12130

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LSC/2016/0402**
Property	:	**17 Brayford Square London E1 0SG**
Applicant	:	**Mr T Harvey**
Representative	:	**In person**
Respondent	:	**Swan Housing Association**
Representative	:	**Nicholas Grundy QC**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Mr A Harris LLM FRICS FCIArb** **Ms S Coughlin MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**4 April 2017**

DECISION

Decisions of the tribunal

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

(2) The service charge years 2006-2011 have been accepted by the lessee for the reasons set out in Cain v LB Islington [2016] L&TR 19 and will not be reopened.

(3) For the years 2011-2 onwards:

a) Cleaning of the courtyard is to be charged as an Estate item.

b) Repairs and cleaning of the walkway are to be charged as a Block item

c) Walkway lighting and entryphone are to be charged as sub-block items.

(4) There is to be no reduction of service charge for the Estate due to restricted access by key to parts of the Estate.

(5) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

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 Applicant in respect of the service charge years 2006/7 to 2016/17.

2. The applicant also seeks an order under s20C of the 1985 Act.

3. Directions were issued on 22nd November 2016. Further Directions dated 16 February 2017 were issued following the hearing.

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

The hearing

5. The Applicant appeared in person at the hearing and the Respondent was represented by Nicholas Grundy QC.

6. Immediately prior to the hearing Mr Grundy handed in his skeleton argument.

The background

7. Flat 17 Brayford Square was acquired by the applicant and his father from the London Borough of Tower Hamlets under the right to buy scheme. The flat forms part of the Exmouth Estate and part of that estate is known as Brayford Square. The Estate was transferred to Swan Housing in May 2006.

8. As the lease was originally drafted, for service charge purposes, the property formed part of a building known as 15 to 17 Brayford Square. A number of other flats in Brayford Square were also bought at various times and the building definitions varied between those leases. Under reference LON/00BG/LVT/2010/0008 the Tribunal agreed to vary the definition of The Building in those various leases so that a common definition could be used for calculating service charges.

9. The lease definition of the building in paragraph 4 of the lease particulars was varied by the Tribunal with effect from 1st April 2012 from the original definition of

"all that block known as 15 to 17 Brayford Square London E1 0SG"

to

"All of those buildings structures staircases and raised walkways contained within the land edged red on the plan is attached hereto and are known as Brayford Square Stepney London E1 but excluding, in particular those buildings known as 6 & 7 Brayford square (as defined herein below).

6 & 7 Brayford Square are those buildings and structures edged blue on the plans attached hereto"

10. Following that decision, disputes have continued between the parties as to where within the service charge calculations various items of expenditure should fall.

11. 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.

12. The specific provisions of the lease will be referred to below, where appropriate.

The issues

13. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) Whether following the amendment to the Building definition, apportionment of some heads of the service charge should be amended.

    (ii) Should the applicant be charged for communal grounds maintenance in respect of areas to which he alleges he has no access.

    (iii) Is the increase in the management fee reasonable?

14. 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.

15. It is convenient to break up the issues in the manner set out in the Directions. For 2006-2011 the sole issue is how the cleaning costs should be apportioned between the residential premises and commercial units in Brayford Square. For the years 2011/2 to 2016/7 further issues of apportionment are raised together with service charge liability for closed areas of the Estate to which the applicant says he has no access.

16. It is common ground between the parties that the apportionment is based on the 1990 rateable values of the properties on the Estate and that the commercial units are included in the calculation. The individual rateable values were not in evidence.

2006-2011

17. The applicant seeks an adjustment of the service charge for the years 2006/7, 2007/8, 2008/9, 2009/10 and 2010/11.

18. The basis of the claim is that in the course of the case leading to the Tribunal decision on the Block definition Mr Harvey says he became aware the commercial units did not pay service charges and that the whole of the cost of cleaning the courtyard of Brayford Square was being charged to the residential occupiers. As a consequence, the charge to the residential lease holders is not reasonable. The Tribunal

varied the Building definition but did not exclude the commercial properties from service charge payment.

