9613

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2013/0026**
Property	:	**4 SALISBURY CLOSE, LONDON SE17 1BY**
Applicant	:	**JEFFREY CHANG**
Representative	:	**MR J JONES (AS LITIGATION FRIEND)**
Respondent	:	**LONDON BOROUGH OF SOUTHWARK**
Representative	:	**SOUTHWARK COUNCIL HOME OWNERSHIP DEPARTMENT**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**MS L SMITH (LEGAL CHAIR)** **MRS A FLYNN, MA, MRICS** **MR P CLABBURN**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **22 January 2014**
Date of Decision	:	**24 February 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the "administration charge" (more appropriately classified as a management charge) which is payable and reasonable in respect of the service charge years 2010-11 and 2011-12 is 7%. The figure for the administration charge payable by the Applicant for those years will need to be re-calculated by the Respondent in light of the adjustments to the service charges for amounts which have been conceded.

(2) The Tribunal determines that the sum of £1190.96 is payable by the Applicant in respect of the service charges at issue in this application for the years 2010-11 and 2011-12. The Tribunal notes however that the Respondent may need to re-calculate the overheads which have been found to be payable and reasonable below in light of the charges which the Respondent has conceded.

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

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

(5) The Tribunal determines that the Respondent shall reimburse the Applicant's Tribunal fees within 28 days of this Decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2010-11 and 2011-12.

2. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

3. The Applicant attended the hearing in person and was represented by Mr Jones (as a litigation friend; Mr Jones is an architect by profession) and the Respondent was represented by Miss A Mills (income enforcement officer), Mr D Parnormo (enforcement manager), Mr G Dudhia (accounts officer) and Mr S Clark (heating engineer).

4. The Tribunal was provided with 2 bundles of documents prior to the hearing. At the outset of the hearing, the Tribunal indicated that it

intended to work from the schedule at pp 60-62 of the bundle but was happy to be taken to other documents where relevant and necessary to support the point made but did not wish to be taken to each and every document as the Tribunal had read the bundles. The Tribunal also made clear that it was not for it to work out what the Applicant owed to the Respondent – accounting matters such as re-credits of items conceded was a matter for the Applicant and Respondent to resolve between them. Further, the Tribunal made clear that it did not intend to make declarations about standards of management by the Respondent or its accounting procedures. The only matter for the Tribunal is the reasonableness of the charges and whether those are payable. The Tribunal did not intend to make generalised assertions about the Respondent failing in its obligations but would consider whether the "administration charge" was reasonable as to percentage. The Tribunal also noted that the "administration charge" was not in fact an administration charge properly called but rather a charge for management and part of the service charge.

The background

5. The property which is the subject of this application ("the Property") is a 2 bedroom flat on the first floor of a mid/late twentieth century block of 6 flats arranged over 3 floors (2 flats on each floor) with a communal shared hallway and staircase. Each pair of flats shares a common entrance lobby which is accessed through a lockable outer door. Only the ground floor flats have use of the external garden space. The landlord provides communal heating and domestic hot water. The Property is situated on the Salisbury estate ("the Estate").

6. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Applicant holds a long lease of the Property ("the Lease") which 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 are set out in Appendix 2 to this decision and referred to below, where appropriate.

8. The Tribunal was also provided with a copy of a previous application brought by the Applicant challenging the service charges for the year 2009-10 which had been joined with another case involving other lessees on the Salisbury Estate and resolved in the Applicant's favour (reference LON/00BE/2009/0427). Permission to appeal was refused. That decision related only to heating repair and heating fuel costs and window repairs.

9. The Tribunal was concerned in this case that the application might have been better resolved by way of mediation. This does not appear to have

been raised at the directions hearing but it was clear from the course of the hearing that the issues could have been considerably narrowed by mediation if not resolved completely. The Tribunal raises this in case there is any further dispute between the parties in future years.

The issues

10. At the start of the hearing the Tribunal went through the schedule with the parties and identified the relevant issues for determination as follows:

    (i) The payability and/or reasonableness of the "administration charge" relating to management of the Property for the years 2010-11 and 2011-12 (general issue 1)

    (ii) The payability and/or reasonableness of boiler and non-boiler repairs for the years 2010-11 and 2011-12 on the basis that data provided by the Respondent was incomplete (general issue 2)

    (iii) The payability and/or reasonableness of heating system repairs in the year 2010-11 only on the basis that there were repeated call-outs (general issue 3)

    (iv) The payability and/or reasonableness of overhead charges for the years 2010-11 and 2011-12 (general issue 4)

    (v) The payability and/or reasonableness of various items of repair works and care and upkeep charges for the years 2010-11 and 2011-12 on the basis that the charges could not be substantiated, are misallocated or are unreasonable (all dealt with below as issue 5)

11. The Tribunal was informed both before the hearing and during it that certain items were conceded by the Respondent as follows:-

    (a) Mischarges totalling £126.20 as set out in the schedule for the year 2010-11. The Respondent confirmed that these amounts either had been refunded or would be shortly including the proportion of the 10% administration charge which related to those items.

