10037

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	LON/00AC/LSC/2013/0211
Property	:	Allard House and Avro House, Boulevard Drive, London, NW9
Applicants	:	Chan Chung and 14 other lessees of Allard and Avro House
Representative	:	S. Hirsch & Co, solicitors
Appearances for Applicants:	:	(1) Mr A Otchie, counsel (2) Mr J Stern, solicitor (3) Ms Angela Jacobs, tenant of flat 26 Allard House (4) Ms Margret Quinn, tenant of flat 2 Avro House (5) Ms Carolyn Mandleson, tenant of flat 9 Avro House (6) Mr Benjamin Sloane, tenant of flat 32 Avro House
Respondent	:	Genesis
Representative	:	Winckworth Sherwood, solicitors
Appearances for Respondent	:	(1) Ms S Dutta, counsel (2) Ms Marcelle Douglas, service charge officer (3) Mr Michael Wareham, Consort Regional Manager (4) Mr S Doherty, in-house accountant, Consort
Other Appearances	:	Mr L Silverstone, solicitor, St George North London Limited(observing)

Type of Application	:	An application under s.27A Landlord & Tenant Act 1985
Tribunal Members	:	(1) Judge A Vance (2) Mr A Lewicki (3) Mr J Francis QPM
Date and venue of Hearings	:	10.09.13 and 03.04.14 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	28.04.14

DECISION

Decision of the Tribunal

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

2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that 20% of the landlord's costs of the tribunal proceedings are not to be passed to the Applicants through the service charge.

3. Numbers appearing in square brackets in this decision refer to the hearing bundle unless stated otherwise.

Introduction

4. The Applicants apply under section 27A Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of their liability to pay service charge to the Respondent for the service charge years 2010 to 2012 inclusive.

5. Each Applicant is a lessee of a flat in one of two blocks ("the Blocks") that form part of the Beaufort Park Estate, located on the former site of RAF Hendon ("the Estate"). One block, Allard House, is situated at 17 Boulevard Drive, London NW9 5PQ and consists of 27 flats. The other block, Avro House, is situated at 5 Boulevard Drive, London NW9 5HF and consists of 33 flats. A total of approximately 2,000 dwellings comprise the Estate.

6. The freehold interest in the Estate lies with the Respondent, St George North London Limited ("SGNL"). By a lease dated 20.12.09, SGNL let Avro House to Paddington Churches Housing Association ("PCHA") for a term of 999 years commencing from 01.03.06 **[710]**. It also let Allard House to PCHA by lease dated 11.05.07 for a term of 999 years commencing 01.03.06 **[732]**. The relevant clauses of these two headleases are in identical terms.

7. PCHA subsequently entered into underleases with the Applicants. A copy of the lease for 17 Allard House (the flat let to the First Applicant) appears in the bundle **[769]** and all parties agree in all material respects its terms are identical to the provisions of the leases entered into by all of the Applicants.

8. The Respondent engages managing agents to deal with the day to day management of the Estate. Throughout the relevant period the managing agent was Peverel OM Limited **[806]** who carried out the management function through a subsidiary company, Consort Management Limited ("Consort"). Consort was replaced at the end of December 2013.

9. In May 2011, various housing associations, including PCHA, were merged to form Genesis Housing Group ("Genesis").

10. Genesis demands service charge from the Applicants in respect of its own costs of management and maintenance of Allard and Avro House ("the Blocks"). It also demands, by way of service charge, a contribution towards the costs that it is liable

to pay to SGNL. These are the costs incurred by Consort for the maintenance and management of the Estate.

11. In their Application **[1]** the 11 named Applicants asserted that the Genesis service charge statements and service charge accounts are unclear; that Genesis breached terms in the Applicants' leases concerning computation and auditing of the service charge; that there had been a failure to consult in respect of major works; that there had been a failure to send demands in relation to unspecified works within 18 months of costs being incurred; that there had been a failure to carry out appropriate maintenance and repairs concerning rubbish and security; and that the Applicants were unable to use the gym on the Estate.

12. By the date of the hearing of this application these issues had been narrowed and varied with the result that there were only three discreet issues requiring determination by the tribunal.

The Leases

13. The relevant provisions of the headleases can be summarised as follows:

(i) PCHA covenants to carry out the obligations set out in the Eighth Schedule including keeping the Blocks in good and substantial repair and to pay "a reasonable and fair proportion" of the "Maintenance Expenses" incurred by SGNL.