19. As the Tribunal has no jurisdiction over the commercial units their liability will not be considered.

20. The respondent argues the application is an abuse of process. All the service charges for the relevant years have been paid by the applicant except those for 2016/7 where the final account is not yet ready.

21. In proceedings which led to a Tribunal determination in respect of major works (reference LON/00BG/LSC/2014/0525) the Applicant filed a defence to the claim and did not mention in that defence the points on which he now relies. The respondent relies on Cain v LB Islington [2016] L&TR 19 in that Mr Harvey has paid all the relevant service charges ie he has made a number of relevant payments and he defended a claim for service charges and did not raise these further points.

22. The Tribunal Directions refused to allow this argument to be taken as a preliminary issue.

23. In Cain, the Upper Tribunal held

14. Before considering the facts of this case, it is necessary to consider the meaning and effect of section 27A(5). An agreement or admission may be express, or implied or inferred from the facts and circumstances. In either situation, the agreement or admission must be clear, the finding being based upon the objectively ascertained intention of the tenant which may be express or implied or inferred from the conduct of the tenant – usually an act or a series of acts or inaction in the face of specific circumstances or even mere inaction over a long period of time or a combination of the two.

15. Absent sub-section (5) and depending upon the facts and circumstances, it would be open to the F-tT to imply or infer from the fact of a single payment of a specific sum demanded that the tenant had agreed or admitted that the amount claimed and paid was the amount properly payable, a fortiori where there is a series of payments made without challenge or protest. Part of the reason for this is that people generally do not pay money without protest unless they accept that that which is demanded is properly due and owing, and certainly not regularly over a period of time. Whilst it would generally be inappropriate to make such an implication or inference from a single payment because it could not be said that the conduct of the tenant was sufficiently clear, where there have been repeated payments over a period of time of sums demanded, there may come a time when such an implication or inference is irresistible.

16. Taking matters one step further, it would be open to the F-tT to make such a finding even where there had been no payment at all but there were other facts and circumstances clearly indicating that the tenant had agreed or admitted the amounts claimed. What is required is some conduct which gives rise to the clear implication or inference that that which is demanded is agreed or admitted by the tenant. The relevant question, therefore, is: are there any facts or circumstances from which it can properly be inferred or implied that the tenant has agreed or admitted the amount of service charge which is now claimed against him?

17. The effect of sub-section (5), however, is to preclude any such finding "by reason only of [the tenant] having made any payment" (italics supplied). The reference to the making of "any payment", and "only" such payment, indicates that whilst the making of a single payment on its own, or without more, will never be sufficient to found the finding of agreement or admission, the making of multiple payments even of different amounts necessarily over a period of time (because that is how service charges work) may suffice. Putting it another way, the making of a single payment on its own, or without more, will never be sufficient; there must always be other circumstances from which agreement or admission can be implied or inferred. And those circumstances may be a series of unqualified payments over a period of time which, depending upon the circumstances, could be quite short, it always being a question of fact and degree in every case.

The Tribunal's decision

24. The Tribunal has considered the pattern of payment of these years and note no objection was made until a number of years after payment and only after a change in the Block definition. The Tribunal accepts the respondent's point that nothing else was changed by the decision.

25. In its Directions, the Tribunal made the point that the staler the claim the higher the evidential burden would be.

26. The Tribunal is persuaded that the pattern of payment is sufficient to convey acceptance as set out in the Cain decision. This is reinforced by the failure to raise the issue in the previous proceedings.

27. The tribunal determines that the amount payable in respect of cleaning for each of these years is

2006-7 Cleaning	£357.36
2007-8 Cleaning	£244.75
2008-9 Cleaning	£296.19

2009-10 Cleaning	£281.23
2010-11 Cleaning	£296.98

2011/2 to 2016/7

28. In respect of these years Mr Harvey stated that he had withheld a portion of the service charge and that there is not a sufficient pattern of payment to indicate acceptance of the service charge. The Tribunal accepts this for these years as there is clearly a build-up of arrears shown on the payment statements before the Tribunal.

29. There are a number of headings under which the reasonableness of the service charge for these years is challenged and which are common to all years. We will therefore deal with them as a question of principle and apply the result to the years in question. It should be made clear that the total costs under each heading are not challenged, just the apportionment.

