

9562



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00BB/LSC/2013/0588**

**Property** : **FLAT 104, DAVID LEE POINT,  
LEATHER GARDENS,  
STRATFORD, LONDON E15 3LF**

**Applicant** : **LONDON BOROUGH OF NEWHAM**

**Representative** : **WILKIN CHAPMAN GRANGE LLP**

**Respondent** : **MR JAY OGUN-JIMI**

**Representative** : **IN PERSON**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge and  
administration charges**

**Tribunal Members** : **MS L SMITH (LEGAL CHAIR)  
MR M TAYLOR FRICS  
MS J DALAL**

**Date and venue of  
Hearing** : **10 December 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **4 January 2014**

---

**DECISION**

---

### **Decisions of the tribunal**

- (1) The Tribunal determines that the sum of £12,693.57 is payable by the Respondent in respect of the service charges for major works carried out in 2007/8 and which are the subject of County Court proceedings under claim no 2YN65701
- (2) The Tribunal determines that the sum of £350 is not payable as administration charges under the Lease.
- (3) Since the tribunal has no jurisdiction over county court costs and fees and interest, this matter should now be referred back to the Bow County Court.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge for major works carried out in 2007/8 (“the Works”) to the Leather Gardens Estate of which Flat 104 David Lee Point (“the Property”) forms part. Proceedings were originally issued in the Northampton County Court under claim no. 2YN65701. The claim was transferred to the Bow County Court and then in turn transferred to this tribunal, by order of Deputy District Judge Holroyd on 26 July 2013. The Applicant claimed the sum of £13,311.63 in the County Court proceedings in relation to “the balance of service charges, administration charges and legal costs and disbursements” arising from the Works. Mr Green, the solicitor agent who represented the Applicant’s solicitor at the hearing, confirmed that there was a mistake in relation to the claim for the Respondent’s portion of the service charge for the Works. The total cost of the Works being claimed should be £1,642,784.73. The Respondent’s share of that service charge is calculated by dividing the total by the rateable value for the Estate (27825) and multiplying that by the rateable value for the Property (215) giving a total claimed of £12,693.57.
2. The Applicant also claims the sum of £350 in relation to legal costs and disbursements pursuant to “page twelve paragraph fourteen” of the Lease.
3. The relevant legal provisions are set out in Appendix 1 to this decision.

### **The hearing**

4. The Applicant was represented at the hearing by Mr Green (solicitor agent for Wilkin Chapman Grange LLP– the Applicant’s representative), Mr Mills (an independent surveyor who had reviewed the final account for the Works) and Ms D Morelli (Head of Leasehold Services with the London Borough of Newham). The Respondent did not attend and was not represented (see below).
  
5. An order for directions was made on 17 September 2013. The Respondent did not attend that hearing and did not comply with any of those directions save for the filing of the mediation form thereby confirming that he had received the directions. Mr Green indicated at the start of the hearing that telephone contact had been made with the Respondent on 11 November 2013. The Respondent indicated during that telephone conversation that he had received a letter from the Tribunal to say that he had not complied with the directions and he had indicated to the Tribunal that he was not able to deal with the matter until December and that the Tribunal had acknowledged this. The Applicant’s representative indicated to the Respondent that if he needed more time then the Tribunal would have to order it and he could not simply request this and expect it. The Applicant’s representative advised the Respondent to contact the Tribunal to clarify the position and whether he had been given more time. The fact that he had been told that he had failed to comply with directions indicated that the Tribunal was not acceding to a request for more time. The Applicant’s representative indicated that the Applicant intended to proceed in accordance with the directions unless the Tribunal confirmed otherwise. The Respondent said that he would contact the Applicant’s representative once he had spoken to the Tribunal but failed to make further contact. The file note of the conversation as produced by the Applicant at the hearing is at Appendix 3 to this Decision.
  
