12515

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AA/LSC/2017/0285**
Property	:	**Tudor Rose Court, 35 Fann Street, London EC2Y 8DY**
Applicants	:	**The tenants listed in Appendix 1**
Representative	:	**Mr P Bennett, chairman of Residents Association**
Respondent	:	**Hanover Housing Association**
Representatives	:	**Mrs S Turton and Mrs J Horton (both in-house)**
Also present	:	**Mrs J Bennett (Mr Bennett's wife) and Mr A Camp (treasurer of Residents Association)**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge P Korn** **Mr H Geddes RIBA MRTPI**
Date and venue of Hearing	:	**27th November 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**18th December 2017**

DECISION

Decisions of the Tribunal

(1) In relation to Flats 1, 2, 4, 5, 12, 14, 15, 20, 23, 30, 32, 33 and 35 the disputed charges are payable in full.

(2) In relation to Flat 3 the disputed charges are not payable at all.

(3) In relation to Flats 28 and 36, the disputed charges are not payable at all, save that the Respondent is entitled to charge to the relevant tenant the relevant proportion of the estimated contribution to the equipment replacement fund.

(4) In relation to Flat 22, the following disputed charges are not payable:-

2014/15

- Repairs Security Equipment
- Repairs Fire Detection
- Repairs Fire Fighting Equipment
- Annual Contracts – Fire Detection Equipment
- Annual Contracts – Fire Fighting Equipment
- Annual Contracts – Smoke Vents

2015/16

- Maintenance of Bathroom
- Repairs Security Equipment
- Repairs Fire Detection
- Repairs Fire Fighting Equipment
- Annual Contracts – Fire Detection Equipment
- Annual Contracts – Fire Fighting Equipment
- Annual Contracts – CCTV
- Annual Contracts – Smoke Vents
- Annual Contracts – Pest Control

2016/17

- Maintenance – Pest Control
- Maintenance of Guest Room
- Maintenance of Bathroom
- Maintenance of Communal Kitchen
- Repairs TV Aerial
- Repairs Security Equipment

- Repairs Fire Detection
- Repairs Fire Fighting Equipment
- Repairs CCTV
- Annual Contracts – Fire Detection Equipment
- Annual Contracts – Fire Fighting Equipment
- Annual Contracts – Automatic Doors
- Annual Contracts – CCTV
- Annual Contracts – Smoke Vents
- Annual Contracts – Pest Control

2017/18 (estimated charges)

- Maintenance of Guest Room
- Repairs CCTV
- Repairs Fire Detection
- Repairs Security Equipment
- AC – CCTV
- AC – Fire Detection Equipment
- AC – Fire Fighting Equipment
- AC – Pest Control

(5) In relation to Flat 34, the services listed above as not being payable in respect of Flat 22 are also not payable in respect of Flat 34. In addition, the tenant of Flat 34 is not obliged to pay the estimated contribution to the equipment replacement fund.

(6) We hereby make a Section 20C order that none of the costs incurred or to be incurred by the Respondent in connection with these proceedings are to be added to the service charge for any of the tenants or leaseholders at the Property.

Background

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

2. The Applicants are all assured tenants or assured periodic tenants. The Property itself is a purpose-built block of 35 flats providing sheltered housing for the elderly, with residents currently aged between 60 and 95. The building was developed by the City of London Corporation,

which, under separate agreements, has nomination rights in respect of all of the 19 flats rented by the Applicants. The Head Lease is dated 3rd February 1998 and was granted by the City of London Corporation to Network Housing Association Limited. The Head Lease was then assigned to the Respondent in February 2014.

3. The challenge relates to the service charge years from 2014/15 to 2017/18 inclusive. The issue in dispute is whether the Applicants are obliged to contribute at all towards the cost of any of the items listed in the service charge accounts under the headings "Maintenance", "Repairs", Annual Contracts" in the accounts for 2014/15 to 2016/17 inclusive and whether they are obliged to contribute at all towards the estimated cost for 2017/18 in respect of any items listed in the budget as Maintenance, Repairs, AC (Annual Contracts) or Equipment Replacement Fund.