(ii) Maintenance Expenses is defined as being the costs incurred in carrying out the Lessor's obligations contained in the Sixth Schedule. These include the costs of repairing and maintaining the structure of the Blocks and the Estate.

(iii) Paragraph 4 of the Seventh Schedule provides that if PCHA objects to any item of the maintenance expenses as being unreasonable then the dispute is to be determined by a member of the Royal Institute of Chartered Surveyors ("RICS").

(iv) The accounting year runs from 1st January to 31st December in each year

14. The relevant provisions of the underleases can be summarised as follows:

(i) The Lessees covenant to pay service charge in accordance with clause 7 of the lease including *"all expenditure reasonably incurred by the Landlord in connection with the repair maintenance and provision of services and insurance of the Building and the Common Parts* (clause 7(5)).

(ii) This expenditure includes *"all reasonable fees charges and expenses payable to the Surveyor any solicitor accountant surveyor valuer architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building"* (Clause 7(5)(c).

(iii) It also includes *"any sums payable by the Landlord pursuant to the Headlease"* (clause 7(5)(j).

(iv) The Lessees also covenant to pay a fair and reasonable proportion of the ground rent and service charges reserved under the Headlease (clause 3(2)(c).

(v)The accounting year runs from 1st April to 31st March in each year.

Case Management Hearings/Adjourned Hearing

15. An oral case management hearing took place on 21.05.13, attended by the solicitor for the Applicants and officers of the Respondent. Directions were issued by the tribunal on the same day **[58]**.

16. The Application was listed for hearing on 10.09.13 **[62]**. At that hearing the tribunal identified that the Applicants' principal challenge concerned the service charges demanded from the Applicants by Genesis for costs incurred by Consort. These costs had been paid by Genesis to SGNL under its' obligation to contribute towards maintenance expenses under the headleases. They were then being passed on to the Applicants. As there was insufficient documentation before the tribunal to determine this issue the hearing was adjourned to 03.12.13. Directions were issued **[66]** which provided for disclosure of the headlease and Consort accounts.

17. On 18.10.13 the tribunal added Susan Ward and Alice Lara as Applicants **[70]**.

18. Following correspondence from both parties to the tribunal and an application by the Respondent to strike out part of the Applicants' case further detailed case management directions were issued by the tribunal on 11.11.13 **[71]** in which it was directed that the hearing listed for 03.12.13 was now to be a case management hearing.

19. At the hearing on 03.12.13 Margret Quinn and Yvette Kabagabo were added as Applicants making the total number of applicants 15. The strike out application was not pursued by the Respondent following clarification from the Applicants as to their specific service charge challenges and an application by the Applicants to include the service charge years 2008 and 2009 to their Application was refused by the tribunal. Further case management directions were made **[74]** including the service of Scott schedules relating to the 10 specific service charge costs now being challenged as identified by the Applicants at the hearing.

20. Following service of Scott schedules **[79]** and a response from Genesis **[89-104]** the Applicants served their latest and final version of their statement of case **[105]** in which the number of challenges had been narrowed to six items. Challenges relating to landscaping charges, business suite costs, refuse bin costs and CCTV costs for 2010 were abandoned.

21. After enquiries made by the Respondent it was established that cleaning services for 2010 and 2011 had been carried out by a company under an agreement that had subsisted for over a year. As such, the Respondent had decided to cap the recovery

of costs under the heading "Cleaning and Refuse Collection" to £100 in the service charge years 2009/10 and 2010/11 **[209]**.

22. Challenges relating to Consort lift charges and CCTV charges for 2012 were dropped by the Applicants on 04.03.14 **[822]** leaving just four heads of expenditure remaining in dispute.

23. An application by the Applicants to amend its application to seek rebates for the years 2011 and 2012 was refused by the tribunal on 24.03.12.

24. At the restored hearing of this Application on 03.04.14 both counsel confirmed that the remaining issues in dispute were the following:

(i) whether sums charged as management fees by Genesis are recoverable for the years ending 2010 to 2012;

(ii) whether sums charged by SGNL/Consort for CCTV costs are recoverable for the year ending 2011 only; and

(iii) whether sums charged by SGNL/Consort for 'Concierge and 'On costs' are recoverable for the years ending 2010 to 2012.

Inspection

25. Neither party requested that the tribunal inspect the properties and the tribunal did not consider this to be necessary or proportionate.