30. In calculating the service charge the Landlord uses three percentages:

Services for the Estate 0.17% of expenditure

Services for the Block 2.11% (includes the commercial units)

Services for the sub-block 7.79% (residential units only)

In cross examination Mr Harvey agreed these percentages were correct and the question is under which heading some items should fall.

31. No evidence was offered in respect of 2016/7 as this is not a concluded service charge year and accounts are not ready.

Brayford Square Cleaning.

32. Mr Harvey contends that the cleaning of Brayford Square ie the ground floor Courtyard should be an Estate charge. the practice of Swan is to charge it as a block charge. Swan's argument is that other parts of the Estate are charged in a similar manner with blocks being charged for the area around them.

33. The Tribunal finds that the Courtyard should be treated as an Estate charge at 0.17% as this is an open area to which all residents and the general public have access due to the presence of the commercial units

including a bank, a surgery and a community centre. Units 6 and 7 are excluded from the definition of the Block settled by this Tribunal in its decision of 2011 referred to above.

34. The Tribunal accepts the figures set out in the letter dated 31 March 2016 where no Block Cleaning charges are claimed for the years 2012-3, 2013-4 and 2014-5.

Block and Sub-block

35. In the 2011 decision at paragraph 24, the Tribunal included the walkway between the blocks within the definition of the building. At paragraphs 34 and 35 the Tribunal referred to the sense of varying the leases so that the upper and lower parts of the same structure are considered together. At paragraph 39 the Tribunal held the splitting of Brayford Square into mini blocks would introduce unnecessary complication into the calculations.

36. For the Landlord Mr Grundy argued that some services are for the sole benefit of the residential occupiers of the block, for example the entryphone system and there is no benefit to the commercial occupiers. Mr Harvey accepted this.

37. The Tribunal accepts Mr Harvey's argument that the walkway surface has a dual function as a walkway to the flats and as part of the roof of the premises below and should therefore form part of the block. Repairs clearly benefit both. As a flat roof with internal drainage it is clearly important to keep the drainage clear. The Tribunal noted the photograph of the walkway showing leaves blocking drainage outlets. While the primary benefit of walkway cleaning falls to the residential tenants as matter of amenity, it is also an essential part of preventive maintenance of the block and on balance the Tribunal finds that these cleaning costs should be charges to the Block.

38. The entryphone and walkway lighting benefit the residential occupiers only. The Tribunal were not persuaded by Mr Harvey that the lighting is also of benefit to the commercial occupiers. The Tribunal noted the comments of the 2011 decision at paragraph 39 but consider that the comment was really directed at other issues to avoid arbitrary apportionments between the different parts of Brayford Square rather than where there is a service to one part which is clearly identifiable.

Communal Grounds access restrictions

39. Mr Harvey alleges that as a result of major works at the Estate various fences and gates have been erected which prevent him having access to parts of the Estate to which he is entitled to go under his lease. He therefore argues that he should have a reduction in the Estate Charges

to reflect this. He referred to a letter dated 8 January 2014 in which he was advised access to the various parts of the Estate were on a "need for access" basis to improve security.

40. In contrast, during the hearing of the 2015 reference, Mr Pearce of Swan stated that Mr Harvey could have a key to go where he wanted.

41. In evidence Mr Grundy QC called Mr Charles Wheaton who said that despite that offer in the previous hearing Mr Harvey had not taken up the offer of a key unlike some of his neighbours.

42. The Tribunal notes that this issue came up in the 2015 hearing and at paragraph 157 of their decision the Tribunal said:

"The argument advanced by the respondents was really a counterclaim for breach of any rights over the other parts of the Estate as set out in their leases. However, they made no counterclaim within the County Court proceedings. It follows the Tribunal has no jurisdiction to determine whether there has been any breach of these rights or whether set off would be appropriate. The Tribunal makes no finding on whether there has been a breach. In any event the respondents have now been offered keys to other gated areas on the Estate"

43. The Tribunal notes that this claim was made in the 2015 proceedings in respect of the period up to that date and was dealt with by that Tribunal who found the claim was not a matter falling under the service charge but needed a claim for breach of covenant. This application raises no new point and the Tribunal accepts the Landlords argument that the issue is concluded and it is not open to Mr Harvey to reopen it The Tribunal agrees with the previous Tribunal that this is in effect a a claim for breach of the lease which we consider does not fall with our jurisdiction.