    (b) Mischarge of £12.34 relating to a repair in 2010-11 which should have been charged to a different block. The Respondent confirmed that this would be refunded to the Applicant including the proportion of the 10% administration charge which related to that item.

    (c) Mischarge of £14.02 relating to block lighting which should have been charged to a different block in 2011-12. The Respondent

confirmed that this would be refunded to the Applicant including the proportion of the 10% administration charge which related to that item.

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

General issue 1: payability and reasonableness of 10% administration charge totalling £137.97 for 2010-11 and £154.76 for 2011-12

13. The Applicant's complaint in this regard was an overarching one which related to the rest of the application. In essence, he complains that the Respondent is not managing the Property properly and that 10% is too high for the charge which it makes for management. The Tribunal did press the Applicant for his view of what would be reasonable but the Applicant's case was in reality that due to the number of mistakes made by the Respondent it should not be paid anything for administration.

The Tribunal's decision

14. The Tribunal determines that the administration charge percentage should be reduced from 10% to 7% in relation to both years 2010-11 and 2011-12. Since the charge is raised as a percentage of the other costs some of which have been conceded by the Respondent, the Tribunal has not calculated what the amount should be and it will be for the Respondent to recalculate in light of the concessions made and the remainder of this decision.

Reasons for the Tribunal's decision

15. The Applicant complained firstly that the actual service charge was significantly higher than the estimate and no explanation had been provided by the Respondent. In October 2012, for example, the actual figure provided was double that estimated. Mr Jones said notwithstanding the fact that prices vary a doubling was unacceptable. It was as a result of this that the Applicant had asked to see all the supporting documents and as a result of this inspection had discovered discrepancies such that he considered the figures provided by the Respondent could no longer be trusted. He had identified 7 mischarges totalling £3138.82 which were readily apparent from the documents. It was only as a result of his correspondence that the Respondent had examined the figures in further depth in order to answer some of the Applicant's queries. Others had first been raised 18 months earlier but it was only since this application that the Respondent had responded. Had it done so fully, accurately and reasonably at an earlier stage, the application might have been avoided. The service provided was not to a reasonable standard. Although the Applicant conceded that it was

open to the Respondent to charge for this service (paragraph 7(7) of Part I of the Third Schedule to the Lease), the Lease provides only that the Respondent "may" add 10% for this service. What was at issue therefore was the reasonableness of the charge given the poor quality of the service. The Respondent's statement acknowledged that mistakes had been made and did not justify the standard of the service. Management inefficiency based on resources was irrelevant. Whilst the Applicant acknowledged that a public authority might be in a difficult position, this did not provide it with the right to provide a lesser standard of service. The fact that the Respondent had failed to respond to some of the issues raised was admitted by the Respondent in response to the Applicant's formal complaint (see letter dated 13 November 2012).

16. In response to questions from the Tribunal about what would be a reasonable charge, Mr Jones explained that he was not a managing agent but an architect so that his experience of what charges would be reasonable (for example in a building contract scenario) were not really relevant. The Tribunal did explore with Mr Jones and the Applicant whether the Applicant was seeking a reduction in the level of the charge and if so what reduction but in the end the Applicant indicated that he was really seeking a decision that the Respondent should get nothing under this head.

17. Miss Mills on behalf of the Respondent responded to the various complaints made by the Applicant. The estimated service charge was based on the previous 3 years' service charges. This was not an exact science as a landlord can rarely predict the levels of repairs accurately. In relation to a complaint that the mischarges had not been refunded properly, Miss Mills explained that the credit had been moved to an unallocated payments account because the Applicant's account was in credit and when a further invoice had been raised, the refund had been moved back to the Applicant's service charge account as a credit. Miss Mills made the point that the Applicant's conduct was disproportionate. The queries raised had generated about 800 pages of material and cost the Respondent about £500 to provide. In that context, it was unfortunate that 1 item was missed. The mischarges were minimal. As to those mischarges, the charges were raised by the various Departments which had responsibility for checking the charges before they were submitted to the accounts department. The charges were also checked by a chartered accountant. The accounts department would pick up anything unusual such as a high number of works orders on a particular day and may check that there was no duplication but other than that should not be expected to check every charge submitted in minute detail which appeared to be what the Applicant expected.