The Hearing; Decisions and Reasons

26. At the start of the hearing counsel for the Respondent handed up a copy of the office copy entries for the freehold title as well as a skeleton argument and chronology.

27. The tribunal heard oral evidence from Mr Sloane; Ms Quinn; Ms Mandleson and Ms Jacobs on behalf of the Applicants and Ms Douglas and Mr Wareham on behalf of the Respondent.

28. All of the witness statements included in the hearing bundle on behalf of the Applicants were signed by Mr Stern on behalf of the individual witness. At the beginning of the hearing Mr Otchie sought permission to rely on newly prepared witness statements for the Applicants' witnesses in attendance at the hearing. None of these witness statements had been signed by the witnesses present. Mr Stern stated that some of the witnesses had read the statements in advance of the hearing but others had not. He also indicated that that these new witness statements were very similar to the statements in the hearing bundle signed by him but were not identical.

29. The tribunal was unimpressed with Mr Sterns' explanation as to why such a late application was being made given that directions for exchange of witness statements had been made as long ago as 03.12.13. It did not find Mr Stern's explanation for the delay, namely that he had experienced difficulties with the availability of witnesses,

satisfactory, unsupported as it was, by any witness evidence from him or the witnesses themselves.

30. Despite these reservations the tribunal decided that it was in the interests of justice to grant permission to the Applicants to rely on these witness statements. It considered that it would be unjust for the Applicants to be deprived of the opportunity to give witness evidence in full for what appeared to the tribunal to be a delay caused by their solicitor. The tribunal adjourned for a short period for the witnesses to read and sign the statements and for Mr Datta to consider them. It indicated that it would hear any submissions from Mr Datta as to the weight to be given to such evidence given that the Respondent had not seen these statements prior to the hearing. None, in the event were made.

Genesis management fees: 2010 to 2012

31. The sums in dispute, as set out in the Applicants' statement of case are as follows:

Year	Item	Amount (per lessee)
2010	Management Fee	£0.30
	Fixed Administration Fee	£100.00
2011	Management Fee	£0.40
	Fixed Administration Fee	£200.00
2012	Management Fee	£323.53

The Applicants Case

32. The Applicants' case is difficult to ascertain. In the Scott Schedules **[91 -103]** they state that the Management Fee "should have been included within the service charges" and that the Fixed Administration Fee "should have been included within the service charge description". No explanation is given as to what these comments mean.

33. In their statement of case **[107]** they argue that the costs have not been reasonably incurred. The basis on which this is argued is that the costs amount to administration charges for the purposes of Schedule 11 Commonhold and Leasehold Reform Act 2002 ("CLARA")for which no summary of rights and obligations in relation to administration charges was served, contrary to paragraph 4(1) of that Schedule.

34. There is also what appears to be an assertion that because the charges are in a fixed sum they are not a true reflection of the work carried out and are therefore unreasonable.

35. It is not part of the Applicants' advanced case that these costs have been unreasonably incurred because the service provided was sub-standard.

The Respondent's Case

36. The Respondent's position was that the Applicants appeared to be conflating management charges with administration charges as referred to in Schedule 11 of CLARA. This was wrong as a matter of law as these sums do not fall within the definition of an administration charge as set out in paragraph 1(1) of that Schedule.

37. In evidence, Ms Douglas confirmed that what was recorded in the Respondent's Reply **[167]** was correct. The explanation as to what these charges relate to is given at page four of that Reply and, it too is not very clear. However, the position became clearer after hearing Ms Douglas' evidence.

38. The Management Fee, which for the year ending 2010 was £0.30 **[28]** relates, the tribunal was told, to the fee charged by Genesis for its preparatory work for the annual audit.

39. As for the Fixed Administration Fee this is poorly described. It is not an administration fee at all but, rather, Genesis' fee for its management and maintenance of the Blocks. Ms Douglas confirmed that the flat fee is £200 per flat but that for the service charge year ending 2010 a decision was taken to limit this to £100.

40. From April 2012 following a review of its management fee structure the Respondent moved over to a standardised management fee based on the number of services received by a tenant **[136]**.

41. Its position was that the sums were recoverable under clause 7(5)(c) of the underlease and that they were reasonable in amount. Further, the method of charging was reasonable.

Decision and Reasons

42. The tribunal determines that all of the sums in dispute are payable by the Applicants to the Respondent in their apportioned shares and the costs have been reasonably incurred.