6. In light of the above, the Tribunal checked the office file. There was a note on file to the effect that the Respondent was away from 15 November to 1 December. Other than that and with the exception of the signed mediation form there was no record of any further communication with the Tribunal and no request for an adjournment. Both the directions order and the letter from the Tribunal of 6 November which the Respondent had clearly received mentioned the date of the hearing. However, out of an abundance of caution, the Tribunal adjourned the hearing for a short period to enable the Tribunal office to contact the Respondent to ensure that he was aware of the hearing and whether he was intending to attend. Initially, the Tribunal office was unable to contact the Respondent by mobile telephone and therefore left him a message to call. The Tribunal was then informed by the clerk that the Respondent had returned their call and indicated that he was aware of the hearing but would not be attending.

7. The Tribunal therefore continued with the hearing. However, at 11:12 hours, the Respondent sent an e-mail to the Tribunal in the following terms:-

*“Dear Sir/Madam*

*My sincere apologies for not attending the hearing today. I contest that I had not been properly notified and was therefore unaware of the hearing in progress today.*

*Further to my discussion with Miss Caroline Stone I can confirm that my last correspondence with the court was to request an extension or postponement of the hearing date as I was going to be out of the country from 05/11/13 to 12/12/13. I had no contact or correspondence received from Wilkinson Grange and/or the court to confirm either mediation or a re-scheduled hearing date.*

*Notice “bundle” was received from the solicitors on Friday 06/12/13. No prior confirmation of today’s hearing was received, therefore please consider my prior notice of absence as confirmed by Miss Stone and the lack of a response from the solicitors to the mediation request and subsequent lack of a hearing confirmation date.”*

8. Mr Green resisted any request for an adjournment (if indeed this was what the e-mail requested since this was not clear). The Tribunal was satisfied that the Respondent was made fully aware of the date of the hearing, not once but on 4 occasions namely by the order for directions (which the Respondent had clearly received as he had returned the accompanying mediation request form), by the letter from the Tribunal of 6 November notifying him that he had not complied with the directions (and which he admitted to having received during his telephone conversation with the Applicant’s representative), by oral confirmation during the telephone conversation with the Applicant’s representative on 11 November and by letter from the Applicant’s solicitor dated 5 December 2013 which enclosed the bundle (and which the Respondent admitted in his e-mail having received). The Tribunal was on notice that the Respondent was unavailable between 15 (not 5) November and 1 (not 12) December 2013. He had not requested an adjournment and was not unavailable at the date of the hearing since contact was made by both mobile phone and e-mail (apparently received from his place of work). He had been advised by the Applicant’s representative that if he wanted more time and an adjournment of the hearing date, he needed to contact the Tribunal and he failed to do so. Accordingly, the Tribunal rejected any suggestion that the Respondent was not aware of the hearing date and decided to proceed in his absence.

9. Mr Green pointed out to the Tribunal that the Respondent had also failed to engage with the County Court proceedings to the extent that the Applicant had sought summary judgment (although that application had not been determined). The Respondent's "defence" in the County Court amounted to no more than production of 2 letters both dated 9 May 2007 (the second of which clearly post-dated that date) addressed to "Home Ownership and leaseholder services unit" querying his service charge bill. Only the first of these letters bore any relevance to the Works but the Tribunal read that letter and had regard to the Respondent's complaints about the Works when determining the reasonableness of the Applicant's claim.
10. Mr Green also explained that the Applicant had been hampered in presentation of its case by the fact that the contractor who carried out the Works had gone into administration. Mr Mills is an independent surveyor, working for IGM. He was brought in by the Applicant 18 months ago to look at work carried out by the Applicant under the Decent Homes programme (although in fact the Works pre-date Decent Homes). He had carried out a review of the final account and had attended the Property (and the block of which it forms part) and carried out a visual inspection to ascertain what works had been carried out (so far as is possible when looking at works done over 5 years ago).

### **The background**

11. The Property is a 1 bedroom flat on the 18<sup>th</sup> floor of a 21 storey block known as 1-125 David Lee Point ("the Block") which forms part of the Leather Gardens estate ("the Estate"). The Block is a local authority block forming part of a larger estate. Some of the flats in the Estate remained owned by the local authority and are tenanted by it. Some including the Property are owned by private individuals.
12. Neither party requested an inspection and the Tribunal did not consider that one was necessary, It would be unlikely to have assisted in any event given that the works which are the subject of this application were carried out over 5 years ago.
13. The Respondent holds a long lease of the Property dated 12 June 2000 ("the Lease"). The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease which are relevant to this application are set out in Appendix 2 and are referred to below, where appropriate.

