10688

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2014/0339**
Property	:	**Flat 8, 2-4 Colville Road London W11 2BP**
Applicant	:	**The Mayor and Burgesses of The Royal Borough of Kensington and Chelsea**
Representative	:	**Ms Vachino of Legal Services of The Royal Borough of Kensington and Chelsea** **Mr D Ward Leasehold Manager of Kensington and Chelsea Tenant Management Organisation ("TMO")**
Respondent	:	**Miss E Edema**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Haria** **Mrs Davies FRICS** **Mr Ring**
Date and venue of Hearing	:	**9 October 2014 at 10 Alfred Place, London WC1E 7LR**
Date of reconvene	:	**11 November 2014**
Date of Decision	:	**10 March 2015**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at London West.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2010/11,2011/12, 2012/13 and the budget for 2013/14.

2. Proceedings were originally issued in the County Court at West London under Claim no. 3YU57178. The claim was transferred to this tribunal, by order of Deputy District Judge Thornett on 20 June 2014.

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

The hearing

4. The Applicant was represented at the hearing by Ms Vachino from the Applicant's Legal Services department. The Respondent appeared in person at the hearing.

5. At the start of the hearing the Applicant produced the final accounts for the service charge years 2013/14. The tribunal agreed to admit these accounts as evidence as they would be helpful to the parties and the tribunal in relation to the disputed service charges.

6. The Respondent sought permission to submit a revised Scott Schedule incorporating her further response and she also requested permission to use her laptop instead of the agreed bundles during the hearing.

7. The Tribunal had before it 4 lever arch files consisting of a total of 1529 pages. Three of the four lever arch files consisted of the Respondent's Statement of Case and supporting documents. The Respondent had attended the Case Management Hearing and the Applicant had been represented at that hearing. Directions had been issued following the Case Management Hearing after consultation with the parties and so there should be no need to make further written submissions at this late

stage in the process. The Directions had provided for the Respondent to complete a Scott Schedule ("the Schedule") identifying items in issue, the amount in issue and the reasons why the amounts were in issue. The Directions provided for the Applicant to add its comments on the Schedule and the Respondent to submit a brief supplementary reply. The tribunal did not consider it to be proportionate to the sum in dispute or in the interests of justice to permit one party to the proceedings to make further written submissions beyond what had been provided for by the Directions and disclosed to the other party prior to the hearing. If one party was to be allowed to make further written submissions immediately prior to the hearing there is a potential for there to be prejudice to the other party. Under the circumstances the tribunal did not allow the Respondent the chance to make further written submissions, the Respondent was of course entitled to make oral submissions at the hearing and refer to her further written submissions to assist her. In relation to the use of the laptop, the tribunal was of the view that the use of the laptop was liable to lead to confusion, the parties had submitted agreed bundles in evidence and in these circumstances to avoid any confusion it is preferable that the parties and the tribunal refer to the agreed bundles.

The background

8. The Respondent is the lessee of the second floor flat known as Flat 8 at 2-4 Colville Road London W11 ("the property"). The Applicant is the freeholder of the Building ("the Building"). The Kensington and Chelsea Management Organisation ("TMO") is the managing agent for the Applicant and manages the Applicant's housing stock. We were informed that the Building comprises a total of 9 flats, 6 of the flats are let on secure tenancies and 3 of the flats are sold on long leases. There are 2 flats in the basement and 2 flats on each of the ground, first and second floors of the Building with a further flat on the third floor of the Building. There is a flat roof rear addition to the building,

9. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

10. The Respondent holds a long lease of the property which requires the Applicant, landlord to provide services and the Respondent as tenant is required to contribute an appropriate proportion of the total costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

11. There has been a longstanding dispute between the parties regarding the service charge. The Respondent stated in her statement in reply that she has been making the same observation to the Applicant for the last 18 years or so. The Respondent stated that she has never refused to pay "...a

reconciled account", and that "...when the TMO can establish confidence in its good and proper provision of services and management of these services as well as an accurate reconciling of accounts..." she will pay the estimated service charge in full. The Applicant's position is that pursuant to the terms of the Lease, the service charges including the major works charge are payable in full by the Respondent.

The Lease

12. The lease is dated 2nd July 1990 and is made between The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea (1) and Elizabeth Winifred Edema (2) ("the Lease").

13. By Clause 1 of the Recitals to the Lease:

    (i) The building is defined as 2-4 Colville Road,

    (ii) The demised premises is fully defined by reference to the First Schedule of the Lease.

14. The demised property is fully defined in the First Schedule to the Lease and basically comprised of the Flat including all internal walls, doors, door frames, glass, ceilings, floorboards and other floor surfaces, all pipes wires cables conduits which exclusively serve the Flat and all fixtures and fittings in or about the Flat. The following are specifically excluded from the demise:

    (i) Any part or parts of the building lying above the surface of the ceilings or below the floor surfaces,

    (ii) Any of the main timbers and joists of the building and any walls or partitions except those in the Flat,

    (iii) Any balconies and balcony doors and frames and fire escape staircase,

    (iv) Any pipes cables wires and conduits in the building which do not exclusively serve the Flat,

    (v) Windows and window frames (but not the glass)

    (vi) District heating radiators and enjoining pipework entry phone and enjoining wires communal television aerial sockets and enjoining wires.

15. By Clause 3(ii) of the Lease the Respondent covenanted to "... contribute and pay to the Lessors by quarterly payments on the usual quarter day a

service charge ... being an appropriate contribution .. towards the annual costs expenses outgoings and matters mentioned in the Fifth Schedule....An account shall be kept by the Lessors of all the said costs and expenses arising in each period of twelve months ending the 31st day of March in each year during the said term (hereinafter referred to as "the Relevant Period") AND the Lessors' Director of Finance or such other person designated by the Lessors for such purpose shall certify the total amount of the said costs and expenses for the period to which the account relates and the proportionate amount due from the Lessee to the Lessors pursuant to this sub- clause AND the certificate of the Lessors' Director of Finance in this regard shall be conclusive and binding upon the Lessee AND if the Service Charge credited by the Director of Finance for the Relevant Period shall be more or less as the case may be than the total of the appropriate contribution made by the Lessee any deficit thus arising shall be paid by the Lessee to the Lessor on demand and any excess shall be refunded to the Lessee or credited towards the appropriate contributions for the next following Relevant Period as the Lessor's Director of Housing may consider necessary so afar as the same apply to the demised premises ....."

16. The Fifth Schedule defines the costs expenses outgoings and matters in respect of which the Lessee is required to contribute and basically include the costs and expenses incurred or to be incurred by the Lessor in complying with the obligations under Clause 4(ii) of the Lease

17. By Clause 4(ii) of the Lease subject to the Lessees paying the service charge contribution the Lessor covenants amongst other things to "...maintain (and wherever necessary rebuild reinstate renew and replace all worn and damaged parts) the external main walls and windows and window frames (excluding glazing) foundations the structural divisions between the flats and the balconies (if any) together with the balcony doors and frames (but excluding glazing) of the building and any service areas and housings and roof of the building and the pipes including the gas supply pipes from the rising main to the meter cables including the electric supply cables from the rising main from the Electricity Board's fuses to the input side of the meters and wires (excluding meters) .....the main entrances passages landings access balconies staircases (and the lift and motor rooms and apparatus situate therein) (if any) enjoyed or used by the Lessee in common with the other owners lessees or occupiers of the flats at the building and (where applicable) the accessways paths forecourts gardens boundary fences and walls thereof adjoining the building in good and substantial repair and condition except as regards damage caused by or resulting from any act or default of the Lessee or the occupier of the demised premises PROVIDED ALWAYS AND IT IS EXPRESSLY AGREED that subject to the provisions of the ....."

Method of apportionment of service charge.

18. The terms of the Lease provide that service charges and major works charges are paid quarterly in advance on the normal quarter days. The Applicant maintains two accounts in respect of the service charge for administration purposes. These are a Service Charge account covering day to day expenses and a second account which is the Major Works account covering charges relating to major works.

19. Mr Ward explained that the Applicant uses a weighted room system in order to apportion the service charge, whereby the rooms are awarded the following points:

    (i) 1 point per bedroom,

    (ii) 1 point for a lounge or dining room, and

    (iii) ½ point for a kitchen or bathroom

20. The Respondent has a one bedroom flat with one reception, kitchen and bathroom and so is awarded 3 points. The Building has a total of 29 weighted points. Accordingly in respect of the charges that apply to the whole building the Respondent pays 3/29 of the total cost. However in relation to some charges the proportion charged to the Respondent is 3/23 as the basement flat does not benefit from some of the services and is therefore excluded from those charges. Mr Ward gave the example of the internal communal repairs, as the basement flat has its own front door it is not charged for repairs to the landings, front door and corridors but it does contribute towards the cost of cleaning of the common parts etc which extend to the area beyond the threshold of the main front door.

The issues

21. The proceedings were transferred from the County Court and the tribunal's jurisdiction is limited to the sum of £2018.33 in relation to general service charges and the sum of £803.66 in relation to major works. The tribunal has no jurisdiction in relation to interest or county court costs.