43. These costs are clearly not administration charges for the reason advanced by Mr Datta in his skeleton argument. They do not fall within any of subparagraphs (a) to (d) of Schedule 11 of CLARA as set out in the annex to this decision. As such there was no requirement to serve a summary of rights and obligations in relation to administration charges on the Applicants. Rather, these charges have been demanded as service charges for which it is conceded that a summary of rights and obligations had been provided **[108]**.

44. The Applicants' have not sought to argue that these costs are unreasonable given the service provided and there is no evidence before the tribunal that would justify such a determination.

45. The tribunal sees no merit in the Applicants' contention that a fixed management charge is inappropriate. A fixed fee per flat is the method of charging recommended by RICS at paragraph 2.3 of its' Service Charge Residential Management Code, 2nd Edition. The tribunal considers the Code to reflect good practice and that that the

£200 flat fee charged up until the fee structure changed in 2013 to be reasonable (in the absence of any evidence from the Applicants to the contrary).

46. What did concern the tribunal, however, was an additional management fee charged by Genesis but which was not directly challenged by the Applicants' in this Application.

47. These fees are described in the service charge account statements for the year ending 2010 and 2011 as a "Management Fee" and amounted to £104.21 per lessee in 2010 and £65.63 in 2011. The tribunal was informed by Ms Douglas that these sums were a percentage of the costs demanded by Consort from Genesis for management and maintenance of the Estate.

48. She indicated that they amounted to 5% of what is described as "Managing Agent Service Charges" in the 2010 and 2011 service charge account statements. However, that does not appear to be correct. These Managing Agent Service Charges, which relate to Consort's charges to Genesis, amount to £1,740.66 in 2010 and £1,018.42 in 2011. Five percent of those figures is not £104.21 and £65.63.

49. It is not clear to the tribunal how these additional Management Fees were calculated for the years ending 2010 and 2011. The position regarding the year ending 2012 is clearer. The service charge account statement for this year **[179]** contains a manuscript note that indicates that the total management fee payable by the leaseholder of £323.52 was calculated as follows:

(i) £200 for the Genesis flat management fee

(ii) £56.84 being 5% of the Consort managing agent charges in the sum of £1,136.89

(iii) £66.68 being 15% of the total cost of all the other Consort services amounting to £444.50.

50. It is clearly reasonable for the Respondent to seek to recover from the Applicants a reasonable proportion of the costs it has to pay SGNL for the services provided by Consort in relation to the maintenance and management of the Estate. What is not necessarily reasonable, in the tribunal's view is for it to charge the Applicants 5% of the Consort managing agent charges for what is described in the Respondent's statement of case as being *'the cost of paying invoices, dealing with queries and any other associated costs'* **[170]**.

51. In the tribunal's view it is arguable that to seek to recover this sum in addition to the Genesis flat management fee of £200 is unreasonable and that the fixed fee should encompass all of the management charges payable by the Applicants to the Respondent.

52. However, whilst the tribunal considers this to be an arguable point it is not one that the Applicants have advanced before the Tribunal. For the years ending 2010 and 2011 they have not challenged this additional management fee. Whilst the Applicants challenged the whole of the management fee for the year ending 2012 (which included 5% of the Consort managing agent charges for that year) in the tribunal's view it would be inappropriate for the tribunal to determine that these

charges were unreasonable for any of the three service charge years in dispute. This is because the point was not part of the case advanced by the Applicants.

53. This application has had a long and convoluted history. The tribunal has issued detailed directions on three occasions and has afforded the Applicants every opportunity to present their case at its fullest. The tribunal has considerable sympathy for the Applicants but it is not for the tribunal to advance the Applicants' case for them. They have had legal representation throughout these proceedings and had the benefit of counsel at the final hearing. It was for their legal representatives to put their case to the tribunal.

54. It would, in the tribunal's opinion be inappropriate for it to determine, on its own initiative, that these costs were unreasonably incurred when this was not part of the Applicants' case. The Respondent needs to know in advance of the hearing what case it has to answer so that it can properly prepare its response and it was not on notice as to a challenge to the 5% Consort managing agent charges or the basis on which such a challenge was pursued.

55. The tribunal determines that these costs are payable under clause 7(5)(c) of the Applicants' leases as *"fees charges and expenses.....in connection with the management or maintenance of the building.....including the cost of preservation of the account of the service charge...."* and that, for the above reasons, they have been reasonably incurred.