4. The relevant statutory provisions are set out in Appendix 2 to this decision.

Applicants' case

5. The regime envisaged by the Head Lease was for some flats to be sold on long leases and the balance to be let on assured tenancy agreements. The Head Lease has a standard form assured tenancy agreement attached to it, and under clause 5.9:5.3 *"The Tenant shall not without the consent of the Landlord vary the terms of a Standard Tenancy Agreement ... without the previous written consent of the Landlord which is not to be unreasonably withheld or delayed save where in the Landlord's opinion the proposed amendment or variation makes the Standard Tenancy Agreement ... no longer a Lease for the Elderly".*

6. The City of London Corporation has confirmed that no deeds of variation to the Head Lease have been granted allowing for any changes to the agreed form of standard tenancy agreement.

7. The Applicants' tenancy agreements fall into three basic categories. 11 flats have 'Type A' tenancy agreements, which were granted between 2000 and 2013. 2 flats have 'Type B' tenancy agreements, which were granted in 2014 and specify services to be recharged using a tick-box system. 6 flats have 'Type C' tenancy agreements, which were granted in or after 2015 and specify the services to be recharged by way of a Statement of Estimated Service Charge Appendix. The Applicants' view is that only the 'Type A' tenancy agreements are in accordance with the Head Lease and that no consent was given by the freeholder for the Respondent (or its predecessor) to grant 'Type B' or 'Type C' tenancy agreements.

8. The Applicants submit that the Respondent is in breach of the terms of its own lease (the Head Lease) by requiring tenants since 2014 to contribute to the cost of maintenance, repair and annual contracts, and that it is also in breach by requiring tenants since 2017 to contribute towards the long-term costs of renewal of certain items through a sinking fund.

9. Specifically in relation to repair, the Applicants state that the form of assured tenancy agreement attached to the Head Lease includes an obligation on the landlord to repair the building and therefore that the landlord (i.e. the Respondent) is responsible for all repairs and should not be recovering the costs from tenants.

10. The Applicants note that, of the 11 'Type A' tenancy agreements, 5 specify the services to which the service charge relates whilst the others have left this section blank (presumably accidentally).

11. The Respondent's predecessor, Network Housing Association Limited ("**Network**"), issued a handbook for tenants whilst it was their landlord which listed the items to be covered in the service charge, namely "the Warden, Cleaning, Lighting and Heating of Communal Areas, Gardening, Window Cleaning etc". In September 2013, Network wrote to the then chairperson of the Residents' Association stating that *"Tenants are not charged for insurance or repairs and maintenance as this is covered by the Landlord ..."*.

12. At the hearing Mr Bennett for the Applicants said that in his view it was not within the contemplation of the freeholder that assured tenants would be required to contribute towards the cost of repair and maintenance, which is what occurred when the Respondent took over. He also took the Tribunal through the service charge provisions of a number of different tenancy agreements.

Respondent's response

13. The Property was initially developed as an 'Extra Care' facility, including a care team, a catering service and high levels of housing-related support. Clause 8.3 of the Head Lease specifically refers to this care element by stating that the *"Lease and the Development Agreement and Care Agreement and Nomination Agreements embody the entire understanding of the parties relating to the Premises and to all the matters dealt with by any of the provisions of this Lease"*. In its early days the Property was decommissioned as 'Extra Care' and treated as a traditional 'Sheltered Housing' estate, and then later the support service was removed, but the Head Lease and associated agreements were not varied to reflect the changed circumstances and services offered.

14. The contract between the Respondent and each of the Applicants is the relevant tenancy agreement in each case. These tenancy agreements are binding regardless of any separate agreement between the freeholder and the Respondent contained in the Head Lease (or elsewhere).