### **The issues**

14. In light of the Respondent's failure to attend the hearing and failure to comply with the Tribunal's directions, it was difficult for the Applicant or the Tribunal to identify what the issues were. The Tribunal therefore indicated to the Applicant at the start of the hearing that it would

require the Applicant to set out its case in relation to the Works, in terms of liability for payment under the Lease, compliance with the consultation procedures under s20 Landlord and Tenant Act 1985 and amounts due in relation to the Works. The Tribunal has therefore set out its determination on each of those issues, taking account under those headings of what the Respondent stated in his letter of 9 May 2007 in relation to those items.

15. In reaching its determinations, the Tribunal has taken into account the evidence from Mr Mills, the Applicant's submissions and the content of the Respondent's letter referred to above and has considered all of the documents provided.

### **The Works**

16. The Works were part of the local authority's Tall Blocks programme which pre-dated the Decent Homes Programme. The Works were carried out pursuant to a standard form contract and covered both David Lee Point and Bassett Point which together form the Leather Gardens Estate. The 2 blocks are identical and were constructed, Mr Mills thought, in the 1970s. The Works were tendered using an approved list (the Works were below the EU procurement threshold). The Works were the same for both blocks. The selected main contractor was Connaught Partnerships Ltd ("Connaught"). As indicated above, Connaught is now in administration.
17. The Works were administered by Newham Homes which was an Arms-Length Management Organisation set up to deliver the Decent Homes Programme but was set up before Decent Homes. The Works were carried out in 2007/8 and invoiced in October 2009 (although written notice of the amount due was sent prior to the formal invoice). The final account for both blocks was in the sum of £3,014,396 which was just over £3000 below the contract sum. That total was apportioned between the 2 blocks (£1,487,247 for David Lee Point and the remainder for Bassett Point).
18. Mr Mills explained that the Works were to upgrade the fabric of the building and communal parts. The Works are described in the consultation notices as follows:-  
*"External envelope cladding, concrete, render, brickwork repairs, PVCu window repair/replacement, cavity insulation, asbestos removal, flat entrance door replacement, roofing felt overlay system, internal decorations to communal areas, pigeon protection, upgrade of communal lighting and power, tenants risers, lightning protection system and BT block wiring"*.  
The reason for carrying out the Works was given as:-  
*"...necessary to maintain the common and structural parts of block, to ensure compliance with statutory obligations, and in furtherance of the Decent Homes Standard"*.

### **The Service Charge Provisions in the Lease**

19. Certain of the relevant provisions are set out in the Applicant's statement of case dated 26 September 2013 and were referred to by Mr Green in his submissions. By clause 5(2) the Lessee covenants to pay by way of additional rent for services provided by the Applicant but also charges for expenses incurred by the Applicant "*in the repair maintenance renewal and insurance of the Estate... and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable*". The Third Schedule sets out the "*Costs expenses outgoings and matters in respect of which the Lessee is to contribute*". Paragraph 1 relates to the expense of "*maintaining repairing redecorating renewing amending cleaning repointing painting graining varnishing whitening or colouring the Estate and all parts thereof and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable.*"
  
20. Paragraph 6 of the Third Schedule also refers to "*the cost of decorating the passages landings staircases and other parts of the Estate enjoyed or used by the Lessee in common with others and of keeping the other parts of the Estate used by the Lessee in common as aforesaid and not otherwise specifically referred to in this Schedule in good repair and condition*". Part of the Respondent's complaint insofar as this can be ascertained from his letter appears to be that he does not consider that he should be responsible for those parts of the Works which related to parts of the Estate which he did not use. This covered in particular the BT system as he "already have a phone line that I make payments on". The words "*enjoyed or used*" in the Lease are legal terms which are commonly found in many standard form leases and are to be read as being services, rights or obligations which benefit or relate to the Property in common with others and not just those which the Lessee physically uses – whether by necessity or by choice. The Lease clearly sets out the distinction between the Property ("the demised premises"), the Block (which is the individual block in which the Property is situated and which forms part of the Estate) and the Estate (which is the freehold property including the Property, the Block and the surrounding areas). The Applicant's obligation to repair etc under the Lease extends to the Estate as a whole and not just the Property or even just the Block. The Lease provides for the Respondent to contribute to the expenses of the Applicant to meet its obligations under the Lease. The way in which the Respondent's individual portion of the overall expenses is calculated is set out at clause 5(2)(e) of the Lease and is based on a division according to rateable values and not according to what parts of the Estate the Respondent actually uses.
  