CCTV costs for the year ending 2011

56. The costs of CCTV for the Estate for this service charge year amounted to £17,404.60. These were costs incurred by Consort and passed on by Genesis. A breakdown of these costs and an invoice from Octopus Rentals Ltd are at pages **[233]** and **[234]**. This was an increase from £4,573.87 for the service charge year ending 31.12.10 **[239]** but less than the sum charged for the year ending 31.12.11 £18,873 **[308]**. The Applicants had not challenged the costs for the 2010 service charge year and dropped their challenge for the 2012 service charge year after they were provided with copy invoices.

The Applicants Case

57. The extent of the Applicants' challenge **[110]** is that the increase in cost in the year ending 31.12.11 was unreasonable. This is despite the size of the Estate increasing from 15 blocks in the year ending 2010 to 22 blocks for the year ending 2011.

58. No challenge was made as to the whether or not the service provided was reasonable.

The Respondent's Case

59. The Respondent's position is that these sums were properly recoverable through the service charge. It had provided evidence of the invoices for this year to the Applicants' solicitor on 23.12.13 **[173]** but despite this the Applicants' had not

advanced any challenge to the specific costs incurred and it was unclear as to the basis of the Applicants' challenge.

Decision and Reasons

60. The tribunal determines that the sum in dispute is payable by the Applicants to the Respondent in their apportioned shares and that the costs have been reasonably incurred.

61. In his witness statement **[688]** Mr Wareham provides an explanation as to what the costs in dispute relate to. He states that the sum of £9,493.42 relates to the rental costs of the CCTV system for the Estate paid in advance in the financial year ending 2010 but which were allocated in the accounts for the year in which the services were actually provided, namely, the year ending 2011. The remaining balance of £7,911.18 is, he says, a re-apportionment by auditors in order to correctly allocate CCTV costs between the Estate and the car park areas.

62. The tribunal accepts Mr Wareham's explanation. There is no evidence from the Applicants as to why the amount of costs incurred is unreasonable (whether by way of alternative quotes or estimates or otherwise). The tribunal is not, on the evidence before it, in a position to determine that these costs have been unreasonably incurred.

63. In reaching that decision the tribunal bears in mind that the Applicants' dropped their challenge to the 2012 service charge year. As the costs incurred in that year were higher than in the year ending 2011, then in the absence of any explanation from the Applicants, it is difficult to see why the 2011 costs should be considered unreasonable when the 2012 costs are not being challenged.

'Concierge and 'On costs' for the years ending 2010 to 2012.

64. The total sums being challenged, as set out in the Applicants' Scott schedules are the Applicants' apportioned shares of the following amounts: £291,995.44 for the year ending 2010 **[92]**; £272,589.70 for the year ending 2011 **[97]**; and £323,692.00 for the year ending 2012 **[101]**.

65. These costs relate to concierge and other services provided by Consort and summarised in the Respondent's reply at **[174-6]**. Annexed to Mr Wareham's witness statement is a breakdown of these costs for Allard and Avro House together with a breakdown of the individual contributions due from each of the lessees in those blocks for the service charge years in dispute **[680-708]**.

66. The tribunal was informed that the concierge services are provided from a ground-floor office close to a roundabout about 150-200 metres from Avro House.

The Applicants Case

67. In their Statement of Case **[112]** the Applicants' challenge the following aspects of the service provided by Consort:

(i) Inspection of the Estate – It is asserted that the concierge always refused to carry out such inspections during the years in question.

(ii) Inspection of car parks - It is asserted that it is unreasonable for those residents who do not own a car to contribute towards these costs as they derive no benefit from the inspection.

(iii) Inspection of plant rooms and ventilation rooms - It is asserted that these inspections are of little value as the asserted purpose is to ensure that all is in working order and a concierge is not qualified to establish this.

(iv)Give access to meter cupboards so residents can top up electricity - It is asserted that each property is individually metered so this charge is not incurred. It was also asserted that the lessees would rather have their own keys to access the meter cupboard.

(v) Take bookings for meeting rooms and set up meeting rooms - It is asserted that this cost should be included under the heading of Business Costs

(vi)Act upon any reports of anti-social behaviour and report to the police - It is asserted that incidents have been reported to the concierge who have taken no action

68. There is also a general assertion that the residents have been refused assistance from the concierge on occasions and that the service provided is sub-standard.