15. In any event, the Respondent does not accept that any of the charges are in breach of the standard form of tenancy agreement attached to the Head Lease. In addition, the charges for repairs do not relate to the fabric of the building but rather to the repair and maintenance of items used to provide services.

16. When the Respondent acquired the Property, its staff requested detailed financial information from Network but only received an overview of the 2013/14 service charge budget and year end accounts. From those accounts it seemed clear that residents were paying for the services received, including lifts, the warden call system and washing machines. The Respondent has also included in the hearing bundle a letter dated 23rd April 2010 plus attached budget which it states was provided to all tenants and lists a range of services which they were receiving and for which they were paying, including washing machine maintenance, lifts maintenance, pest control, aerial repairs, etc.

17. The Respondent has also referred us to the Upper Tribunal decision in *Cardiff Community Housing Association v Kahar (2016) (2016) UKUT 0279 (LC)*, on which we will comment later.

18. As regards the sinking fund contributions, Network had not been making provision for renewal of service items that have reached the end of their useful life, and therefore the Respondent has (since taking over) engaged in extensive consultation with tenants to give prior warning that contributions towards a sinking fund will now be demanded. The Respondent has tried to keep the level of contribution affordable and has not sought to build up a renewals fund retrospectively, accepting that it will remain in deficit for some years. All but two of the tenancy agreements contain a provision for sinking fund contributions.

19. As regards the Applicants' statement that no deeds of variation to the Head Lease have been granted to allow changes to the agreed form of standard tenancy agreement, the Respondent comments that all that is needed is a signed consent rather than a deed of variation and that – due to the length of time that has passed and the loss of records – it cannot be established whether consent was in fact given.

20. At the hearing, Mrs Turton and Mrs Horton said that the Respondent had been trying to contact the freeholder to discuss these service charge issues but had had difficulties in getting hold of the freeholder. As regards the general question of affordability of charges, they said that rents were limited in accordance with a specific formula and that there

was the possibility that tenants could seek housing benefit to cover unaffordable service charges.

21. In the Respondent's view, the pro-forma tenancy agreement did not limit the types of services for which a charge can be made.

Tribunal's determination

The standard form assured tenancy agreement

22. One of the Applicants' central arguments is that the disputed charges are not payable because it was not envisaged by the standard form of assured tenancy agreement that the landlord would be entitled to charge tenants for these items.

23. Clause 1.1 of the standard form of assured tenancy agreement envisages the payment of rent plus a service charge on a weekly basis, and then clause 1.3 states that *"The Association shall provide the following services in connection with the Premises for which the Tenant shall pay the Service Charge"*. That wording in clause 1.3 of the standard form agreement is followed by three blank dotted lines, the clear inference being that the actual extent of the services will be filled in prior to completing each actual tenancy agreement.

24. Clause 2 of the standard form agreement sets out the landlord's obligations, including various repairing, maintenance and decorating obligations. Clause 3 sets out the tenant's obligations, including in clause 3.2 the obligation *"to pay the rent and other charges weekly and in advance"*.

25. In relation to its service charge regime, arguably the standard form of assured tenancy agreement is unsatisfactory in that it gives no indication as to what principles should govern the services to be provided in respect of which a service charge will be payable. On the other hand, it is only a pro-forma document, and in the case of each individual tenancy it will have been for the parties to agree what services should be listed in clause 1.3. If, for example, in pre-contract negotiations the landlord had sought to include items to which the relevant prospective tenant had objected then it would have been open to that prospective tenant to raise an objection, following which either there would have been a negotiated agreement or the tenant could have refused to proceed with the transaction.

26. In our view, therefore, the standard form of assured tenancy agreement allows for the levying of a service charge and does not limit what services can be listed in clause 1.3. The only limit, subject to issues of reasonableness of charge, provision of service, quality of service, and

compliance with specific statutory provisions (such as section 11 of the 1985 Act) comes from the wording of the individual tenancy agreement.