21. Otherwise, the Respondent's letter of 9 May 2007 appears to be a request for information about what the Works comprised and confirmation that all the Works were communal and not to benefit individual flats. Mr Mills was asked in evidence to deal with what the Works entailed and the Tribunal had before it the final account agreed

between the contractor and Newham Homes and as also reviewed by Mr Mills.

22. The Tribunal was therefore satisfied that the Respondent is liable under the Lease to pay his contribution of the cost of the Works insofar as those were properly claimed and are reasonable.

### **Section 20 Consultation Procedure**

23. Notice of Intention to carry out Qualifying Works was given on 4 July 2005 inviting observations by 3 August 2005. Notice was given on 9 December 2005 providing the statement of estimates and inviting observations by 8 January 2006. The Works were carried out in 2007/8. Notice was given to the Respondent on 25 January 2007 of the estimate of his contribution. He wrote and queried the extent of the Works by letter dated 9 May 2007 (see above) to which the Applicant responded on 29 and 30 May 2007. The Works were invoiced on 29 October 2009.
24. The Applicant's statement of case "strongly maintains" that the Respondent was sent copies of the consultation documents and that all the service charge demands had been sent in full compliance with s20 Landlord and Tenant Act 1985 as amended. The Respondent's letter of 9 May 2007 responds to the statement of estimates and asks various questions about the nature and extent of the Works to which the Applicant responded by its letters of 29 and 30 May 2007. Copies of all the Notices and demands relied upon by the Applicant as addressed to "the current lessee(s)" or to the Respondent at the Property were produced to the Tribunal and the Tribunal is satisfied that the proper procedures were followed.

### **Reasonableness of costs of the Works**

25. As noted above at paragraph 1, the cost of the Works as claimed from the Respondent has been reduced to the figure of £12,693.57. That is based on an overall figure for the Estate of £1,642,784.73. That total is broken down as follows:-

Brickwork and Concrete repairs	£70,544.28
Window repairs	£217,164.16
Pigeon deterrent	£17,680.40
Internal decoration	£129,949.04
External decoration and cladding	£38,263.05
Roofing	£78,384.79
Front door replacement	£113,471.45
Asbestos removal	£4500.30
Builders work	£18,337.44
Electrical	£438,843.04
Refuse hoppers	£12,576.85
Miscellaneous	£5976.16
Mechanical	£1115.62



Fire doors repair	£2575.49
Signage	£5898.75
Preliminaries	£324,031.74
Bond	£1922.95
Extension of time	£5447.50
Professional fees @10.5%	£156,101.72

Those figures are to be compared to the estimates at the time of the s20 consultation exercise as follows:-

Brickwork and Concrete repairs	£48,172
Window repairs	£137,249
Pigeon deterrent	£13,694
Internal decoration	£147,305
External decoration and cladding	£30,571
Roofing	£72,506
Front door replacement	£91,289
Asbestos removal	£22,072
Builders work	not included separately in tender
Electrical	£453,417
Refuse hoppers	not included separately in tender
Miscellaneous	not included separately in tender
Mechanical	not included separately in tender
Fire doors repair	not included separately in tender
Signage	not included separately in tender
Preliminaries	£322,110
Bond	not included separately in tender
Extension of time	not included separately in tender
Professional fees @10.5%	£155,953.46

It is to be noted that some items included in the tender (cavity walls - £26,611, balcony works - £42,500, contingencies - £77,235) do not appear in the final account or final invoice.