18. As to the reasonableness of the standard, Miss Mills pointed out that there was no general concept of reasonableness. It was both a subjective and objective assessment. The Applicant was extremely demanding and appeared to have very high expectations and so

subjectively he might consider unreasonable a standard which was in fact reasonable on an objective assessment. The Tribunal ought to take into account the size and resources of the Respondent. It was not a cash cow and it is important for the landlord to bear this in mind when responding. The service provided was also linked to the age of the Property (built Miss Mills thought in the 1970s); older properties need more repair and attention. There had been issues for example with a temporary boiler. Whatever the Applicant thought of the service, it had been provided and Miss Mills urged the Tribunal not to reduce the percentage. She submitted that 10% was reasonable; it was similar to other local authorities – some in fact charged more. She referred to the Tribunal decision of LB Southwark v Paul and others [2013] UKUT 0375 (LC) as support for her submission that the 10% was in fact inadequate to cover the Respondent's costs (although Mr Jones did point out that the Tribunal did not in that case indicate whether it thought that the 10% was reasonable). Miss Mills also submitted that the Applicant had no substantiation of a figure less than 10 % and in any case 10% did not even cover costs.

19. The Tribunal considers that there are faults on both sides. On the one hand, the Respondent has clearly made some errors in the apportionment of charges and has failed to engage with the Applicant's queries at an early stage or in some cases not at all prior to the hearing. On the other, the Applicant has clearly generated a lot of work for the Respondent by the volume of queries which he has raised, some of which were quite unfocussed. Had he specified exactly what his query was in some cases, it might have been possible to narrow if not resolve the issues. A specific example of this is dealt with later in this decision in relation to charges where data was said to be incomplete.

20. For that reason, the Tribunal is not prepared to find that the whole of the charge should be disallowed but considers it appropriate to reduce the percentage of the charge to reflect the standard of the service. Having considered carefully the extent of the mistakes made by the Respondent and its failure to engage with the Applicant's queries sufficiently early, the Tribunal has decided to reduce the percentage charge to 7%.

General issue 2: payability and reasonableness of boiler and non-boiler repairs due to incomplete information of £12.73 and £148.64 respectively for 2010-11 and £115.09 for 2011-12

21. The Applicant challenged these items on the basis that he had not been supplied with complete information. In the main this related to incomplete information in spreadsheets which had been supplied and which were cut off in the description column so that a full description was not supplied.

The Tribunal's decision

22. The Tribunal determines that the amount payable in respect of boiler and non-boiler repairs is as claimed in the sum of £12.73 and £148.64 for 2010-11 and £115.09 for 2011-12 together totalling £276.46.

Reasons for the Tribunal's decision

23. Mr Jones submitted that the Applicant was entitled to be sceptical about the level of repairs and whether these were properly attributed particularly in light of an independent audit carried out in relation to Southwark's leasehold service charges in 2009. This had been very critical of the "lack of charge justification provided by the Council's computerised I-World ordering/invoicing system". The spreadsheets supplied were from I-World and Mr Jones argued that the Applicant's entitlement to inspect information under s22 Landlord and Tenant Act 1985 included the full information on I-World. The Applicant also relied on the fact that a number of items had been found not to relate to his estate when questioned (leading to some of the mischarges which had been accepted by the Respondent).

24. The Applicant had been told in relation to this complaint by the Respondent that they did not hold the missing data and that this was restricted on a need to know basis. This was not a particularly helpful response. However, this needs to be seen in the context of the level of queries raised by the Applicant in this regard running to some 26 questions with varying degrees of detail being requested.

25. In fact, when pressed about what was actually being questioned about these items when looking at the spreadsheet breakdown of the items in question, it appeared that the Applicant's real complaint was of not having a full description and also that these spreadsheets had less columns than in previous years. Many of the entries ended "emanating from". The columns missing included one headed "Neighbourhood" which was of particular concern to the Applicant because it described the estate or building to which the charge was attributed and enabled the Applicant to see at a glance whether the charge was properly attributed to the Estate.

26. Mr Dudhia who is an Accounts officer for the Respondent was able to indicate that the Neighbourhood column had been left off as neighbourhood offices no longer existed so that column would no longer have any relevance. He also indicated that the Applicant could have access to the system itself if he was concerned that the description was incomplete. The lack of a complete description arose because the Respondent had tried to fit the information from the database onto a spreadsheet. He was able to confirm that the entries which finished with the words "emanating from" were followed by the words "the initial visit".