27. We do not accept the Applicants' submission that including certain repairing and maintenance obligations as landlord's obligations precludes the landlord from passing on the cost to the tenants. On the contrary, it is absolutely standard in a lease for a landlord to covenant to provide certain services or to be responsible for items of repair and maintenance and for each tenant to covenant to pay a proportion of the cost.

28. We also do not accept the Applicants' submission that a deed of variation of the Head Lease would need to have been entered into in order to permit the head tenant to grant an assured tenancy agreement which differed from the standard form. All that would have been needed was a written consent from the freeholder, although on the balance of probabilities the evidence available suggests that no such consent has been obtained from the freeholder.

29. In any event, the Applicants are not party to the Head Lease, which was entered into prior to the passing of the Contracts (Rights of Third Parties) Act 1999, and therefore the Applicants are not in a position to enforce or to rely on any alleged breach of the Head Lease in this context. In each case, the Applicants have signed a tenancy agreement which is a contract between the Respondent and the relevant Applicant. We are not persuaded that the validity of the terms of that contract is affected by any alleged inconsistency between the terms of the tenancy agreement and the terms of the Head Lease. It is for the freeholder to enforce any alleged breach on the part of the head tenant if it chooses to do so, and we have not even been presented with particularly compelling evidence that the freeholder intends to take any such enforcement action, if indeed there is any breach against which to take such action.

30. The Applicants have referred us to a statement contained in Network's handbook and in a letter from Network to the then chairperson of the Residents' Association as to the types of service envisaged, and we assume that their purpose in referring to these items is to set up a form of 'estoppel' argument. However, the Respondent has referred to a letter from Network in April 2010 attached to a budget listing a wider range of services. There is therefore evidence pointing both ways, but in any event we do not consider that a comment in a handbook or letter by the Respondent's predecessor as to the services being provided at that time precludes the Respondent from later widening or varying the services as long as it follows any process required by the relevant tenancy agreement.

31. In conclusion on this point, therefore, we do not accept that the Respondent is precluded by virtue of the terms of the Head Lease or

through some form of estoppel from charging the disputed items to the Applicants.

Individual tenancy agreements which contain the fullest service charge

32. On the basis of the evidence available, we are satisfied on the balance of probabilities that the tenancy agreements for Flats 14 and 15 (Type 'B' tenancy agreements) and the tenancy agreements for Flats 1, 4, 20, 23, 32 and 35 (Type 'C' tenancy agreements) contain service charge provisions which are sufficiently wide to permit recovery of the cost of the items listed in the accounts under maintenance, repairs, annual contracts and a contribution towards an equipment replacement fund. It is not disputed by the Applicants that these tenancy agreements cover these items; their point instead is that they regard these provisions as being in breach of the terms of the Head Lease.

33. The Type 'B' tenancy agreements use a tick-box system to list services, and these include central control, common parts and communal facilities, repairs and maintenance and provision for renewals. The Type 'C' tenancy agreements contain a schedule of services including facilities maintenance, access control, fire safety, lift and security, and there is a specific clause (clause 1.8) allowing for the service charge to include provision for future expenditure on various items.

34. Therefore, in the absence of any challenge to the reasonableness of the level of the charges or any challenge to the standard of services we consider that the disputed charges are payable in full in respect of Flats 1, 4, 14, 15, 20, 23, 32 and 35.

Individual tenancy agreements which are silent on details of service charge

35. The Upper Tribunal decision in *Cardiff Community Housing Association v Kahar* referred to above related to a weekly tenancy agreement in a standard printed form with space for details to be added. The agreement began with a list of general terms, including a statement that the weekly service charge was £14.60. It also stated that the service charge could be increased or decreased by the landlord giving to the tenant not less than 4 weeks' notice in writing and that the service charge could be altered at any time to reflect changes in the cost of providing the services. The agreement also included the following statement: *"The Association shall provide the following services in connection with the Premises, for which the Tenants shall pay a service charge: ....."*. There were five blank lines on which details of the services could be provided, but in this case no details had been inserted. The agreement also contained a number of obligations to be performed by the landlord, including various repairing, maintenance and decorating obligations.