26. The final figures are also to be compared with the actual figures in the final account which were the basis of Mr Mills' analysis. Those are as follows:-

Brickwork and Concrete repairs	£71,028.07
Window repairs	£217,164.16
Pigeon deterrent	£17,680.76

Internal decoration	£129,949.04
External decoration and cladding	£38,263.05
Roofing	£78,384.79
Front door replacement	£113,551.38
Asbestos removal	£4500.30
Builders work	£18,337.44
Electrical	£438,843.04
Refuse hoppers	£12,576.85
Miscellaneous	£5976.16
Mechanical	£1115.62
Fire doors repair	£2575.49
Signage	£5898.75
Preliminaries	£324,031.74
Bond	£1922.95
Extension of time	£5447.50
Professional fees @10.5%	£156,160.94

27. They are then to be compared with the figures in the initial breakdown given by the Applicant when invoicing for the Works. Those are as follows:-

Brickwork and Concrete repairs	£70,544.28
Window repairs	£223,135.78
Pigeon deterrent	£17,680.40
Internal decoration	£130,019.86
External decoration and cladding	£51,481.52
Roofing	£78,384.79
Front door replacement	£113,471.45
Asbestos removal	£16,634.13
Builders work	£18,337.44
Electrical	£438,843.04
Refuse hoppers	£12,576.85
Miscellaneous	£5976.16
Mechanical	£1115.62
Fire doors repair	£2575.49
Signage	£5898.75
Preliminaries	£324,031.74
Bond	£1922.95
Extension of time	£5447.50
Professional fees @10.5%	£159,398.16

28. As explained at paragraph 10 above, Mr Mills who gave evidence about the cost of the Works was not someone involved in the carrying out of the Works. He had been brought in about 18 months ago to review the invoicing of the final account. He explained in evidence that although he was able to see some of the Works carried out to the Estate on site, it was not possible to see every item of work carried out due to the passage of the time and also that some of the work would have been covered up by other work. He had therefore worked on the basis that the final account agreed by Newham Homes with Connaught and

signed off following a proper process set out the Works as actually carried out. However, when looking at the invoicing of the Works, there were discrepancies between the figures in the final account and the amounts claimed. He had therefore adjusted the figures to only those which he could substantiate from the final account when reaching the overall figures. Where the figure in the final account was higher than the figure in the final invoice, he had included only the figure from the final invoice so that the lessee always gained from any discrepancy. Mr Mills provided a full explanation for the differences between the figures in the tender, those in the final account and those included in the final invoice and the Tribunal was also provided with the relevant pages from the final account. Mr Mills' review had led to the following adjustments:-

#### Concrete and Brickwork repairs

The original contract figure was £48,172. Based on a re-measurement, the actual figure was £71,028.07 but only £70,544.28 was included in the final account. The reviewed figure was therefore included as £70,544.28. Mr Mills explained that the final account figure had included the contractor's overheads and profit from the tender sum which was included elsewhere. The final account was adjusted from the original tender figure as a result of a re-measure of the actual quantities.

#### Window repairs

The original contract figure was £137,249. Based on a re-measurement, the actual figure was £217,164.16 but a higher figure of £223,135.78 was included in the final account. The reviewed figure was therefore included as £217,164.16. Mr Mills explained that the original invoice cost had included the contractor's overheads and profit which was included elsewhere. The final account was adjusted from the original tender figure as a result of a re-measure of the actual quantities.

#### Pigeon deterrent

The original contract figure was £13,694. Based on a re-measure, the final account figure was £17,680.76 which was wrongly transposed into the final invoice as £17,680.40. Accordingly, only the figure of £17,680.40 was included in the reviewed figure.

#### Internal decoration

The original contract figure was £147,305. Based on a re-measure, the final account figure was £129,949.04 which was wrongly transposed into the final invoice as £130,019.86. Accordingly, only the figure of £129,949.04 was included in the reviewed figure.

#### External decoration and cladding

The original contract figure was £30,571. Based on a re-measure, the final account figure was £38,263.05 which was wrongly transposed into the final invoice as £51,481.52. Accordingly, only the figure of £38,263.05 was included in the reviewed figure.

#### Front door replacement

The original contract figure was £91,829. Based on a re-measure, the final account figure was £113,551.38 which included an element of overhead and profit which was included elsewhere and should have been deducted. Accordingly, the figure invoiced was £113,471.45 which was the figure included in the review.