22. The Applicant in its Statement of Case expressed the difficulties it had in dealing with the Respondent's Statement of Case due to its sheer length being 74 pages long and 101 paragraphs with supporting documents filling 3 lever arch files and furthermore the Applicant found the Respondent's statement of case to be unclear and confusing. Accordingly the Applicant addressed the service charge years stipulated in the Directions and focused on the issues raised by the Respondent within the Scott Schedule. The tribunal also had difficulties dealing with over 1500 pages spanning four lever arch files when the case had been set down for a one day hearing. The Directions had stated that the parties should inform the tribunal if they considered that one day for a hearing was

unrealistic. The tribunal reminded the parties of the overriding objective set out in the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which requires the parties to co-operate with the tribunal in dealing with a case fairly and justly including dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the tribunal

23. At the start of the hearing the parties agreed and identified the relevant issues for determination as being the payability and/or reasonableness of service charges for the service charge years 2010/11, 2011/12, 2012/13 and the budget for 2013/14 as detailed in the Schedule.

24. The method of apportionment of the service charge was not challenged as the Lease provides at Clause 3 for "quarterly payments on the usual quarter day a service charge ... being an appropriate contribution .. towards the annual costs expenses outgoings and matters mentioned in the Fifth Schedule....". The tribunal considered the method of apportionment used by the Applicant to be reasonable for calculating an appropriate contribution to the service charge.

25. In making its determination the tribunal had in mind the guidance given in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100, which was followed in the Lands Tribunal case Schilling v Canary Riverside Development PTD Ltd LRX/26/2005 in support of the fact that it is for the Applicants to make a prima facie case. At paragraph 15 of the Lands Tribunal decision Judge Rich QC states:

"... if the landlord is seeking a declaration that a service charge is payable he must show not only that the costs was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case makes clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard

26. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

ROOF LEAK

- **Service charge year 2010/11 - item 1 - amount claimed £5.41**

27. It is admitted that the charge relates to repairs to a flat roof.

28. The tribunal accepted the explanation offered by the Applicant that the repair was carried out at the end of the financial year and when the charge was raised the total anticipated charge was £52.29 for the Building. However once the actual charge was known it was in fact £46.92 as notified in their letter of the 13/2/12 and the difference of £5.37 was reflected in the 2011/12 final account.

29. The Respondent argued that since the Applicant had allowed the occupiers of Flat 9 to have access to the roof and sole use of the roof as a balcony the charge to trace and rectify the leak from the roof could not be charged as a service charge. The Respondent did not claim that the work had not been done to a reasonable standard or that the cost was unreasonable. The issue was whether she should be liable to pay for the cost as a service charge as she claimed it was "not communal" because the Applicant has allowed Flat 9 to have access to the area and have sole use of the area as a balcony. The Respondent referred to the covenants under Clauses 2 (viii) and 2(xiii) in support of her submission that the Applicant has allowed Flat 9 to use the roof. The Applicant submitted that as the repair was to the flat roof, and as such it was a repair to a part of the structure of the Building and so fell within the Applicant's repairing obligation under the terms of the Lease. The Applicant stated that the area in question had not been demised under a lease and all leases of flats in the Building were in a similar form. The Applicant also confirmed that they had not consented or allowed the occupiers of Flat 9 to use the area as a balcony. The Respondent also referred to the invoice [320] and the photograph [330] in support of her contention that the area had been covered with decking which had to be stripped and recovered, she stated that she believed the leaks were caused because of bad drainage due to the decking.

30. In addition the Respondent relied on the provisions of Clause 4(i)(b) of the Lease.

The tribunal's decision

31. The tribunal determines that the amount payable in respect of item 1 is £5.41.

Reasons for the tribunal's decision

32. The Respondent did not claim that the work had not been done to a reasonable standard or that the cost was unreasonable. The issue was whether she should be liable to pay for the cost as a service charge as it is "not communal" because the Applicant has allowed Flat 9 to have access to the area and have sole use of the area as a balcony. The tribunal noted the photograph [330] and although this does appear to show the area covered by decking, without more such as a surveyors report, the tribunal cannot be satisfied that it was the cause of the leak.

33. The tribunal finds the area in question forms part of the structure of the Building. Clause 4(ii) of the Lease requires the landlord to maintain (and wherever necessary rebuild reinstate renew and replace all worn and damaged parts) the roof of the building amongst other areas. The cost of doing so falls within the costs under the Fifth Schedule to the Lease for which the Respondent as lessee has covenanted under Clause 3(ii) of the Lease to pay. The fact that the occupier of Flat 9 may have used the area does not prevent the cost of repair of the roof falling within the service charge. The Respondent relied on the covenants under Clause 2(viii) which is a covenant that prohibits the alteration or addition to the demised premises without prior written consent of the Lessor and Clause 2(xiii) which is a covenant prohibiting any act which may be or become a nuisance damage annoyance etc. It may be the case that the lessee of Flat 9 was in breach of these covenants and the Applicant as Landlord may have had a cause of action against the lessee of Flat 9 but this is a separate matter and does not prevent the charge for the repair being recoverable as a service charge. If the Applicant takes action against the lessee of Flat 9 and is successful in recovering the cost of these works then under those circumstances the Applicant ought to credit such sum to the service charge account.

34. The Respondent appears to have misconstrued the application of the covenant under Clause 4(i)(b) of the Lease. This Clause is the Lessor's (ie the Applicant's) covenant with the Lessee (ie the Respondent) to maintain the building including all the structural parts of the building. The covenant is subject to the proviso that the obligation to maintain does not extend to "...damage caused by or resulting from any act or default of the Lessee or the occupier of the demised premises..". This proviso relates to any damage caused or resulting from any act or default of the Lessee (i.e the Respondent) or the occupiers of Flat 8. The covenant is between the Applicant and the Respondent, and not between the Applicant and the occupiers of Flat 9 (although it is highly likely that if Flat 9 is held under a Lease there will be a similar provision in its lease). The proviso to this covenant cannot be relied upon by the Respondent in support of her argument that since the damage to the roof was caused by the occupiers of Flat 9 the Applicant cannot recover the cost of the repair as a service charge.

ROOF LEAK

- **Service charge year 2010/11 - item 2 - amount claimed £124.50**

35. The Respondent made the same submissions in relation to this charge as for item 1. The Respondent did not accept the cost of locating and rectifying a leak on the roof affecting Flat 11 and locating and rectifying the leak on the roof affecting Flat 9 was chargeable as a service charge as she submitted that it was "not communal".

36. The Applicant made the same submission as for item 1.

The tribunal's decision

37. The tribunal determines that the amount payable in respect of item 2 is £124.50.

Reasons for the tribunal's decision

38. The reasoning given above in relation to item 1 applies equally to this item. The area in question which was repaired was the roof affecting Flat 11 and Flat 9. The roof forms part of the structure of the Building which the Applicant as Lessor is required to maintain and the Respondent as Lessee is required to contribute towards the cost of these works under the provisions of the Lease.

ROOF LEAK FRONT ELEVATION

- **Service charge year 2010/11 - item 3 - amount claimed £0.92**

39. The Respondent challenged this charge as she claimed the work was not done. The Applicant produced a copy of the invoice in relation to the work and the Respondent queried the veracity of the invoice as she questioned how it was possible to undertake the work without the use of scaffolding. The Applicant confirmed that access to the roof was via Flat 7 but access was not available on the day although it had been previously arranged and so a total call out charge of £8.90 was charged and the Respondent is liable for her contribution towards this charge.

40. The Respondent argues that there should be no charge as it was not "incurred on the provision of services or the carrying out of works" and so is not a relevant cost for the purposes of section 19 of the Act.

The tribunal's decision

41. The tribunal determines that the amount payable in respect of item 3 is £0.92.

Reasons for the tribunal's decision

42. The Applicant has produced an invoice in relation to the call out charge. The Applicant admits the work was not done but explains this was because the contractor could not gain access to the roof via Flat 7 even though the access had been pre- arranged. The call out to undertake the works is part and parcel of the works and so is a relevant cost. If the contractor had gained access and undertaken the works, then presumably the Respondent would not argue that the call out charge (which no doubt

would have been included in the cost of the works) was not a relevant cost. The contactor incurred a cost in the abortive visit to building to undertake work, the contractor has charged the Applicant for this cost and as such this cost is properly charged as a service charge.

STONEWORK REPAIRS

- **Service charge year 2010/11 - item 4 - amount claimed £124.05**

43. This item was conceded by the Applicant as they had no evidence of a credit in relation to this charge which also appears as a charge under item 17. The work was executed from 15 -28 October 2011 and the scaffolding dismantled on the 16 November 2011.

NORMAL HOURS CALL OUT DOOR ENTRY SYSTEM

- **Service charge year 2010/11 - item 5 - amount claimed £3.65**

44. This item was accepted by the Respondent.

EMERGENCY CALL OUT DOOR ENTRY SYSTEM

- **Service charge year 2010/11 - item 6 - amount claimed £4.70**

45. The charge relates to an emergency call out in relation to a door entry system. The Applicant arranged a call out in relation to a reported fault. The Respondent stated that the call out was one of the first call outs since the door had been installed in 2000. The Respondent submitted that the call out was not due to general wear and tear to the front door closing mechanism but occurred during the time the new leaseholder of Flat 3 was undertaking works and was due to the dust and debris from the works at Flat 3 causing the door to malfunction. The Respondent put forward no evidence in support of her claim but stated that this was something the caretaker or supervisor engaged by the TMO should have been aware of and as a result the Respondent does not consider the charge to be rechargeable as a communal repair.

46. The Applicant claimed that the repair falls within its repairing obligation under the Lease and the Respondent is liable to contribute to the cost of the repair as a service charge. The Applicant stated that in the absence of any proof that the damage was caused by the works at Flat 3, the cost of the repair is chargeable as a service charge.