36. The dispute in *Cardiff Community Housing Association* arose after the tenancy agreement had been assigned and the assignee was presented with a separate sheet listing various services in a 'Service Charge Schedule'. The assignee applied to the First-tier Tribunal ("**FTT**") for a determination of her service charge liability and the FTT decided that no amounts were payable in respect of service charges, essentially because of the absence of a list of services for which a service charge was payable.

37. The Upper Tribunal disagreed with the FTT and allowed the appeal. Whilst the omission to include details of the services created some uncertainty it did not appear to have created any practical difficulty. It was clear that an assessment had been made of the charge which was to be levied, and there must have been a list of services which it was intended should be provided by the landlord and paid for by the tenant. At any time between 2006 and 2014 details of those services could have been requested.

38. The present case has superficial similarities with the *Cardiff Community Housing Association* case in that certain of the tenancy agreements contain a blank space where the list of services was intended to be provided. However, the Applicants in the present case are not arguing that no service charge is payable; rather they are arguing that certain categories of service charge are not payable, primarily because those services were not (in the Applicants' submission) envisaged by the Head Lease. In addition, the Upper Tribunal's decision in *Cardiff Community Housing Association* was not that specific categories of service charge similar to the disputed categories in the present case were payable (notwithstanding the failure to list specific services in the relevant clause of the tenancy agreement); rather the decision was the more limited one that a service charge was payable due to "the course of dealings over the years".

39. The decision in *Cardiff Community Housing Association* therefore, does not, in our view, assist with the question as to what services can be included in the service charge where the relevant clause is accidentally silent on the point, save that – within the parameters of what the Upper Tribunal need to determine – it seems to invite the conclusion that the answer is to be found by working out what the practical understanding has been between the parties as to what services are to be provided by the landlord and paid for by the tenant. However, even on this point it may be possible to distinguish the present case, as *Cardiff Community Housing Association* concerned an assignee of a tenancy agreement, and the decision seems in part to have hinged on the previous understanding between the landlord and the assignor.

40. In the present case, the Applicants are not arguing that the services to which the disputed charges relate have not been provided. They are also not arguing that the charges do not represent value for money or

that the services have been of poor quality. It would therefore seem to be common ground between the parties that the Applicants have received reasonably priced, good quality services, with the only point of dispute being whether the tenancy agreement obliges them to pay for those services. Precisely what was intended cannot be known for certain, as the relevant clause is blank. If it had been the case that those tenancy agreements entered into immediately prior to **and** immediately after the incomplete tenancy agreements had both (or all) contained identical service charge provisions, then it might have been possible to infer that the incomplete tenancy agreements had also been intended to include those same service charge provisions. However, that is not the case.

41. Furthermore, all but one of the incomplete tenancy agreements – namely Flats 2, 5, 12, 30 and 33 – contain a clause (clause 1.4.2) stating that the landlord may, after consulting the tenants affected, increase, add to, remove, reduce or vary the services provided.

42. Taking all of the above points together, in relation to Flats 2, 5, 12, 30 and 33 in our view the Respondent is entitled to charge for all of the items listed in the service charge accounts under the headings "Maintenance", "Repairs", and Annual Contracts" in the accounts for 2014/15 to 2016/17 inclusive and the estimated cost for 2017/18 in respect of all items listed in the budget as Maintenance, Repairs, and AC (Annual Contracts). The evidence indicates that the services concerned have been provided, and there is no specific reason to conclude with any degree of certainty that any of those services was not intended to be listed.