#### Asbestos

The original contract figure was £22,072. Based on a re-measure, the final account figure was £4500.30 which was wrongly transposed into the final invoice as £16,634.13. Accordingly, only the figure of £4500.30 was included in the reviewed figure.

Although some items were not included in the original tender (builders work, refuse hoppers, miscellaneous, mechanical, fire door repairs, signage, bond and extension of time), Mr Mills confirmed (and the documents showed) that the final account included figures for those works confirming that they had been done and Mr Mills found no errors in those calculations nor in the transposition of those figures into the final invoices. Some other sums included in the tender (cavity walls and balcony works) were left out of scope in the final works and therefore balanced out the costs of the additional works.

29. Mr Mills also confirmed that he considered that the costs were reasonable. He also considered that although the contract for the Works was managed in house, the professional fees of 10.5% were reasonable compared to a normal professional fees charge of 15% at that time. Those fees would include design, contract administration and the quantity surveying function as well as for mechanical and electrical consultants.
  
30. As to the need for the Works, Mr Mills had not seen the surveys and inspections which formed the basis for the scoping of the Works. He understood however that there had not been any major works for a long period prior to the Works (although some further works were done later under Decent Homes). The blocks were of a concrete frame structure with cladding panels. The concrete and brickwork behind those panels is affected by weathering. He had seen the schedule which was for full repairs and had seen the re-schedule following the re-measure. It was not possible to see the extent of the Works carried out as those were now covered up. As to window repairs, those were mainly retained rather than replaced but the programme of Works in relation to the windows was a major one. Mr Mills had seen a schedule of the windows replaced and where replaced they would have been replaced using uPVC. In terms of internal decoration, this had been to the communal areas only as the documents showed. Mr Mills explained that there were staircases at each end of each block and lifts in the centre as well as communal landings. The Works comprised replacement of vinyl flooring tiles, re-latexing of flooring, new finishes

to the walls, staircases and landings and application of fire retardant and decoration. The Works also included the refuse areas, electrical cupboard and internal plaster. Mr Mills had inspected these Works although given the passage of time since the Works, it was not possible to see what exactly had been done. The external decoration comprised painting of pipework and the garage door (there are no residents' garages but there is one garage used presumably by the concierge). Cladding was applied and refixed and rendering was carried out to the ground floor. In terms of roofing works, Mr Mills explained that this had included new covering to the flat roofs, new flashing, rainwater, gutters and outlets. It also involved decoration to some grilles. The front door replacement did include a small sum (£7265) for 10 individual doors described as "leaseholder doors". Mr Mills assumed that those were doors to properties which were privately owned and not to tenanted flats due to that description. The major cost in any event was clearly to main entrance doors. The asbestos removal was significantly reduced from the original tender and involved mainly the removal of flooring tiles in communal areas. The builders' works and electrical works were combined in the final account. Mr Mills had inspected some of the work. There was a complete new mains and sub mains as well as new connections to each individual dwelling. There was also new communal lighting and new power system for landlord's supply. There was also BT rewiring and new conduit trunking. Mr Mills acknowledged that there was an item included headed "tenants installations" and it was not clear to what that related but the sum (£7498.14) was again very small in comparison with the overall sum. The refuse hoppers had been replaced for all chutes in the blocks. The miscellaneous works included remedial works due to leaks and the presence of security guards whilst the main front entrance door was replaced. The mechanical item was to renew a mains water booster pump.

31. Mr Mills came across as a credible and experienced witness. Further, the Tribunal was provided with the relevant pages of the final account and was therefore able to see for itself the extent of the Works. The discrepancies between the final account, final invoice and reviewed figure were explained to the Tribunal's satisfaction. Accordingly, the Tribunal is satisfied that the Works and the cost of those Works are reasonable.
32. The Respondent did raise a few issues in his letter of 9 May 2007 about the way in which the Works were being carried out including the inconvenience being caused and damage which he attributed to the contractors. Ms Morelli pointed out that there was a complaints procedure and a residents' liaison officer to whom the Respondent could make complaints and take up issues about compensation. If that procedure did not resolve matters, then the Respondent could complain direct to the Applicant. The Tribunal enquired whether the Respondent had made any formal complaints, and was told that none had been made.