The tribunal's decision

47. The tribunal determines that the amount payable in respect of item 6 is £4.70.

Reasons for the tribunal's decision

48. The provisions of Clause 4(ii) of the Lease requires the Applicant as Lessor to maintain the ".... the main entrance passages landings balconies staircases ...", in addition the Lessor is required to maintain "...in good repair ...any entryphone system or installation and the cables thereof...". The Respondent as Lessee is required to pay an appropriate contribution towards the costs incurred by the Applicant. The Respondent has produced no evidence to support her claim that the works at Flat 3 caused the door to malfunction. The Respondent may consider the caretaker or supervisor engaged by the TMO ought to have been aware of the matter and this may be relevant when considering any service charge costs relating to the caretaker or supervisor but it cannot be relied upon in support of her claim that the charge is not payable.

49. The Respondent did not challenge the standard of the work or the reasonableness of the costs incurred. The tribunal finds the Respondent is liable to pay the sum of £4.70.

DOOR ENTRY PLANNED AND PREVENTATIVE MAINTENANCE

- **Service charge year 2010/11 - item 7 - amount claimed £1.96**

50. The Respondent queried whether the works in relation to this charge had been undertaken, the Applicant produced copies of their routine maintenance inspection sheets. The Respondent did not accept these inspection sheets as evidence that the works had been done and also stated that the sheets had been provided 6 years later. The Applicant explained that the costs relate to a maintenance contract for the door entry system which includes a yearly visit to the building where a number of checks are undertaken. Colville Road is one of about 700 properties/estates that are included within the contract and the Applicant does not receive a specific invoice for each building/ estate where routine maintenance inspections are carried out.

The tribunal's decision

51. The tribunal determines that the amount payable in respect of item 7 is £1.96.

Reasons for the tribunal's decision

52. On the evidence the tribunal was satisfied that a maintenance contract in relation to the door entry system existed. The Respondent challenged the

cost on the basis that there was no proof that any works had been done. The tribunal found the explanation given by the Applicant to be credible and accepted the maintenance sheets as adequate evidence that the works had been undertaken. The Respondent had not challenged the reasonableness of the cost or the standard or work. As stated above the Applicant is required under the provisions of Clause 4 of the Lease to maintain the door entry system and the Respondent is liable to pay for the costs.

COMMON PARTS ELECTRICITY REPAIRS

- **Service charge year 2010/11 - item 8 - amounts claimed £29.15, £11.35, £21.62 and £11.35**

53. This item was accepted by the Respondent.

The tribunal's decision[SEE COMMENT ABOVE]

54. The tribunal determines that the amounts payable in respect of item 8 is £29.15, £11.35, £21.62 and £11.35

Reasons for the tribunal's decision

55. This item was accepted by the Respondent.

COMMON PARTS ELECTRICITY

- **Service charge year 2010/11 - item 9 - amount claimed £9.39**
- **Service charge year 2011/12 - item 19 - amount claimed £42.30**
- **Service charge year 2012/13 - item 28 - amount claimed £27.41**
- **Service charge year 2013/14 - item 37 – estimated amount claimed £52.56**

56. Items 9, 19, 28 and 37 all relate to the common parts electricity consumption. The Respondent stated that she would pay the charge when the Applicant provides the actual invoices of meter readings electricity consumption at the Building. The Respondent referred to section 22 of the Act and submitted that the Applicant has not fulfilled its obligation under this section as no invoices in relation to the electricity consumption have been produced. The Respondent stated that the communal lights are on in the Building 24/7, 365 days a year

and so she could not understand why there was a huge fluctuation in the charges from year to year. By way of illustration she referred to the Common parts electricity consumption charges for the following years:

(i) 2010/11 - £72.00,

(ii) 2011/12 – over £300.00,

(iii) 2012/13 – over £300.00.

57. The Applicant explained the electricity is purchased in bulk at a discounted rate to ensure value for money for leaseholders. The TMO are invoiced electronically because it manages a large housing stock within the borough. The Applicant explained that they are provided with a breakdown of charges and these detail the readings of each individual meter and provides them with the total cost rechargeable to each individual block. The Applicant produced a copy of the breakdown of the common parts electricity consumption relating to the Building [1284-1289], the relevant meter is identified as Meter Point ID on the breakdown. Mr Ward explained that the caretaker provides meter reading to the service charge accountant and these are used by the Applicant to work out adjustments and credits in relation to the charge. By way of illustration Mr Ward referred to the Final Account Breakdown for 2010/11 [311-313] which shows the number of units of electricity consumed. He accepted that there was a hike in the usages and so the principal accountant applied an adjustment. He stated that he thought the fluctuations in the charges could be due to inflation and also a distortion of the charges by the application of credits in bulk in a particular year. The Common parts electricity consumption charge is an estimated charge based on the usage figures from the previous years final accounts with an increase applied for inflation, once the final accounts are completed for the year a balancing charge for the service is applied based on actual charges. In view of the comments made by the Respondent Mr Ward stated that for the future they would look at removing the Building from the bulk buying of electricity and being charged for consumption on the basis of the meter reading from its own meter.

The tribunal's decision

58. The tribunal determines that the amount payable is as follows:

(i) item 9 is £9.39

(ii) item 19 is £42.30,

(iii) item 28 is £27.41, and

(iv) item 37 is £52.56.

Reasons for the tribunal's decision

59. The tribunal accepts that the Respondent has a right under the provisions of Section 22 of the Act to inspect invoices. In this case no such invoices exist, the Applicant has produced the electronic invoices and a copy of the breakdown of the common parts electricity consumption relating to the Building. The tribunal finds the Applicant has complied with the provisions of section 22 by providing the Respondent with the information it had in relation to the charges. The fluctuations in charges for electricity consumption at the Building are of concern particularly as the main consumption is due to the lighting of the common parts which the parties accept are kept on constantly and so one would not expect such enormous fluctuations. However the tribunal accepted the explanation given by Mr Ward that the fluctuations are partly attributable to inflation and variation in prices as well as the application of bulk credits to the accounts in a particular year. The tribunal finds the charges to be reasonable since they are based on actual consumption and since the electricity is purchased in bulk the rate per unit of the charges are likely to be reasonable.

CLEANING

- **Service charge year 2010/11 – item 10 - amount claimed £90.09**
- **Service charge year 2011/12 - item 21 - amount claimed £89.24**
- **Service charge year 2012/13 - item 29 - amount claimed £96.43**
- **Service charge year 2013/14 - item 38 - estimated amount claimed £96.24**

60. The Respondent contended that the cleaning service was not provided according to the contracted schedule and specifications as shown on the schedules produced [335 & 336]. The Respondent referred to several letters and telephone calls that she made to inform the Applicant. The Respondent's specific comments about the cleaning service for the particular service charge years are noted on the Schedule. The Respondent drew the tribunal's attention to the photographs [337-341] which showed the condition. The Respondent accepted that there was an improvement in the service in 2013 when she recorded 19 mops in the service charge year. In relation to the estimated charge for the service charge year 2013/14 the Respondent questioned how this could be based on a service provided in the previous year notwithstanding her repeated comments about the lack of cleaning in the previous years.

61. In response to the comments made by the Respondent Mr Ward stated that they had received no additional complaints from any other resident. He stated that the caretaker attends the Building and it is part of the caretaker's function to ensure the cleaning is carried out. Mr Ward on being questioned by the tribunal stated that the cleaners are not required to sign a log to confirm that they have attended the Building and undertaken cleaning. He stated the caretakers are not always present when the cleaners attend but the caretakers undertake routine inspections to ensure the cleaning service is provided and they have a duty to inform the TMO if the cleaning is not being done and the TMO would follow it up with the contractor. Mr Ward stated that the photographs show the main issue is the mail that is left uncollected, and this was not part of the cleaners role to clear up the mail.

The tribunal's decision

62. The tribunal determines that the amount payable is as follows:

(i) item 10 is £90.09

(ii) item 21 is £89.24

(iii) item 29 is £96.43, and

(iv) item 38 is £96.24.

Reasons for the tribunal's decision

63. The Respondent did not deny liability to pay for the cleaning service. The Respondent accepted that some cleaning services were provided but the Respondent's complaint was that the service provided fell short of the service the contractor was required to provide as shown on the cleaning schedule produced by the Applicant. The photographs referred to by the Respondent as well as several other photographs in the papers produced show junk mail in the main entrance area and some areas which were not immaculately clean but appear to be reasonably clean. The cleaning schedule specifies items of regular as well as periodic cleaning and details when and how specific areas are to be cleaned. The Applicant has incurred a cost for the provision of a cleaning service. The evidence shows the cleaning to be of a reasonable standard but not a superior standard. The tribunal accepted that the caretakers routinely checked to ensure the cleaning service had been provided. On the evidence although the tribunal accepts that a more superior cleaning service could have been organised, this would probably have resulted in a higher charge, and on the whole the tribunal finds that the cleaning service provided was of a reasonable standard and that the charge for the cleaning to be reasonable.

BULK REFUSE

- **Service charge year 2010/11 – item 11 - amount claimed £1.34**
- **Service charge year 2011/12 - item 22 - amount claimed £5.35**
- **Service charge year 2013/14 - item 39 - estimated amount claimed £4.32**

64. The comments of the parties in relation to the bulk refuse are detailed on the Schedule and their statements. In addition the Respondent referred to the photographs of items of bulk refuse in support of her case [340-341].