43. As regards the estimated contribution towards the equipment replacement fund, in our view this is only payable if the relevant tenancy agreement contains a clause allowing the landlord to require such contributions. All of the tenancy agreements in relation to Flats 2, 5, 12, 30 and 33 contain such a clause (clause 1.4.4 in each case) and therefore the estimated contribution towards the equipment replacement fund is also payable in each case. This in turn also strengthens the case for arguing that the service charge was intended to include items such as the disputed repair and maintenance items listed in the service charge accounts.

44. The tenancy agreement for Flat 34, on the other hand, does not include a clause allowing the landlord to increase or vary the services. In addition, it was entered into on 18th September 2000, earlier than any of the other Applicants' tenancy agreements. In the absence of any better evidence as to what was intended, we consider that the best evidence is the wording of the service charge in the next tenancy agreement to be entered into, namely that for Flat 22. With the exception of one point, therefore, we consider that the tenant of Flat 34 is liable in respect of the same services as the tenant for Flat 22. The

exception is the contributions to the Equipment Replacement Fund as, unlike with Flat 22, there is no provision in the tenancy agreement for Flat 34 allowing the landlord to require contributions towards a sinking fund.

45. Therefore, in relation to Flat 34, the position is the same as for Flat 22 (as to which, see below) save that the tenant of Flat 34 is not obliged to contribute to the Equipment Replacement Fund.

Individual tenancy agreements which have a limited service charge

46. The other tenancy agreements need to be dealt with individually insofar as they contain as more limited service charge and differ from each other to some extent. Taking them each in turn:-

47. *Flat 3* – this tenancy agreement specifies the services for which a service charge is payable as being communal cleaning, lighting of communal areas, gardening + handyman, warden service. The only provision allowing this to be varied or extended is clause 1.5 which allows for the agreement to be altered but only with the agreement in writing of both parties, and there is no evidence of any such agreement before us. There is also no provision allowing contributions to an equipment replacement fund. Therefore, the Respondent is not entitled to charge for any of the disputed items in relation to Flat 3, as in our view the services listed are not wide enough to include the maintenance or repair items listed in the accounts or any items listed in the accounts under Annual Contracts or contributions to the Equipment Replacement Fund.

48. *Flat 6* – here the services for which a service charge is payable include maintenance. Whilst the description of services is very brief and therefore unsatisfactory, we are forced to make a decision as to how widely the word 'maintenance' should be interpreted. In our view, on the balance of probabilities and in the absence of any other information (except for the fact that it is one of the latest Type 'A' tenancy agreements) the use of the word 'maintenance' was intended to move the service charge forwards in a material way. We also note that clause 1.4.4 allows for the establishment of a sinking fund "to be applied to any unusually heavy cost". The two provisions in aggregate indicate to us an intention to cover repair and maintenance, including the sorts of item listed in the accounts under 'Annual Contracts' as well as (by virtue of clause 1.4.4) the Equipment Replacement Fund. Therefore, the Respondent is entitled to charge for all of the disputed items in relation to Flat 6.

49. *Flat 22* – the services for which a service charge is expressed to be payable are communal lifts, cleaning, electricity, gardens, lounge, laundry, door entry, warden call system, full scheme management. There is also a provision allowing for a sinking fund. The services may

be increased or varied but only after consultation with tenants, and the Respondent has not provided evidence of any such consultation. In the future, if consultation is carried out in accordance with clause 1(3)ii), the position might be different. Looking at the disputed items, we consider the service charge provisions to be wide enough to include maintenance of laundry room, repairs telecare, annual contracts/lift, annual contracts/telecare, maintenance/main door entry, and equipment replacement fund. The following items are not payable:-

2014/15

- Repairs Security Equipment
- Repairs Fire Detection
- Repairs Fire Fighting Equipment
- Annual Contracts – Fire Detection Equipment
- Annual Contracts – Fire Fighting Equipment
- Annual Contracts – Smoke Vents