44. The Tribunal notes that Mr Harvey has not taken up the offer of a key which he would have done if the matter had been of any importance to him. On the facts therefore Mr Harvey has not been denied access since the 2015 hearing so the claim for years following the 2015 claim is not made out.

Management Charges

45. Mr Harvey argued that a rise in the management charge for the Estate from £83.83 in the year to March 2011 to £197.74 in the following year was unreasonable. Mr Harvey produced evidence of a comparable in Cable Street E1 where a charge of £128.18 is made. Mr Harvey accepted that an inflation adjustment was reasonable.

46. In evidence Ms Gillian Macdonald, a senior leasehold manager for Swan explained the staff arrangements for the Estate Office and confirmed that the same office dealt with both tenanted and leasehold flats. They had obtained a report from outside consultants who advised on the level of charge which was appropriate. The consultant was not named and the report was not in evidence. Duties of the office include dealing with day to day running, checking on cleaning on the Estate and dealing with tenancies. Management Estate Charges were generally in the range of £100 to £200 per unit. The charge had not been materially reviewed since Swan took over from Tower Hamlets Council.

47. The Tribunal notes the arguments of both parties. It accepts that the previous charge was too low but also considers that there needs to be a reflection in the charge of the costs of dealing with tenancies which does not benefit the leaseholders. The Tribunal considers that a charge of £150 per flat for the year to March 2012 is reasonable and adjusted each subsequent year by the rise in the Consumer Price Index (CPI).

Service charge item & amount claimed year 2011/2012

48. The only items remaining under challenge for this year are communal grounds maintenance of £27.36, communal cleaning ££87.80 and the management fee of £197.74.

49. The Tribunal accepts the grounds maintenance charge as reasonable. The accounts do not distinguish between courtyard cleaning and other cleaning but we note the amount arises from a block charge of 2.11% applied to the total of £4162.63. The Tribunal accepts this total as reasonable. The management charge is reduced to £150.00.

Service charge item & amount claimed year 2012/2013, 2013/4, 2014/5, 2015/6

50. For these years, the accounts presented by Swan are broken down in to Estate, Block and Sub-block which make analysis somewhat easier. It is not clear what if any charges for cleaning the courtyard are made. Cleaning listed as a sub-block charge for these years is for the walkway areas which we have determined should be a block charge. (See para 34 above) Communal lighting and door entry are conceded by Mr Harvey as Sub-block repair items whereas any repairs to the walkway or drainage should be block charges

51. The adjusted figures for each of the disputed items are as shown on the attached spreadsheet decided in accordance with the principles set out above.

Application under s.20C

52. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, he tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: A P Harris LLM FRICS FCIArb **Date:** 4 April 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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.

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

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 20B

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

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

Section 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Claimed amounts are taken from the accounts at tab 17 as amended by the letter of at 31 March 2016 at page 106 in italics.

Year 2012-3

	claimed			Determined			Comment		
disputed item	**total amount**	**% share**	**Charge**	**total amount**	**% share**	**Charge**			
Communal Grounds Maintenance	£ 11,125.55	0.17%	£ 18.91	£ 11,125.55	0.17%	£ 18.91			
communal repairs	£ 7,494.61	2.11%	£ 158.14	£ 7,494.61	2.11%	£ 158.14			
communal lighting maintenance	£ 640.93	7.79%	£ 49.93	£ 640.93	7.79%	£ 49.93			
communal door entry	£ 2,031.84	7.79%	£ 158.28	£ 2,031.84	7.79%	£ 158.28	conceded		
communal cleaning	£ 1,757.12		£ -						
Block Cleaning	*£ -*	*2.11%*	*£ -*	*£ -*	*0.17%*	*£ -*	*not claimed see p108*		
Sub-block cleaning	*£ 1,757.12*	*7.79%*	*£ 136.88*	*£ 1,757.12*	*2.11%*	*£ 37.08*			
communal repairs	£ 1,024.69	0.00%	£ -	£ 1,024.69	0.00%	£ -	walkway		
sub-block communal repairs	*£ 506.39*	*7.79%*	*£ 39.45*	£ 506.39	*2.11%*	*£ 10.68*	walkway		
management fee	£ 197.74	100.00%	£ 197.74			£ 153.28	CPI	96	98.1
			£ 759.33			£ 586.30			