The tribunal's decision

65. The tribunal determines that the amount payable is as follows:

(i) item 11.1 is £1.34 and 11.2 is £1.34,

(ii) item 22 is £5.35, and

(iii) item 39 £4.32.

Reasons for the tribunal's decision

66. The Applicant under Clause 4 of the Lease is obliged to maintain in "...good substantial repair and condition..." the "....accessways paths forecourts gardens ...." And under this provision the Applicant is obliged to remove any items of bulk refuse in these areas. The Applicant stated that the orders to undertake the bulk refuse clearance were raised by the caretaker and had the caretaker witnessed a neighbour dumping the refuse he would have arranged for that neighbour to clear the refuse. The Respondent alleges that certain neighbours have dumped the bulk refuse and questions why the Applicant has not sought to take action against those responsible for dumping the items under paragraph 13 of the Fourth Schedule of the Lease which basically requires the Lessee to ensure that arrangements are made to dispose of items too bulky for the chute. There is no evidence to support the Respondent's claim that the owners or occupiers of certain flats were responsible for the bulk refuse, and without evidence it is not reasonable to expect the Applicant to pursue those people. The tribunal finds the charges to be reasonable for the service provided and the Respondent to be liable for the charges under the terms of her Lease.

CARETAKING & SUPERVISION

- **Service charge year 2010/11 – item 12 - amount claimed £40.16**
- **Service charge year 2011/12 - item 20 - amount claimed £41.87**
- **Service charge year 2012/13 - item 30 - amount claimed £25.12**
- **Service charge year 2013/14 - item 33 - estimated amount claimed £43.44**

67. J Pretorious a Home Ownership Officer on behalf of the Applicant set out in her letter to the Respondent of the 20 September 2011 [303] the caretaker's duties and what is covered by this charge. She stated that the charge covers the costs of staff employed by the TMO and their schedule of tasks and duties include"...visual checks of all streets and blocks including dealing with issues such as Graffiti removal, fly- tipping, litter, abandoned vehicles, disused needles, vandalism, repairs in communal areas, improperly disposed rubbish and to arrange the removal of bulky items. To report any of the above issues ...to another specialist section within the TMO or to the Area Housing Office for action". Ms Pretorious also explained that each caretaker reports to a supervisor and the charge is calculated based on their "on – costed salaries" which are split across all properties that have been allocated to them based on the number and frequency of their visits to any property. At the hearing Mr Ward clarified that the charge represented around 55.55 minutes per week for the caretaker and 0.96 minutes in relation to the supervisor, and the fluctuations in the charges are due to reviews and adjustments of the amount of time spent at the Building.

68. Mr Ward stated that it is evident from the call backs that were raised by the caretaker and the service charge account breakdown which records that several repairs and maintenance issues were reported by the caretaker that the caretaker carries out weekly inspections.

69. The Respondent submitted that the caretakers and supervisors do not provide the service they are required to provide and any call backs made to the TMO or Area housing office are as a result of complaints by occupiers of the flats. She stated that the caretaker dose not undertake weekly inspections and referred to her complaints in relation to the following:

    (i) Items 3 & 4- the caretaker undertaking a weekly inspection should have informed the TMO that no scaffolding had been erected and so the render and stone works repair had not been done,

    (ii) Items 5 & 6 – the caretaker undertaking a weekly inspection should have deduced that the renovation

work at Flat 3 was the cause of the faulty street door closing mechanism,

(iii) Item 8 – a caretaker undertaking weekly inspections should have ensured that the lights that are out of order are repaired within days as opposed to 9 months later,

(iv) Item 10 – the caretaker should have noted that cleaning was not being undertaken according to the schedule, and

(v) Item 11 – the caretaker should have identified the source of the bulk refuse.

The tribunal's decision

70. The tribunal determines that the amount payable is as follows:

(i) item 12 is £40.16,

(ii) item 20 is £41.87,

(iii) item 30 is £25.12, and

(iv) item 33 is £16.42.

Reasons for the tribunal's decision

71. The tribunal finds that the method used to apportion the caretaker and the supervisor's salaries to be a fair and reasonable method. The issue is whether the amount charged is reasonable for the service provided. The Respondent has pointed to specific matters which she considers demonstrates that the caretaker and supervisor service falls short of that specified in Ms Pretorious' letter. The Respondent accepted that the charge was reasonable for a caretaking service but her main issue was that that the service was not being provided at the required level, and she would like a good caretaking service. The tribunal finds the standard of caretaking to be in keeping with the age and character of the Building and the charges levied. The tribunal finds the charges to be reasonable. Although the Respondent may prefer a higher standard of caretaking, it is a matter for the Applicant to determine the type of service provided. In any event a better service might result in a higher charge.

72. The amount payable for item 33 is the actual amount as shown on the accounts produced at the hearing.

MAJOR WORKS ADMINISTRATION FEE

- **Service charge year 2010/11 – item 14 - amount claimed £50.00**
- **Service charge year 2011/12 - item 24 - amount claimed £50.00**
- **Service charge year 2012/13 - item 32 - amount claimed £50.00**
- **Service charge year 2013/14 – item 41 - estimated amount claimed £50.00**

73. The charge is an annual flat fee charged whether or not major works are undertaken in that service charge year. Mr Ward explained that historically a charge of 12.5% of the cost of any major works was charged and this was subsequently reduced to 7.5 % of the cost of the major works, but this charge has since been replaced by an annual flat fee of £50. The flat fee covers the cost of preparing a long –term budget and considering the future maintenance needs of the development.

74. In response to the comments made by the Respondent Mr Ward stated that they undertake major works surveys of all the stock and send and estimate to the leaseholders. He stated that the cost is very much an indicative cost of any major works and is as much to assist the leaseholders and the landlord in financial planning for any works as well as to assist in giving relevant information for the sales of any of the properties.

75. The Respondent disputed the charge and stated that the charge has not been reduced but has been split. She stated the Applicant had not provided any administration. By way of example the Respondent stated that the Applicant produced an estimate for cyclical major works of £45,000 but were not able to produce a copy of the specification for the works as they stated the estimate was based on a visual survey and in any event the Building was not included in the redecoration works for that year even though an estimate of £45,000 in relation to the works had been sent.

The tribunal's decision

76. The tribunal determines that the amount payable is as follows:

(i) item 14 is £50.00,

(ii) item 24 is £50.00,

(iii) item 32 is £50.00, and

(iv) item 41 is £50.00.

Reasons for the tribunal's decision

77. The tribunal considers it good management practice for a landlord to manage its property portfolio and keep an eye on its properties in order to plan ahead for any major works that may be required. The tribunal considers a flat annual fee of £50 to be a reasonable charge for such a service.

BUILDING INSURANCE

- **Service charge year 2010/11 – item 15 - amount claimed £ 155.03**

- **Service charge year 2013/14 – item 42 - estimated amount claimed £289.00**

78. The Applicant's comments regarding the insurance are in the statement of case and the Schedule. Mr Ward stated that the insurance is through a block policy and the procurement is managed directly by the landlord who then advises the TMO of the premium for each dwelling. He accepted that there had been a noticeable increase in the premium and stated that the former Insurance Company exercised a break clause in the policy so in 2010/11 after a re-procurement and tendering process the insurance was placed with another insurance company. The re-tendering process was due to a proposed increase of 50% in the renewal premium from the existing insurer Aspen. The 50% proposed increase was only an indicative assessment by the then holding insurers, Aspen, it was not a quote but an indication of the likely increase in the premium. The services of Insurance Brokers, Jardine Lloyd Thompson were used to assist in the production of the Tender document and in assessing the tenders against percentage weightings in respect of price 60%, policy cover 15%, claims service 20% and administration/risk management advice 5%. OCASO SA UK Branch were the insurer recommended by Jardine Lloyd Thompson after such assessment. Mr Ward confirmed that there had been a Section 20 Consultation undertaken in relation to the insurance [1361, 1364, 1367, & 1368]. Mr Ward stated that there was no evidence to show that the one issue of the claims history had resulted in the increase in premiums.

79. The Respondent's comments regarding the increase in the premium are in her Statement of Case, Statement in Reply and noted on the Schedule. In 2010/11 there was a 43% increase in the premium and in 2013/14 an increase of 83%. The Respondent stated that the explanation given for the increase in premium was that it was because of a bad claims history. The Respondent stated that in her view the bad claims history was due to the landlord's negligence. She explained that as repairs to flat 9 were not

carried out in a timely manner the ceiling collapsed when there was a storm and caused damage to her flat. She stated that the landlord's insurance should have paid for the damage and not the block policy as the landlord's negligence had resulted in the damage.

The tribunal's decision

80. The tribunal determines that the amount payable is as follows:

(i) item 15 is £155.03, however as the Respondent has already paid this sum, no further sum is due from her, and

(ii) item 42 is £289.00,

Reasons for the tribunal's decision

81. The TMO had consulted the leaseholders under the Section 20 consultation process prior to letting the insurance. The TMO received observations from 3 leaseholders in relation to the notice of intention dated 16 November 2012. The observations and responses are summarised in the Proposal to Enter into a Qualifying Long Term Agreement [1367 -1370]. The proposal was to accept the tender of OCASO SA UK Branch as it was the "...most economically advantageous, having regard to the cost of the premium, the scope of cover, the level of insurance and the experience of other local authorities about the quality of service". The Applicant's Statement of Case fully addresses the issues raised in relation to the Insurance. The Respondent produced no comparable insurance quotations. On the basis of the evidence the tribunal finds the Applicant went to considerable lengths to test the market and obtain the best value for money. The tribunal finds the premiums to be reasonable and the Respondent under the terms of her Lease is liable to pay the amount charged.