69. No challenge is made as to the amount of the costs incurred. Rather, the Applicants argue that the amount sought from them is unreasonable in light of the service received.

70. The lessees present at the hearing gave oral evidence concerning what they considered to be the poor concierge service.

71. Ms Quinn indicated that she had been told, a number of occasions, by concierge staff that they were unable to assist her with problems that she raised including receipt of a parking ticket **[677]**.

72. Ms Mandleson asserted that if the concierge inspected the car park daily then this would have revealed that a security door leading from the car park was broken for nine months in 2013 until it was replaced in 2014 by the new managing agents who replaced Consort. She, like Ms Quinn, had been told on a number of occasions by the concierge that they were unable to assist her, including when she reported witnessing a neighbour's bicycle being stolen. She also stated in evidence that on 28.08.12 the electricity company were unable to change her meter as the concierge had lost the appropriate cupboard key.

73. Ms Jacobs evidence was that she had, in 2009, raised the issue of a defective intercom system to Allard House with the concierge but was told that this needed to be raised with Genesis directly and that this was something she needed to do by herself **[673]**.

74. Mr Sloane stated that the lift to Avro had broken down on a number of occasions and that when this happened the concierge was unwilling to assist. Again, the

response received was that this was a matter that had to be raised with Genesis directly. Mr Sloane pointed out that he had been trapped in the lift twice for a couple of hours. On one occasion the emergency button in the lift was out of order and when he telephoned the concierge using his mobile phone they indicated that they were unable to help. On both occasions, Mr Sloane had telephoned the Fire Brigade for assistance **[671]**.

75. In his closing submissions Mr Otchie highlighted that all of the Applicants' present had given evidence that the Estate was not well maintained and not a pleasant place to live in. They felt insecure; vandalism and anti social behaviour was a problem and Consort should do more than just throw their hands up and say that this was nothing to do with them but for Genesis to deal with. He also submitted that under cross-examination Ms Douglas had agreed that if complaints had been made about the concierge that these should have been passed on to her as service charge manager. This was not done and in his submission, should be reflected in a reduction in the service charge. In his view, the Respondent should have invoked paragraph 4 of the Seventh Schedule of the headleases and objected these costs as being unreasonable.

The Respondent's Case

76. The Respondent's position is that these sums were properly recoverable through the service charge. The costs would, in any event, be properly recoverable from the Applicants as they are charges that fall within the maintenance expenditure recoverable under the headlease and, by extension, under the applicants' underleases.

77. The Respondent also complains that the Applicants complaints are poorly particularised with no corroborating evidence

Decision and Reasons

78. The tribunal determines that all of the sums in dispute are payable by the Applicants to the Respondent in their apportioned shares and the costs have been reasonably incurred.

79. The tribunal does not consider that the evidence tendered by the applicants is sufficient to establish that these costs have been unreasonably incurred.

80. The tribunal accepts the evidence of Mr Wareham that Consort staff carried out the functions listed at paragraph seven of his witness statement **[685]**. Although Mr Wareham did not assume his post at the Estate until August 2013, his oral evidence to the tribunal was that he had seen members of Consort's staff performing all of these functions. The tribunal found Mr Wareham's evidence to be credible and considers that there is insufficient evidence for it to conclude that these services were not also provided for the service charge years in dispute

81. The tribunal does not doubt that the Applicants are being truthful in their witness evidence. However, the fact that they may not have witnessed inspections does not mean that they are not taking place. Mr Sloane conceded that he had seen Consort

staff inspecting the car park but not the Estate. Ms Mandleson informed the tribunal that she was at work seven days a week and that she could not say that inspections were not taking place only that if they were taking place then Consort were doing a bad job. The evidence from Mr Wareham indicates, in the tribunal's view, that inspections of the Estate are, in fact, taking place.

82. Nor, in the tribunal's view, is there any evidence before the tribunal to support the assertion made in the Applicants' statement of case that the concierge staff refused to carry out inspections. Most notably, this point is not mentioned in any of the Applicants' witness statements.

83. As to the car parks, the evidence from Mr Wareham and Mr Sloane indicates that inspections are taking place. The tribunal does not accept that it is unreasonable for those residents who do not own a car to contribute towards the costs of these inspections. Such inspections are for the benefit of all the lessees, not just those that own a car as they could potentially identify health and safety matters that need to be addressed. As Mr Wareham indicated in oral evidence this could include potential trip hazards or defective lighting.