Year 2013-4

	claimed			Determined			Comment		
disputed item	**total amount**	**% share**	**Charge**	**total amount**	**% share**	**Charge**			
Communal Grounds Maintenance	£ 23,749.60	0.17%	£ 40.37	£ 23,749.60	0.17%	£ 40.37			
trees	£ 14,110.00	0.17%	£ 23.99	£ 14,110.00	0.17%	£ 23.99			
communal lighting maintenance	£ 135.33	7.79%	£ 10.54	£ 135.33	7.79%	£ 10.54			
communal door entry	£ 1,202.68	7.79%	£ 93.69	£ 1,202.68	7.79%	£ 93.69	conceded		
communal cleaning	£ 1,519.17	0.00%	£ -						
Block Cleaning	*£ -*	*2.11%*	*£ -*	*£ -*	*2.11%*	*£ -*	*not claimed see p 107*		
Sub-block cleaning	£ 1,519.17	7.79%	£ 118.34	£ 1,519.17	2.11%	£ 32.05			
communal repairs (sub-block)	£ 1,713.11	7.79%	£ 133.45	£ 1,713.11	2.11%	£ 36.15	walkway		
management fee	£ 197.74	100.00%	£ 197.74			£ 155.46	CPI	98.3	99.7
			£ 618.13			£ 392.26			

Year 2014-5

	claimed			Determined			Comment		
disputed item	**total amount**	**% share**	**Charge**	**total amount**	**% share**	**Charge**			
Communal Grounds Maintenance	£ 23,823.52	0.17%	£ 40.50	£ 23,823.52	0.17%	£ 40.50			
trees	£ 4,065.96	0.17%	£ 6.91	£ 4,065.96	0.17%	£ 6.91			
communal repairs	£ 7,169.44	0.00%	£ -						
Communal repairs	*£ 1,658.88*	*2.11%*	£ 35.00	£ 1,658.88	*2.11%*	£ 35.00			
communal door entry	£ 3,068.30	7.79%	£ 239.02	£ 3,068.30	7.79%	£ 239.02	conceded		
communal cleaning	£ 1,519.17	0.00%	£ -						
Block cleaning	*£ -*	*2.11%*	*£ -*	*£ -*	*2.11%*	£ -	*not claimed see p 107*		
sub-block cleaning	*£ 1,523.25*	*7.79%*	*£ 118.66*	*£ 1,523.25*	*2.11%*	£ 32.14			
management fee	£ 197.74	100.00%	£ 197.74			£ 154.84	CPI	100.1	99.7
			£ 637.84			£ 508.42			

Year 2015-6

	claimed			Determined			Comment		
disputed item	**total amount**	**% share**	**Charge**	**total amount**	**% share**	**Charge**			
Communal Grounds Maintenance	£ 21,294.00	0.17%	£ 36.20	£ 21,294.00	0.17%	£ 36.20			
trees	£ 10,574.40	0.17%	£ 17.98	£ 10,574.40	0.17%	£ 17.98			
communal repairs	£ 2,480.40	2.11%	£ 52.34	£ 2,480.40	2.11%	£ 52.34			
communal door entry	£ 3,421.26	7.79%	£ 266.52	£ 3,421.26	7.79%	£ 266.52	conceded		
Sub block cleaning	£ 1,432.03	7.79%	£ 111.56	£ 1,432.03	2.11%	£ 30.22			
communal repairs	£ 1,128.75	7.79%	£ 87.93	£ 1,128.75	2.11%	£ 23.82			
management fee	£ 197.74	100.00%	£ 197.74			£ 155.31	CPI	99.9	100.2
			£ 770.25			£ 582.37			

1.021875

1.014242

0.996004

1.003003