TRACE AND RECTIFY LEAK

- **Service charge year 2011/12 – item 16 - amount claimed £ 4.85.**

82. After hearing the explanation given by Mr Ward, the Respondent accepted that this sum had been credited back and so there was no issue remaining for the tribunal to determine.

INVESTGATE FALLING MASONARY

- **Service charge year 2011/12 – item 17 - amount claimed £ 150.00.**

83. Paragraph 30 of the Respondent's statement in reply [1395- 1396] sets out the Respondent's case. Basically it is the Respondent's case is that the charge for this work should be £124.05 as opposed to £150.00. The Respondent contended that if the works had been carried out in 2009 when it was first reported, the charge would have been less.

84. The work was executed from 15 -28 October 2011 and the scaffolding dismantled on the 16 November 2011. The Applicant stated that the repair related to falling masonry and was therefore urgent and as a result the repair was carried out prior to the cyclical redecoration works. In addition the Applicant in their letter of the 27 March 2013 [1276-1281] clarified that although the invoice from the contractor Morrison was £1,877.44, the charge to each leaseholder was capped at a maximum of £250 and the Respondent was charged £150.00.

The tribunal's decision

85. The tribunal determines that the amount payable for item 17 is £124.05.

Reasons for the tribunal's decision

86. The Respondent did not dispute liability to pay the charge under the terms of the Lease. The Respondent challenged the amount charged on the basis that the charge would have been lower had the work been undertaken in 2009. The relevant invoice is produced [442-443] showing a net cost of £1,877.44. The tribunal was persuaded that the delay in undertaking the works resulted in an increase in the cost of the works. The original cost of the work is shown at Item 4 on the Schedule and the charge at the time was £124.50 and had the work been done at that time the cost would have been £124.50. The Applicant conceded that the work specified at item 4 was not done and a charge should not have been made in 2010/11 as the work was subsequently undertaken and charged for on a later date at item 17.

MAJOR WORKS CYCLICAL REDECORATION

- **Estimated Service charge year 2011/12 – item 43 - amount claimed £ 1607.33.**

87. The Applicant served a Notice of Intention to undertake the works on the 24 June 2011 [784-789]. The letters of the 1 August 2011 [790-792] and 25 August 2011 [793-795] were sent as part of the Section 20 Consultation process. Mr Ward admitted that they did have an issue with the contractor who undertook the works and they arranged for the works to be made good after which the works were signed off as satisfactory. Mr Ward stated that the payment is a payment on account in relation to the costs and although they would prefer a payment of more than 50%, they are not opposed to making a reasonable adjustment in the light of the

comments made by the Respondent. He confirmed that due to the issue with the standard of the work the actual costs have not yet been reconciled.

88. The Respondent stated that she has paid half the amount charged as that is what she considers that to be reasonable.

The tribunal's decision

89. The tribunal determines that the payment for item 43 of £803.66 representing 50% of the estimated costs to be reasonable in the circumstances. Once the actual sum has been finalised an adjustment in relation to the sum due from the Respondent may be necessary.

Reasons for the tribunal's decision

90. The Respondent has paid £803.66 in relation to the works as she considered this to be a reasonable amount for the standard of the works. The works were not done to a reasonable standard and Mr Ward confirmed that once the actual costs are known they are willing to make a reasonable adjustment. Since the actual costs of the works have yet to be finalised, the tribunal makes a determination in relation to the on account payment only. The tribunal determines that under the circumstances the payment for item 43 of £803.66 representing 50% of the estimated costs to be reasonable. Once the actual sum has been finalised an adjustment in relation to the sum due from the Respondent may be necessary.

MANAGEMENT FEE

- **Service charge year 2010/11 – item 13 - amount claimed £150.14**
- **Service charge year 2011/12 - item 23 - amount claimed £150.14**
- **Service charge year 2012/13 - item 31 - amount claimed £150.14**
- **Service charge year 2013/14 – item 40 - estimated amount claimed £150.16**

91. Mr Ward explained that the management fee has been calculated on a weighted room basis. The fee charged has not changed and has been £150.14 per annum, he explained that he thought the estimated fee of £150.16 for the service charge year 2013/14 should in fact be £150.14. The management fee for the whole Building is £1548 per annum and the Respondent's proportion is 3/29 of the total. The fee covers the cost of providing all management services related to Home owners, such as

leasehold management, invoicing and arrears control, surgeries etc. Mr Ward stated that since 2009 they have scrutinised the accounts and where there has been an error they have resolved these and apologised. He explained that they are working with 220,000.00 transactions across the borough and regrettably some errors are unavoidable. The amount of correspondence in this case supports there is a management service provided.

92. The Respondent accepted the fee was reasonable if a good standard of management was provided but she submitted that that the catalogue of errors including the provision of un-reconciled accounts showed there to be a lack of a full and proper provision of management services. The leaseholder of Flat 3 Mr C Fielding wrote to the Applicant's Chief Solicitor on the 29 April 2014, in support of the Respondent. She stated that when errors were pointed out it took over 7 months for them to recognise a duplication of invoices. She did not know what a reasonable fee would be for the level of service she actually received. She stated that part management is equivalent to no management. Furthermore she stated that they put contracts in place for various services but fail to supervise the contracts.

The tribunal's decision

93. The tribunal determines that the amount payable is as follows:

(i) item 13 is £150.14,

(ii) item 23 is £150.14,

(iii) item 31 is £150.14, and

(iv) item 40 is £150.14.

Reasons for the tribunal's decision

94. It is clear on the evidence that the Applicant did provide a management service. The Respondent pointed out several areas where the level of management fell below a perfect service but was not able to state what she considered to be a reasonable fee for the level of service she received. There was nevertheless a great deal of management undertaken. The mere letting of the contracts for cleaning and repairs alone requires management as does the collection of service charges and passing on the insurance premiums. There is also evidence of section 20 consultations which require a great deal of management. A management fee of between 10-15% of the total costs is within the normal range of management fees for a property such as the subject property. The tribunal accepts that there have been some failing in the level of management service but in

view of the service actually provided the tribunal considers a fee of £150.14 to be reasonable.

Application under s.20C

95. At the end of the hearing, the Respondent made an application under section 20c of the Act.

96. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not consider it just and equitable to make an order under section 20C of the Act to prevent the Applicant from passing any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

97. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court at London West.

Name: N Haria **Date:** 10 March 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

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

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

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

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

Schedule

Disputed Service Charges S/C Year 2010-11, 2011-12, 2012-13, 2013-14

Case Reference: LON/00AW/LSC/2014/0339	**Premises: Flat 8, 2-4 Colville Road, London W11**

Disputed Service Charges S/C Year 2010-11

	Item	Cost	Tenant's comments	Landlord's Comments	Tribunal
1	**Charge element 200940991** Tenant Flat 3- trace and rectify leak from roof or down pipe leaking, causing damage to his property. Leaking balcony also	5.41	This sum is for the committed cost of the repair. It should be removed because the actual cost of £4.85 for the repair had been credited back to my account. See para 11.2 and 11.3 of my Statement. It should also be removed because it is **not** a **communal** charge as the Claimant has allowed Flat 9 to have access to the roof and to have the sole use of the roof as a balcony. See para 11.4 – 11.7 of my Statement. There should be no charge.	This repair was carried out near to the end of the financial year and when the charge was raised the anticipated (or committed) charge to the building was £52.29. We confirmed in our letter of 13/2/12 [R172] that the actual charge was £46.92 and a credit of the difference would be applied to the accounts the following financial year. This was only known after the final accounts were prepared. The repair was carried out to a flat roof that forms part of the structure of the building. Consent has not been given to allow flat 9 to use this area as a balcony.	

Schedule

2	**Charge element 201009406** Locate and rectify leak on the roof affecting Flat 11 – Locate and rectify leak on the roof affecting Flat 9. Coming into the rooms and penetrating wall.	124.50	It is **not communal.** See para 11.4 - 11.7 of my Statement because this repair was for the same flat roof. There should be no charge.	This roof forms part of the structure and is therefore rechargeable to all leaseholders.	
3	**Charge element 201018640** Roof leak front elevation Flat 7 trees growing out of roof	0.92	This repair was **Not Done.** See para 13.3 of my statement. There should be no charge.	Access for this repair was via flat 7 and access was not available on the day having previously been arranged. The total charge to the building of £8.90 was the callout charge.	
4	**Charge element 201041678** Scaffold up to Front Roof Parapet … Undertake Render & Stonework Repairs as directed by TMO Surveyor	124.05	**Not done.** See para 14.3 of my statement There should be no charge.	As with item 1 this repair was carried out near to the end of the financial year and when the charge was raised the anticipated (or committed) charge to the building was £1199.16. The actual charge was £868.96 and a credit of the difference applied to the accounts the following financial year. This was only known after the final accounts were prepared and relayed to Ms Edema in our letter of 7/12/11 [see R165 in Ms	