84. The issue raised by Ms Mandleson of a security door leading from the car park being broken for nine months in 2013 is not an issue that falls within the service charge years in dispute and cannot therefore amount to evidence of poor service within those years. In any event, the defective door is something that the Applicants' could and probably should have reported to Genesis of their own accord. An unreasonable delay, if there was one, in Genesis replacing the defective door is not a matter that is relevant to this service charge item.

85. As for inspection of plant rooms and ventilation rooms, the tribunal does not agree with the Applicants that these inspections are of little value. Once again, potential health and safety concerns could be identified. As Mr Wareham points out at paragraph 13 of his witness statement an inspection of the plant rooms would reveal if there was a problem with the water pumps being tripped. In addition, his assertion that those carrying out the inspection would also check that all fire systems were in working order was not the subject of cross-examination by Mr Otchie.

86. Nor does the tribunal consider it unreasonable for the keys to the riser cupboards within which the electricity meters are located to be kept by the concierge on behalf of Consort. Mr Wareham states in paragraph 14 of his witness statement that if the lessees had their own keys there is a risk that the riser cupboards would be used for personal storage which would breach health and safety regulations. Whilst the Applicants may prefer to have their own keys to access the meter cupboard the tribunal does not consider the Respondent's position to be an unreasonable one.

87. As to the Applicants' assertion concerning the concierge taking bookings for meeting rooms. Mr Wareham's evidence at paragraph 16 of his witness statement was that the concierge holds the meeting room log book and it was their responsibility to carry out bookings. As it is, the Applicants' case as argued is not that that these costs should not be paid for by the Applicants but, rather, that this item of expenditure should fall under a different heading in the service charge

accounts schedule. However, as Mr Datta points out in his skeleton argument if it were included under the heading of business suite costs it would still be payable by the Applicants as a cost recoverable under the headleases and underleases. The tribunal does not see any merit in the Applicants' challenge as advanced by their solicitor.

88. Nor does the tribunal consider there to be evidence to support the Applicants' contention that the costs of the concierge should be reduced as the concierge has, in the past, failed to act upon any reports of anti-social behaviour and report to them to the police. Mr Sloane indicated in his oral evidence that the concierge had, in fact, intervened on one occasion when loud music had been blaring for five hours. The only evidence, witness or otherwise, of a failure to respond was that offered by Ms Mandleson relating to the bicycle theft. No date is provided in her witness statement as to when this incident took place and no evidence of a formal complaint made by Ms Mandleson or evidence that that she reported the theft to the police herself has been provided. The tribunal does not accept that the evidence indicates that these costs should be reduced because the service provided is inadequate. The Applicants have not provided adequate evidence to substantiate their assertions.

89. As for Mr Otchie's closing submission regarding the issue with Consort staff who, he suggested, should do more than just refer lessees to Genesis, the principal issue here appears to relate to the fact that the tenants of the Genesis Blocks do not receive the same level of service as the tenants of the other blocks on the Estate. For Genesis tenants, including the Applicants, Consort only provides estate services and not block services. For other lessees, who pay block costs to Consort, they also provide block services such as investigating internal leaks.

90. As to Ms Douglas's evidence, she stated that if a tenant made a complaint about Consort staff that this would be referred to the property manager to respond to. She agreed that if the complaint was about a sub-standard service being received that the complaint should have been passed on to her as service charge manager to look into. However, she also stated that none of the residents had said that they were not receiving the service they were paying for. Nor, since 2010, had she received any letter from a tenant or a phone call saying that they were unhappy about these costs or asking what the charges related to. The tribunal considered Ms Douglas to be a truthful witness and in light of the fact that there was no documentary or witness evidence in the bundle to counter her position that no complaints had been made to her directly the tribunal does not consider that she should have taken steps to query these costs with Consort.

Application under Section 20C

91. The Applicants sought an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Respondent incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Applicants.

92. When exercising its' discretion as to whether or not to make a s.20C order the tribunal has to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the degree to which the Applicants have succeeded in this application.

93. Assessing the degree to which the Applicants have succeeded in this application is not easy because the matters in issue and the way the Applicants have presented their challenges has shifted throughout the lifetime of the Application.