33. For all of the above reasons, the Tribunal determines that the cost of the Works is reasonable and that the amount payable by the Respondent in respect of the service charges for the Works is £12,693.57.

#### **Administration charges**

34. The Applicant also claims the sum of £350 in relation to legal costs and disbursements pursuant to “page twelve paragraph fourteen” of the Lease. That clause (clause 5(14)) reads as follows:-

*“[The Lessee hereby covenants with the Corporation that the Lessee... will ...] Pay all expenses including Solicitor’s costs and Surveyor’s fees incurred by the Corporation incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.”*

35. In relation to payability, the issue is whether this clause is sufficiently wide to encompass a claim for legal costs where no s146 notice has been served and no proceedings for forfeiture are in contemplation at the relevant time. This was considered by the Court of Appeal in the case of *Freeholders of 69 Marina, St Leonards-on-Sea v Oram and Ghoorun [2011] EWCA Civ 1258*. The clause in the Lease in the instant case is not so widely drawn as the clause in the 69 Marina case. Later Tribunal decisions have distinguished 69 Marina, for example, where the clause in the lease (as here) allows recovery only of costs for service of the s146 notice but not s146 proceedings. It is clear from those cases that much turns on the wording of the clause in the lease under consideration.
36. The clause in this case provides for recovery only of expenses incidental to preparation and service of a s146 notice and not for costs in connection with or incidental to any forfeiture proceedings. As the Court of Appeal observed in the 69 Marina case, the establishing of whether a tenant is in breach of the terms of his lease in order to commence forfeiture proceedings first requires the consideration of whether any unpaid service charges are payable and reasonable which requires the intervention of this Tribunal. As such, the issue of proceedings to recover the service charge which has entailed the determination of the reasonableness of the service charge was a prelude to any proceedings for forfeiture. However, in the view of the Tribunal, the fact that the focus of the clause in this Lease is only on preparation and service of the forfeiture notice is fatal to a claim to recover the legal costs of the associated proceedings. For that reason, the Tribunal considers that the charges are not payable under the Lease.

#### **Application under s.20C and refund of fees**

37. The Applicant did not make an application for a refund of the fees that it had paid in respect of the application/ hearing<sup>1</sup>. Mr Green explained that the Applicant was content to have legal costs determined by the County Court.
38. No application was made by the Respondent for an order under section 20C of the 1985 Act. In any event, in light of the above decision, the Tribunal would not have made the order.

**The next steps**

39. The Tribunal has no jurisdiction over county court costs or interest. This matter should now be returned to the Bow County Court.

**Name:** Ms L Smith

**Date:** 4 January 2014

---

<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

## **Appendix 1**

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985**

##### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's 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 a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,



- (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 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) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
  
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
  
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
  
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
  
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

- proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **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).

**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).

## Appendix 2

### Relevant Clauses of the Lease

(1) Unless the context otherwise requires the following expressions bear the meaning assigned to them as follows:-

“the demised premises” ALL THAT the eighteenth floor premises known as Number 104 David Lee Point Leather Gardens in the London Borough of Newham and shown edged red on the plan annexed hereto and numbered 2 which demise shall include the surface covering of the walls the glass in the windows ceilings and floors of the said premises (and one half part of the structure between the floors of the said premises and the ceilings of the premises below it) (and one half part of the structure between the ceilings of the said premises and the floors of the premises above it)

“the Estate” The freehold property shown edged blue on the plan annexed hereto and numbered 1

“the Block” The block of flats in which the demised premises is situate forming part of the Estate

“the Common Parts” The Estate excluding the Block and any other block of flats forming part of the Estate.