				Edema's bundle]. We have provided the invoice that supports this repair and had confirmations from the then Repairs Manager that this work was completed as specified. We did not receive further reports regarding this issue and are satisfied that the repair was carried out to a reasonable standard and the sums due also reasonable. Due to the large number of communal repairs carried out across the approx. 10,000 stock the TMO manages it is not possible to either post inspect or provide post inspection reports of all repairs carried out.	
5	**Charge element 201036017** Call out to door entry system – normal hours – the Main Entrance Door (MED) is not locking. The closer needs adjusting. Reported by Pat	3.65	The building works at Flat 3 had caused a fault in the door closing mechanism. It is therefore **not** a **communal** charge because it was not due to the general wear and tear to the front door closing mechanism caused by the normal comings and goings of the residents. See para 15.5 of my statement.	There is no evidence to support Ms Edema's view that this repair was required as a result of works being carried out in Flat 3. In addition to this the TMO were not informed of any works being carried out at this property nor did we receive reports from the caretaker and/or her neighbours regarding works being carried out in	

Schedule

			There should be no charge.	Flat 3. In exchanges with Ms Edema at the time [see TMO letter dated the 19/1/12 at R165 of the Respondent's Edema's bundle] we asked what Ms Edema had to substantiate her assertions but no evidence was provided. This fault was reported by the caretaker as part of his routine inspections and the TMO therefore had a responsibility to carry out the repair which Ms Edema contributes towards in accordance with the lease.	
6	**Charge element 201046511** Emergency callout door entry system MED won't close – Tnt from flat 9 reports the MED does not close	4.70	Ditto	See above in respect of item 5. This was reported by a neighbour and the TMO raised the necessary repair. [see TMO letter dated the 19/1/12 at R165 of Ms Edema's bundle]	
7	**Door entry planned and preventative maintenance**	1.96	This charge was paid but as there was no record of the planned and preventative maintenance visits or an invoice for this item in the S/C year 2011-12 or in any previous year, did Silk & Mackman provide this service in the S/C year 2010-11? See para	There is a maintenance contract in place which includes a yearly visit to the building where a number of checks are undertaken. The door entry inspection sheets are attached to the Applicant's witness statement of David Ward at page 140. Colville Square is	

			16.4 of my Statement. I very much doubt it. This charge should be credited back to my account	one of c. 700 properties/estates that are included within this contract and we do not receive a specific invoice for each building/estate where routine maintenance inspections are carried out. This is standard practice in social housing.	
8	**Common Parts Electricity Repairs** Charge elements 201036013 201032298 201030707 201036008	 29.15 11.35 21.62 11.35	The Claimant initially refuted a duplication of invoices for this charge. It was **partially reconciled** 7 months later. See para 17.1-17.6 of my Statement. There is a dispute about the inconsistent application of the Claimant's calculation formula. I have paid this charge according to my reckoning 87+ 165.75 = 252.75 ÷ 29 weighted rooms = 8.715 x 3 = £26.15. See para 17.6 of my Statement. The Claimant ought to revise the charge for this item	These charges relate to 4 separate repairs that were reported at different times and in different locations as the breakdown [R110] demonstrates. With regards to the calculation of these charges the basement property (with its own independent front door and no access to the common parts) is not included within the calculation of these charges hence the difference in the weighted room count.	
9	**Common Parts Electricity**	9.39	Requests were made for the specific	The TMO are invoiced electronically	

	Consumption		invoices for electricity consumption at 3-9 Colville Road **No invoices were produced.** This charge will be paid when the Claimant provides the actual invoices of meter readings for electricity consumption at 3-9 Colville Road.	because of the large number of stock within the borough that we manage as is standard practice in social housing. We are provided with a breakdown of charges that accompany the invoices and these detail the readings of each individual meter. This provides us with the total cost rechargeable to each individual block. This allows electricity to be bought in bulk, and at discounted rates, which ensures value for money for leaseholders. If this methodology was not followed this would increase the administration costs and unit costs to leaseholders. A breakdown of the meter readings for 2010-11, 2011-12, and 2012 -13 are attached to the Applicant's witness statement of David Ward at page 144.	
10	**Contract cleaning**	90.09	See the OCS cleaning schedules **(pages 1/R 36, 38, 45, 136 and 137)**	The TMO entered into a borough wide cleaning contract after completing s.20 consultation in 2006. Cleaning is	

			Apart from the fact that only 9 visits were made by the cleaner to the building in this financial year, the standard of cleaning was poor and inconsistent with the contract specifications. See para 20.1 and 20.2 of my Statement. There should be no charge.	carried out in accordance with the schedule that Ms Edema makes reference to [in the Respondent's bundle at R136 & R137]. This is monitored by the caretaker as part of his routine visits which are evidenced in the repairs he reports which are prevalent throughout the breakdowns that Ms Edema references.	
11	**11.1 Bulk refuse clearance Charge element 201002485** Small bulk refuse removal - basement area - Requested by Pat Dunlea	1.34	The refuse was from the work being done at Flat 2 and Flat 4 (typing error flat 3) and is therefore **not** a **communal** charge for unidentifiable bulk refuse. See para 21.2 - 21.4 of my Statement. There should be no charge	See response to item 5. There is no evidence in this instance that this refuse was left as a result of works being carried out by a neighbouring property. These orders were raised by the caretaker and had he witnessed a neighbour carrying out works he would have arranged for them to remove this refuse.	
	11.2 Charge element 201019144 Small bulk refuse removal - one item - Requested by Pat Dunlea	1.34	Ditto	See response to item 11. It should also be noted that these orders were raised 3 months apart which suggests it is unlikely to be refuse as a result of works being done.	

12	**Caretaking & Supervision**	40.16	The Claimant was asked to explain why payment for this item was expected when the caretaker and supervisor had not fulfilled their duties according to the Claimant's service specifications. See para 22.1 – 22.4 of my statement for my observations on the chronic lack of this service. There should be no charge.	There is evidence in the repairs reported by the caretaker in respect of this building that he carries out routine inspections of the building. The caretaking service charge is calculated by dividing the number of visits and flats the caretakers cover and is apportioned by the caretakers salary; this provides a fair way of apportioning the caretakers	
13	**Management Fee**	160.14	The Claimant was asked to explain why payment for this item was expected when I was doing a lot of the work that it should be doing in order to receive the services that I am invoiced for and to receive accounts that reconcile. See para 23.1 - 23.5 of my statement for observations on the chronic lack of management. There should be no charge	The TMO has provided an explanation of the management fee that is included within the services charges in a letter dated the 20/09/11 [at R103 of the Respondent's bundle] advising that the management fee is the lessee's share of the costs of providing all management services relating to home owners such as leasehold management, invoicing and arrears control, surgeries and other meetings. In essence these are the costs referred to in the fifth schedule of the	

				lease that allow the TMO to comply with our obligations on behalf of the Landlord. In response to the points raised in Ms Edema's witness statement the TMO carry out a number of checks as part of the preparation of service charge final accounts to try and ensure that they are as accurate as possible. After we have completed our comprehensive checks the accounts are then subject to further checks by RBKC (the Landlord) prior to been signed off by RBKC (the Landlord). We have provided breakdowns in respect of each financial year itemising all charges and further provided invoices and supporting evidence in respect of these charges. Where errors have been highlighted we have removed these and apologised. Whilst we endeavour to ensure that the final accounts are as accurate as possible we are working with around 220,000.00 transactions across the borough and regrettably, sometimes errors may occur.	

14	**Major Works Administration Fee**	50.00	The Claimant was asked to explain why payment for this item was expected when it had not provided an answer to the question "*how did it arrive at an estimate of £45,000.00 for major works?*"; it had not provided a copy of the consultant's works specification for works estimated to cost £45.000.00 and had provided inconsistent guidance See para 24.2 - 24.11 of my statement. There should be no charge	The TMO reviewed the management fee that was applied in respect of 'major works' for the 2010/11 financial year which reduced the fee applied to individual schemes from 12.5% to 7% with an annual flat rate of £50.00 per property. This decision was based on the overall cost to the TMO in managing the entire stock on a year on year basis. This revised methodology was the subject of a Key Decision Report by RBKC (the Landlord) and RBKC signed off this change to the management fee.	
15	**Building Insurance**	155.03	The Claimant's explanation that the 41.3% increase for insurance was due to "serious flooding claims" appeared inconsistent with reported findings See para 25.1 and 25.4 – 25.9 of my statement. I have paid the fee, however a credit	The buildings insurance contract is procured by the landlord directly rather than the TMO as managing agents. The TMO served consultation Notices on the Respondent in respect of the previous insurance contract on the 28th September 2009 and the 9th February 2010 and are attached to the	

			back to my account would be welcome.	Applicant's witness statement of David Ward at page 147. The Council went to tender in respect of this contract and the tender of Aspen Insurance Ltd was subsequently accepted for the period commencing the 1st April 2010. The Applicant landlord then further procured for building insurance in respect of which consultation notices were sent to the Respondent on 16 November 2012 and 20 February 2013, and which are attached in the Applicant's Witness Statement of David Ward at page 152 and 155. Further regarding the Applicant's position regarding the insurance contracts and the current contract entered into in 2013 is in the Applicant's Statement of Case.	