94. The Applicants have been unsuccessful in respect of the three issues requiring determination at the hearing. However, they have persuaded the Respondent to cap the recovery of costs under the heading "Cleaning and Refuse Collection" to £100 in the service charge years 2009/10 and 2010/11. In addition. the issue of lift maintenance by the Respondent was resolved by an agreed rebate of £20 to each resident for the years ending 2011 and 2012.

95. They have also managed to obtain greater clarity concerning the contribution that the Respondent demands from them towards the costs of maintenance and management of the Estate that it is liable to pay to SGNL.

96. It is regrettable that the latter issue only properly crystallised as a head of challenge at the hearing on 10.09.13 because this appears to be the key area of discontent that led to this Application being made. In their Statement of Case **[105]** the Applicants state that prior to making this application their solicitors had been in correspondence with the Respondent to try and resolve their dispute over service charges but without success. However, these problems are not addressed in their witness evidence,

97. They also refer to problems that the Respondent said it was having in obtaining information from Consort concerning the costs that it had incurred and which were then passed on to the Applicants. This problem eventually led to a letter being sent by Stuart Crawley, the Respondent's Property Manager to Stephen Wilding at Consort dated 19.11.12 in which the Respondent threatened to pursue an application to the leasehold valuation tribunal if answers to queries concerning Consort costs as well as access to Consort accounts was not provided **[128]**.

98. In the tribunal's view, the service charge annual accounts provided by the Respondent to the Applicants could be considerably improved. There is no explanation as to what the various management costs relate to and, as stated above, the Fixed Administration Fee is poorly described. The letter from Mr Crawley of 19.11.12 also indicates that there have been significant problems with Consort providing evidence of its expenditure to the Respondent.

99. In the tribunal's view this is an unsatisfactory state of affairs. Whilst the Applicants and other lessees of Allard and Avro House are obliged to contribute towards the costs that the Respondent has to pay to SGNL this clearly is not without limitation. Excessive costs that are unreasonably incurred are not recoverable by reason of s.19 of the 1985 Act.

100. The tribunal is therefore sympathetic to the reasons why the Applicants chose to pursue this Application, namely to seek some clarity as to the service provided by Consort for which they were paying through the service charge.

101. However, the tribunal is mindful that the Respondent should not usually be prevented from recovering via the service charge its costs of dealing with the unsuccessful parts of the Applicants claim. Also relevant is the conduct of the parties during the course of the Application.

102. Mr Datta's description, in paragraph 36 of his skeleton argument, of the application being a variable feast of unparticularised allegations is not entirely fair but the point has substance. It is not always easy to discern the point being made on behalf of the Applicants in the statements of case served since the first Case Management Hearing. They have not always been clearly particularised and the tribunal has indicated above where it has had difficulty in understanding the Applicants case in respect of the remaining issues requiring determination.

103. Furthermore, the way in which this litigation has been conducted by the Applicants is likely to have unnecessarily increased the Respondent's costs of dealing with the claim. A considerable number of heads of expenditure have been challenged by the Applicants and then dropped as the Application has proceeded. The tribunal accepts that this is likely, in part, to be due to issues arising once the Applicants' solicitor was provided with Consort accounts and invoices, only to be dropped following negotiations.

104. To the extent that the parties have successfully managed to narrow issues that is, of course, to be welcomed. However, there appear to be issues of proportionality regarding some of the matters raised by the Applicants. For example, the email from Mr Silverstone to Mr Stern of 14.01.14 **[194]** raises what appear to be legitimate concerns about the proportionality of some of the matters being raised by Mr Stern whereby, if successful, the Applicants would each receive sums in the region of £0.04.

105. Having regard to all the above factors the tribunal determines that the order that is just and equitable for it to make under section 20C of the 1985 Act is that 20% of the costs the Respondent has incurred in connection with these proceedings should not be regarded as relevant costs in determining the amount of service charge payable by the Applicants. The Applicants are, of course, able to challenge the reasonableness of the amount of the costs recoverable in any event by way of a separate application once these have been demanded.

106. Taking into account the determinations above and the degree to which the Applicants' have been unsuccessful in their Application the tribunal does not order the Respondent to refund any fees paid by the Applicants.

Name: Amran Vance **Date: 28.04.14**

Annex

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

.

(3) For this 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 – Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

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

and the amount payable shall be limited accordingly.

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

Section 27A – Liability to pay service charges: jurisdiction

(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 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.

[.....]

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the

proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).