each property by other contractors. They noted that the other tenderers were within a range of 20% (except Fountains) in their costings. Their conclusion was that the Pinnacle costing was too high.

The figures are:

	Clean Green	Fountains	Hi Spec	Pinnacle	RMG
Elliott	5,787	16,779	9,907	11,098	9,288
Wood	4,652	1,677	9,068	5,131	10,462

33. However, as noted above, Pinnacle has effectively defended its figure to the Respondent's satisfaction. Further, looking at the figures, Pinnacle was not the most expensive quote for Elliott. The Applicants have disregarded the Fountains figures, assuming they are errors. However, looking at the other combined figures, Pinnacle is the second cheapest, beaten (by some distance) only by Clean Green. In the light of the evidence of the physical layout of the properties before the Tribunal, RMG clearly looks wrong. Hi Spec wanted to charge £9,068 for cleaning Wood, and slightly more for Elliott. Fountains (who would have been held to their figures if successful) calculated Wood at only £1,677 or

about 10% of the cost cleaning Elliott. Clean Green put in two low figures, but calculated the difference between the two properties at about 20%, which looked quite light. The figures could suggest that only Pinnacle and Fountains looked at the properties correctly, or the whole table could just be random figures meaning nothing at all. The debate could be endless. In any event, the Tribunal decided that little can be deduced reliably from the Applicants' table. However, it can be reliably deduced that Elliott should cost more to clean than Wood. Also Pinnacle has defended its figures, and it was the successful tenderer for the whole contract in an open and competitive tender. Uncoupling the Elliott contract is not an easy option for the Landlord, and Clean Green may have no wish to clean only one property.

34. The Tribunal decided that the other factors used by the Applicants had no validity whatsoever. Pegging professional fees to insurance costs is to compare chalk with cheese, and cutting out Health and Safety costs would be foolhardy, and probably illegal.

35. Thus the Tribunal decided that the Applicants have failed to prove that the Respondent has acted unreasonably relating to any of the Items challenged.

36. Any sums due as the result of this decision shall be paid within 21 days of the date of publication of this decision.

Costs – Section 20C

37. The Applicants applied to limit the landlord's costs of this application chargeable to the service charge. The Respondent submitted that if the costs were reasonably incurred then the Respondent was acting quite properly in resisting this application. The Respondent considered that the Applicants had had opportunities to consider some of the points made, and if so, the hearing would not have been necessary.

38. The Applicants submitted that they had asked for a meeting with the Respondent when they received their letters of increase. It had been the Respondent which had suggested an application to the Tribunal, when they could not agree. They considered that the Respondent had not been prepared to negotiate on the numbers.

39. The Tribunal considered the submissions and evidence. This was a difficult case, but the Tribunal had found entirely in the Respondent's favour. This was not however the decisive factor. The Tribunal had to take into account whether the Applicants had any reasonable alternative to making the application, and whether they had acted reasonably in the application process. The Tribunal considered that both parties had acted reasonably during the process. It appeared to the Tribunal that if the Respondent was unable to convince the Applicants of the reasonableness of its decision by discussion, then an application to the Tribunal was the only course open to the Applicants. The Tribunal also considered that the cost and satisfactory performance of the previous contractor, and the

significant cost difference in the two tenders, must have been weighing heavily in the Applicants' minds. A decision by the Tribunal on this difficult point will have been of benefit to both the leaseholders and the Respondent, in the context of the wider Estate. The Tribunal decided to make an order under Section 20C that the Applicants herein shall not pay any contribution to the Respondent's costs in connection with this application otherwise chargeable to the service charge.

Signed: Judge Lancelot Robson
Chairman

Dated: 8th May 2015

Appendix 1

Landlord & Tenant Act 1985

Section 18

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

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection 1 shall not apply if, within the 18 period of 18 months beginning with the date when the relevant costs in question had been incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) and (6)....

Section 27A

(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.

Section 20C

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

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(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 Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances

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