Disputed Service Charges S/C Year 2011-12

	Item	Cost	Tenant's comments	Landlord's Comments	Tribunal
16	**Charge element 200940991** Trace and Rectify Leak from Roof or Down Pipe	4.85	See Schedule Item 1 above See para 29.1 - 29.4 of my Statement There should be no charge	See response to item 1. This repair was carried out near to the end of the financial year and when the charge was raised the anticipated (or committed) charge to the building was £52.29. We confirmed in our letter of 13/2/12 [R172] that the actual charge was £46.92 and a credit of the difference would be applied to the accounts the following financial year. This was only known after the final accounts were prepared. The repair was carried out to a flat roof that forms part of the structure of the building. Consent has not been given to allow flat 9 to use this area as a balcony.	
17	**Charge element 201119748** Investigate falling masonry on	150.00	The Claimant ought to revise the charge for this item because of its	Ms Edema's comments here are not consistent with those in her witness	

	to Balcony affecting flat 5		own delay in acting to repair the parapet when it was first reported in 2009. See para 30.1 – 30.5 of my statement.	statement where she makes no reference to this being reported in 2009. Regardless of this, the TMO set out its position and advised in our letter of the 24/7/13 sent from our Legal representatives and is included at page R281 of the Respondent's bundle, that this repair was urgent. As a responsible landlord we took the view that more masonry might fall and the repair had to be carried out at that juncture	
18	**Common Parts Electricity Repairs Charge Elements 201113784**	12.07	The Claimant has paid little regard to an error in the invoice for this item and to the inconsistent application of its calculation formula. I have paid this charge according to my reckoning: £69.78 ÷ 29 weighted rooms = 2.409 x 3 = £7.23 See para 33.2 of my Statement. The Claimant ought to revise the charge for this item	The basement property (with its own independent front door and no access to the common parts) is not included within the calculation of these charges hence the difference in the weighted room count. The repair undertaken does not appear to be in dispute.	
19	**Common Parts Electricity Consumption**	42.30	No actual invoices from the energy company were provided.	The TMO are invoiced electronically because of the large number of stock	

			No explanation was given for the 350% increase for electricity. See para 35.2 -35.7 This charge will be paid for when the Claimant provides the actual invoices from the energy company for electricity consumption at 3-9 Colville Road and when the electricity consumption is calculated according to the correct number of weighted rooms. See para 35.7 of my Statement.	within the borough that we manage as is standard practice in social housing. We are provided with a breakdown of charges that accompany the invoices and these detail the readings of each individual meter. This provides us with the total cost rechargeable to each individual block. This allows electricity to be bought in bulk, and at discounted rates, which ensures value for money for leaseholders. If this methodology was not followed this would increase the administration costs and unit costs to leaseholders. A breakdown of the meter readings for 2010-11, 2011-12, and 2012 -13 are attached to the Applicant's Witness Statement of David Ward at page 144.	
20	**Caretaking & Supervision**	41.87	See para 36.2 of my statement for my observation on the continuing chronic lack of this service.	There is evidence in the repairs reported by the caretaker in respect of this building that he carries out routine inspections of the building.	

			There should be no charge	The caretaking service charge is calculated by dividing the number of visits and flats the caretakers cover and is apportioned by the caretakers salary; this provides a fair way of apportioning the caretakers	
21	**Contract Cleaning**	89.24	The Claimant was informed that there are inaccuracies in the 2011-12 RBKCTMO breakdown entries for this item and that the cleaner had made 7 visits to sweep and 9 to mop the communal area in this S/C year. See para 37.1; 37.2 and 37.7 of my statement. There should be no charge	The TMO entered into a borough wide cleaning contract after completing s.20 consultation in 2006. Cleaning is carried out in accordance with the schedule that Ms Edema makes reference to [R136 & R137]. This is monitored by the caretaker as part of his routine visits which are evidenced in the repairs he reports which are prevalent throughout the breakdowns that Ms Edema references.	
22	**Bulk Refuse Clearance Charge element 201115742** Large bulk refuse removal - basement area	5.35	The bulk refuse was from Flat 1 and therefore **not** a **communal** recharge. See para 38.1 and 38.3 of my statement.	There is no evidence to confirm that this refuse was from flat 1 and in the absence of this the cost recharged to the building.	

			There should be no charge		
23	**Management Fee**	160.14	The Claimant is yet to fulfil its obligations to provide the full and proper management of its services as well as the full and proper reconciling of accounts for each of the items set out above. There should be no charge	The TMO has provided an explanation of the management fee that is included within the services charges in a letter dated the 20/09/11 [R103] advising that the management fee is the lessee's share of the costs of providing all management services relating to home owners such as leasehold management, invoicing and arrears control, surgeries and other meetings. In essence these are the costs referred to in the fifth schedule of the lease that allow the TMO to comply with our obligations on behalf of the Landlord. In response to the points raised in Ms Edema's witness statement the TMO carry out a number of checks as part of the preparation of service charge final accounts to try and ensure that they are as accurate as possible. After we have completed our comprehensive checks the accounts are then subject to further checks by RBKC (the Landlord) prior to been signed off by RBKC (the	

				Landlord). We have provided breakdowns in respect of each financial year itemising all charges and further provided invoices and supporting evidence in respect of these charges. Where errors have been highlighted we have removed these and apologised. Whilst we endeavour to ensure that the final accounts are as accurate as possible we are working with around 220,000.00 transactions across the borough and regrettably, sometimes errors may occur.	
24	**Major Works Administration Fee**	50.00	There should be no charge for the provision of inconsistent guidance and the maladministration of the major works. See para 40.3 – 40.8 of my statement.	The TMO reviewed the management fee that was applied in respect of 'major works' for the 2010/11 financial year which reduced the fee applied to individual schemes from 12.5% to 7% with an annual flat rate of £50.00 per property. This decision was based on the overall cost to the TMO in managing the entire stock on a year on year basis. This revised methodology was the subject of a Key Decision Report by RBKC (the Landlord) and	

				RBKC signed off this change to the management fee.	

Schedule

Disputed Estimated Major Works Charges S/C 2011-12

	Item	Cost	Tenant's comments	Landlord's Comments	Tribunal
	Major works cyclical redecoration	1,607.33	The Claimant was informed by a majority of the tenants of the distress and inconvenience suffered by us due its inadequate, incompetent and 'shoddy' mismanagement of the contract and the inability of its contractor and consultant to execute the cyclical redecoration to its "acceptable standard of quality. This was acknowledged by the Claimant and a reworking of the cyclical redecorations was carried out in an attempt to remedy the defects. See para 74 - 99 of my Statement. The Tenant has paid half the estimated flat cost of £803.66 and will pay no more for shoddy work.	Our position is that it is too simplistic to simply state that the works were 'shoddy and to question the management of the contract. We are satisfied that the contract was completely tendered, s.20 compliant and that the works were completed to a reasonable standard. However, the Applicant notes Ms Edema's position and in light of that fact that the actual costs have not yet been reconciled, the Applicant proposes to review Ms Edema's points when the final account is concluded. The Applicant anticipates that this will be towards the end of the financial year. The Applicant wishes it to be noted that the TMO are not opposed to making reasonable adjustments to the recharges, with view to reaching an amicable settlement.	
			Comments on the final account will		

			be made when it is received.		

Disputed Service Charges S/C Year 2012-13

	Item	Cost	Tenant's comments	Landlord's Comments	Tribunal
25	**Charge element 201208966** Faulty intercom at flat 7, **handset** like for like	6.26	This is **not** a **communal** recharge because it is contrary to the terms of the Lease and inconsistent with the application of the Claimant's general principle. See para 43.1 and 43.2 of my statement There should be no charge.	The TMO responded to this in our letter of the 31/12/13 [R403] confirming that this repair relates to a faulty intercom. We went on to confirm that it is the Landlord's responsibility to maintain in good repair the door entry system (of which the intercom forms parts of) in accordance with the terms of the Lease, [R686]; it is therefore rechargeable.	
26	**Door Entry Planned and Preventative Maintenance**	1.96	Invoices were provided but no schedule or record of the visits was provided. See para 44.1 – 44.3 of my statement. There should be no charge	There is a maintenance contract in place which includes a yearly visit to the building where a number of checks are undertaken. The door entry inspection sheets are attached to the Applicant's Witness Statement of David Ward at page 140 Colville Square is one of c. 700 properties/estates that are included	

				within this contract and we do not receive a specific invoice for each building/estate where routine maintenance inspections are carried out. This is standard practice in social housing.	
27	**Common Parts Electricity Repairs** **Charge element 201235572**	22.75	The Claimant has paid little regard to an error in the invoice for this item and to the inconsistent application of its calculation formula. I have paid this charge according to my reckoning £89.75 ÷ 29 x 3 = 9.28 See para 45.1 and 45.2 of my Statement. The Claimant ought to revise the charge for this item	The basement property (with its own independent front door and no access to the common parts) is not included within the calculation of these charges hence the difference in the weighted room count. The repair undertaken does not appear to be in dispute.	
28	**Common Parts Electricity Consumption**	27.41	No actual invoices from the energy company were provided. No explanation was given for the 192% or £138.12 increase for electricity on the 2010-11 charge. See para 47.1 and 47.3 of my Statement.	The TMO are invoiced electronically because of the large number of stock within the borough that we manage as is standard practice in social housing. We are provided with a breakdown of charges that accompany the invoices	