#### Clause 5

THE Lessee hereby covenants with the Corporation that the Lessee and all persons deriving title under the Lessee will throughout the said term hereby granted:

- (1) Pay the said rents at the times and in manner aforesaid without any deduction
- (2) Pay to the Corporation without any deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Corporation in the repair maintenance renewal and insurance of the Estate and the provision of services therein and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called “the service charge”) being subject to the following term and provisions:
  - (a) the amount of the service charge shall be ascertained and certified by a certificate (hereinafter called “the Certificate”) signed by the Corporation’s Director of Finance or such other person authorized by him annually and so soon after the end of the Corporation’s financial year as may be practicable and shall relate to such year in manner hereinafter mentioned;

(b) The expression “the Corporation’s financial year” shall mean the period from the 1<sup>st</sup> April to the 31<sup>st</sup> March in each year or such other annual period as the Corporation may in its discretion from time to time determine as being that in which the account of the Corporation either generally or relating to the Estate shall be made up;

(c) A copy of the Certificate for each such financial year shall be supplied by the Corporation to the Lessee on written request and without charge to the Lessee;

(d) The Certificate shall contain a summary of the Corporation’s said expenses and outgoings incurred by the Corporation during the Corporation’s financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge and the Certificate (or a copy thereof duly certified by the person by whom the same was given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify;

(e) The annual amount of the service charge payable by the Lessee as aforesaid shall be calculated as follows:-

(i) In respect of the Block by dividing the aggregate of the said expenses and outgoings incurred by the Corporation on the Block in the year to which the Certificate relates by the rateable value (but excluding any non residential premises within the Block) of the Block and then multiplying the resultant amount by the rateable value (in force at the same date) of the demised premises and

(ii) In respect of the Common Parts by dividing the aggregate of the said expenses and outgoings by the Corporation on the Common Parts in the year to which the Certificate relates by the rateable value (excluding any non residential premises within the Estate) of the Estate and then multiplying the resultant amount by the rateable value (in force at the same date) of the demised premises

PROVIDED that the Corporation may calculate the amount of service charge payable in respect of the demised premises in such reasonable alternative manner as they shall select in the case of rateable values for the Estate or the demised premises not being available PROVIDED further however that expenses attributable solely to the demised premises shall be payable by the Lessee and shall be shown separately in the Certificate;

(f) The expression “the expenses and outgoings incurred by the Corporation” as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Corporation during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Corporation may in their

discretion allocate to the year in question as being fair and reasonable in the circumstances;

(g) The Lessee shall if required by the Corporation pay to the Corporation on the first April in every year such sum in advance and on account of the service charge as the Corporation shall specify at their discretion to be a fair and reasonable interim payment;

(h) As soon as practicable after the signature of the Certificate the Corporation shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Corporation the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Corporation to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may require;...

(14) Pay all expenses including Solicitor's costs and Surveyor's fees incurred by the Corporation incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court

#### Clause 7

THE CORPORATION HEREBY FURTHER CONVENANTS WITH THE LESSEE as follows:

(1) Subject to the payment by the Lessee of the rents and the service charge to maintain repair redecorate renew amend clean repoint paint grain varnish whiten and colour and make fair and reasonable improvements to:

(a) the structure of the Estate and every part thereof and in particular without prejudice to the generality thereof the roofs foundations external and internal walls (but not the interior faces of such parts of external or internal walls as bound the demised premises) and timbers (including the timber joists and beams of the floors and ceilings thereof) window frames chimney stacks gutters and rainwater and soil pipes thereof

(b) the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines in under and upon the Estate...

(d) ....and the passages landing and staircases and other parts of the estate enjoyed or used by the Lessee in common with others; and

(e) the boundary walls and fences of and in the curtilage of the Estate

#### THE THIRD SCHEDULE

(Costs expenses outgoings and matters in respect of which the Lessee is to contribute)



1. Subject to the provisions of Part III of the Sixth Schedule to the Housing Act 1985 the expense of maintaining repairing redecorating renewing amending cleaning repointing painting graining varnishing whitening or colouring the Estate and all parts thereof and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 7(1) hereof

.....

6. The cost of decorating and lighting the passages landings staircases and other parts of the Estate enjoyed or used by the Lessee in common with others and of keeping the other parts of the Estate used by the Lessee in common as aforesaid and not otherwise specifically referred to in this Schedule in good repair and condition.....

10. The upkeep of the gardens forecourts roadways pathways and rides used in connection with the Estate

11. The cost incurred by the Corporation in management of the Estate