2015/16

- Maintenance of Bathroom
- Repairs Security Equipment
- Repairs Fire Detection
- Repairs Fire Fighting Equipment
- Annual Contracts – Fire Detection Equipment
- Annual Contracts – Fire Fighting Equipment
- Annual Contracts – CCTV
- Annual Contracts – Smoke Vents
- Annual Contracts – Pest Control

2016/17

- Maintenance – Pest Control
- Maintenance of Guest Room
- Maintenance of Bathroom
- Maintenance of Communal Kitchen
- Repairs TV Aerial
- Repairs Security Equipment
- Repairs Fire Detection
- Repairs Fire Fighting Equipment
- Repairs CCTV
- Annual Contracts – Fire Detection Equipment

- Annual Contracts – Fire Fighting Equipment
- Annual Contracts – Automatic Doors
- Annual Contracts – CCTV
- Annual Contracts – Smoke Vents
- Annual Contracts – Pest Control

2017/18

- Maintenance of Guest Room
- Repairs CCTV
- Repairs Fire Detection
- Repairs Security Equipment
- AC – CCTV
- AC – Fire Detection Equipment
- AC – Fire Fighting Equipment
- AC – Pest Control

50. *Flat 28* – the services for which a service charge is expressed to be payable are cleaning, lighting and communal water heating. The services may be increased or varied but only after consultation with tenants, and the Respondent has not provided evidence of any such consultation. In the future, if consultation is carried out in accordance with clause 1.4.2, the position might be different. Unusually, in view of the limited nature of the service charge as expressed in the agreement, there is a provision allowing for a sinking fund. This sits uncomfortably with the limited list of services, but as there is an express provision we consider that the Respondent can seek a contribution towards the estimated cost of the Equipment Replacement Fund, however illogical this may seem.

51. *Flat 36* – the services for which a service charge is expressed to be payable are communal lighting, communal cleaning and garden. As with Flat 28, the services may be increased or varied but only after consultation with tenants, and the Respondent has not provided evidence of any such consultation. In the future, if consultation is carried out in accordance with clause 1(3)ii), the position might be different. As with Flat 28, unusually, in view of the limited nature of the service charge as expressed in the agreement, there is a provision allowing for a sinking fund. This sits uncomfortably with the limited list of services, but as there is an express provision we consider that the Respondent can seek a contribution towards the estimated cost of the Equipment Replacement Fund, however illogical this may seem.

Cost Applications

52. The Applicants and also the leaseholders within the Property have all made a Section 20C application, namely an application for an order that the Respondent should not be allowed to put through the service charge any costs incurred in the course of these proceedings. At the hearing, Mrs Turton and Mrs Horton said that the Respondent did not intend to put any costs incurred through the service charge, but it is appropriate nevertheless to make a decision as to whether to grant the order.

53. The Applicants have been partially successful and the overall position was sufficiently unclear and unsatisfactory to justify the making of the application. Therefore, on balance, but without wanting this to be interpreted as a criticism of the Respondent, we consider it appropriate to make an order that none of the costs incurred or to be incurred by the Respondent in connection with these proceedings (if any) are to be included in the service charge payable by any of the tenants or leaseholders.

Name: Judge P Korn **Date:** 18th December 2017

RIGHTS OF APPEAL

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

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

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

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

APPENDIX 1

List of Applicants

R Cusden (Flat 1)
M Fenby (Flat 2)
H Speight (Flat 3)
G Hollingworth (Flat 4)
M Carroll (Flat 5)
M de George (Flat 6)
M Kiddle (Flat 12)
J Ransome (Flat 14)
J George (Flat 15)
I Burleigh and N Cressey (Flat 20)
A Marshall (Flat 22)
S Stafford (Flat 23)
S Roberts (Flat 28)
M Smith (Flat 30)
S Burrows (Flat 32)
L Wardrope (Flat 33)
J Jackson (Flat 34)
M Pirc (Flat 35)
J Hurry (Flat 36)

APPENDIX 2

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.