			This charge will be paid when the Claimant provides the actual invoices from the energy company for electricity consumption at 2-4 Colville Road. See para 47.4 of my Statement.	and these detail the readings of each individual meter. This provides us with the total cost rechargeable to each individual block. This allows electricity to be bought in bulk, and at discounted rates, which ensures value for money for leaseholders. If this methodology was not followed this would increase the administration costs and unit costs to leaseholders. A breakdown of the meter readings for 2010-11, 2011-12, and 2012 -13 are attached to the Applicant's Witness Statement of David Ward at page 144.	
29	**Contract Cleaning**	96.43	The Claimant was informed of 19 mops in this S/C year. See para 48.1 and 48.2 of my Statement. There should be no charge	The TMO entered into a borough wide cleaning contract after completing s.20 consultation in 2006. Cleaning is carried out in accordance with the schedule that Ms Edema makes reference to [R136 & R137]. This is monitored by the caretaker as part of his routine visits which are evidenced	

				in the repairs he reports which are prevalent throughout the breakdowns that Ms Edema references.	
30	**Caretaking & Supervision**	25.12	The caretaker and supervisor are not carrying out the full and proper performance of their duties according to the Claimant's service specifications. See para 49.3 of my Statement There should be no charge.	There is evidence in the repairs reported by the caretaker in respect of this building that he carries out routine inspections of the building. The caretaking service charge is calculated by dividing the number of visits and flats the caretakers cover and is apportioned by the caretakers salary; this provides a fair way of apportioning the caretakers	
31	**Management Fee**	160.14	The 2010-11, (2011-12) and 2012-13 final accounts remain unreconciled and regarding the management fees for 2012-13, the Claimant was informed of the dissatisfaction that I and the other leaseholders had with its lack of management in that year and which caused distress and inconvenience.	The TMO has provided an explanation of the management fee that is included within the services charges in a letter dated the 20/09/11 [R103] advising that the management fee is the lessee's share of the costs of providing all management services relating to home owners such as leasehold management, invoicing and arrears control, surgeries	

			See para 50.2; 50.2 and 50.3 of my Statement There should be no charge	and other meetings. In essence these are the costs referred to in the fifth schedule of the lease that allow the TMO to comply with our obligations on behalf of the Landlord. In response to the points raised in Ms Edema's witness statement the TMO carry out a number of checks as part of the preparation of service charge final accounts to try and ensure that they are as accurate as possible. After we have completed our comprehensive checks the accounts are then subject to further checks by RBKC (the Landlord) prior to been signed off by RBKC (the Landlord). We have provided breakdowns in respect of each financial year itemising all charges and further provided invoices and supporting evidence in respect of these charges. Where errors have been highlighted we have removed these and apologised. Whilst we endeavour to ensure that the final accounts are as accurate as possible we are working with around 220,000.00 transactions across the	

				borough and regrettably, sometimes errors may occur.	
32	**Major Works Administration Fee**	50.00	There should be no charge for maladministration which caused distress and inconvenience. See para 51.1 and 51.2 of my Statement	The TMO reviewed the management fee that was applied in respect of 'major works' for the 2010/11 financial year which reduced the fee applied to individual schemes from 12.5% to 7% with an annual flat rate of £50.00 per property. This decision was based on the overall cost to the TMO in managing the entire stock on a year on year basis. This revised methodology was the subject of a Key Decision Report by RBKC (the Landlord) and RBKC signed off this change to the management fee.	

Schedule

Disputed Service Charges S/C Year 2013-14

	Item	Cost	Tenant's comments	Landlord's Comments	Tribunal
33	Caretaking & Supervision	43.44	Notwithstanding repeated comments on the chronic lack of these services in previous years, it is not being supplied according to the Claimant's service specifications. The estimate for this service will be paid when it is based on the full and proper provision of these services in the previous S/C year according to the Claimant's service specifications.	Caretaking is estimated based on the pervious year's actual charge plus an inflationary increase. The actual charge will be provided within the final accounts and provide a balancing sum if there are any adjustments to this service.	
34	Repairs to Building	142.80	As the Claimant has paid little regard to my comments on this item and has not reconciled the final accounts for the S/C years 2010-11 and 2011-12, this is not an estimated charge that has been calculating by taking an 'appropriate' average of the actual costs for this item from previous financial years.	The Repairs to building element is an estimated charge based on the last 3 years of final accounts. Once the final accounts are completed for the year a balancing amount for the service will be applied based on the actual charges for the service. The TMO have given due regard to the comments made by Ms Edema.	

35	Internal communal Repairs	7.92	As the Claimant has paid little regard to my comments on this item and has not reconciled the final accounts for the S/C years 2010-11, 2011-12 and 2012-13, this is not an estimated charge that has been calculating by taking an 'appropriate' average of the actual costs for this repair and service from previous financial years.	The internal communal repairs estimated charge is based on the last 3 years of final accounts. Once the final accounts are completed for the year a balancing amount for the service will be applied based on the actual charges for the service.	
36	Common Parts electricity Repairs	43.20	As the Claimant has paid little regard to my comments on this item and has not reconciled the final accounts for the S/C years 2010-11, 2011-12 and 2012-13, this is not an estimated charge that has been calculating by taking an 'appropriate' average of the actual costs for this repair from previous financial years. I have paid an estimate of £21.60 according to my reckoning. See para 60 of my Statement.	The internal communal repairs estimated charge is based on the last 3 years of final accounts. Once the final accounts are completed for the year a balancing amount for the service will be applied based on the actual charges for the service.	
37	Common Parts Electricity Consumption	52.56	Notwithstanding repeated requests, no actual invoices from the energy	The common parts electricity consumption is an estimated charge	

			company of actual meter readings have been provided by the Claimant for the last 12 years. This is not an estimated charge that has been calculating by taking an 'appropriate' average of the actual costs for this item from previous financial years	based on the usage of the previous years final accounts with an increase applied for inflation. Once the final accounts are completed for the year a balancing amount for the service will be applied based on the actual charges for the service.	
38	Contract Cleaning	96.24	Notwithstanding repeated comments on the chronic lack of this service in previous years, it is not being supplied according to the contracted schedule and specifications. The estimate for this service will be paid when it is based on its provision in the previous S/C year according to the contracted schedule and specifications.	The contract cleaning is an estimated charge based on the costs of the previous years final accounts (2012-13). Once the final accounts are completed for the year a balancing amount for the service will be applied based on the actual charges for the service.	
39	Bulk Refuse clearance	4.32	As the Claimant has paid little regard to my comments on this item and has not reconciled the final accounts for the S/C years 2010-11 and 2011-12, it	The bulk refuse chare is an estimated charge based on the last 2 years of final accounts.	

			is not an estimated charge that has been calculating by taking an 'appropriate' average of the actual costs for this service from previous financial years	Once final accounts are completed for the year a balancing amount for the service will be applied based on the actual charges for the service.	
40	Management Fee	160.16	Notwithstanding repeated comments on the negligent lack of monitoring, supervision and management in previous years, management is not being exercised according to the Lease and the LTA 1985 as detailed in my Statement. This estimate will be paid when it is based on the full and proper exercise of the Claimant's obligations in the previous S/C year according to the Lease and the LTA 1985.	The TMO has provided an explanation of the management fee that is included within the services charges in a letter dated the 20/09/11 [R103] advising that the management fee is the lessee's share of the costs of providing all management services relating to home owners such as leasehold management, invoicing and arrears control, surgeries and other meetings. In essence these are the costs referred to in the fifth schedule of the lease that allow the TMO to comply with our obligations on behalf of the Landlord. In response to the points raised in Ms Edema's witness statement the TMO carry out a number of checks as part of the preparation of service charge final accounts to try and ensure that they are as accurate as possible. After we have	

				completed our comprehensive checks the accounts are then subject to further checks by RBKC (the Landlord) prior to been signed off by RBKC (the Landlord). We have provided breakdowns in respect of each financial year itemising all charges and further provided invoices and supporting evidence in respect of these charges. Where errors have been highlighted we have removed these and apologised. Whilst we endeavour to ensure that the final accounts are as accurate as possible we are working with around 220,000.00 transactions across the borough and regrettably, sometimes errors may occur.	
41	Major Works Administration Fee	50.00	Notwithstanding repeated comments on the maladministration of the major works in previous years as set out in my Statement, the Claimant has continued to maintain its position. This estimate will be paid when it is based on the Claimant's provision of	The TMO reviewed the management fee that was applied in respect of 'major works' for the 2010/11 financial year which reduced the fee applied to individual schemes from 12.5% to 7% with an annual flat rate of £50.00 per property. This decision was based on	

			a full and proper administration of the major works in the previous S/C year according to the Lease and the LTA 1985.	the overall cost to the TMO in managing the entire stock on a year on year basis. This revised methodology was the subject of a Key Decision Report by RBKC (the Landlord) and RBKC signed off this change to the management fee.	
42	Building Insurance	289.00	The leaseholders have challenged the 83% increase for building insurance and have asked for the building insurance to be properly charged. See para 68.3 – 68.8	The buildings insurance contract is procured by the landlord directly rather than the TMO as managing agents. The TMO served consultation Notices on the Respondent in respect of the previous insurance contract on the 28th September 2009 and the 9th February 2010 and are attached to the Applicant's witness statement of David Ward at page 147. The Council went to tender in respect of this contract and the tender of Aspen Insurance Ltd was subsequently accepted for the period commencing the 1st April 2010. The Applicant landlord then further	

				procured for building insurance in respect of which consultation notices were sent to the Respondent on 16 November 2012 and 20 February 2013, and which notices are attached in the Applicant's Witness Statement of David Ward at page 152 and 155. Further regarding the Applicant's position regarding the insurance contracts and the current contract entered into in 2013 is in the Applicant's Statement of Case.	
			Comments on the final account will be made when it is received.	The final accounts for 2013/14 will be completed by 30th September 2014.	