27. The Tribunal was satisfied that the charges were payable by the Applicant and were reasonable in amount. This dispute highlighted why this application could have been avoided either by both parties sitting down together before the application was brought or by mediation after it had begun. The fault does not simply lie with the Respondent for failing to answer queries in full but also the Applicant for raising the level of queries which are raised in a lengthy and unfocussed manner rather than raising specific requests for information and then raising more detailed requests if he was unclear whether an item was properly charged to the Property. For the future, it is hoped that the level of correspondence generated by these queries can be reduced by the parties meeting to discuss the items challenged.

General issue 3: the payability and reasonableness of unchecked repeat works amounting to £216.24 in 2010-11 and non-boiler repairs amounting to £34.94 in 2010-11

28. The Applicant challenged certain charges on the basis that the Respondent had no system for checking repairs and that as a result there were repeat call outs for the same item. The same challenge related to an item for non-boiler repairs in 2010-11.

The Tribunal's decision

29. The Tribunal determines that the amount payable in respect of the challenged "repeat works" for 2010-11 is £216.24 and £34.94 together totalling £251.18.

Reasons for the Tribunal's decision

30. Mr Jones again relied on the independent audit which criticised the monitoring and checking of contractors' works by the Respondent. He pointed out that neither the Respondent nor its contractor had answered his queries in this regard.

31. In the course of Mr Dudhia's evidence in response to this challenge it became clear that much of this challenge was based on a misconceived reading by the Applicant of the documents which had been supplied to him. The Applicant was reading the different lines on the print-outs as separate works orders whereas, as Mr Dudhia explained, they were all part of the same works order and the lines were separated due to the way in which orders are placed on I-World. Works orders are based on a schedule of rates which are prices negotiated following a tender exercise. There are different prices for each discipline. Accordingly, one works order might encompass a number of different entries on the print out, each with its own separate rate. That they are the same works order is evident from the works order number shown on the printout.

32. This is yet another example of where, if the parties had actually talked to each other rather than trying to resolve the dispute by voluminous correspondence, the issues in dispute could have been narrowed if not resolved in full. The Applicant's letter of 5th July 2012 in relation to this issue states as follows:-

> *"Please advise whether, in the Council's view, the contractor has performed to the required standard.*
>
> *Please advise what mechanism the Council has in place to challenge poor service and reclaim costs from the contractor."*

There are then listed what appear to be 30 order numbers. It was not evident from that letter that what the Applicant challenged was the fact that these were repeat orders. Had the Respondent understood this, no doubt it could have pointed out that far from these being 30 separate orders, they were in fact 13 orders with 30 separate component elements.

33. Having identified what the challenge was, Mr Clark, the Respondent's heating engineer was able to explain the checking process for these items which had in any event already been the subject of an explanation from the contractor as to the works carried out. Mr Clark explained that a tenant would call the call centre number and the call centre would pass the call on to the contractor. An inspector would be notified of any call out which would exceed £250. An inspection would be carried out if there were any complaint, arbitration or if the work related to a specific project. The main role of the Respondent was to try to maintain the service. Checking by office based staff would be done by a quantity surveyor in relation to plant work but other jobs would be below the radar. However, if there were repeat calls those might be picked up. Mr Clark explained that there had been problems with the heating system on this particular estate. This was underground heating which had suffered from pipe bursts. As a result of repairs, the sediment in the pipework would be disturbed and circulate through the system which would block the strainer. He was not therefore surprised by the number of call outs to clear the strainer in a short period which was one of the remaining complaints made by the Applicant.

34. Having looked at the printouts, the response from the contractor and heard evidence from Mr Clark and Mr Dudhia, the Tribunal was satisfied that the items as claimed were payable and reasonable in amount.

General issue 4: payability and reasonableness of overhead charges amounting to £14.55 in 2010-11 and £33.15 in 2011-12

35. The Applicant challenged these charges on the same basis as general issue 1 in relation to the 10% administration charge.

The Tribunal's decision

36. The Tribunal determines that the amount payable in respect of the overheads in dispute for 2010-11 and 2011-12 is £14.55 and £33.15 respectively together totalling £47.70.

Reasons for the Tribunal's decision

37. The Tribunal has already set out fully in paragraphs 15-20 above the competing arguments and the Tribunal's views on the 10% administration charges. The overhead charges are of a different order since they relate to management of repairs and not to the overall general management system. The administration charge percentage was reduced in light of the failings on both sides to deal with the complaints and queries raised by the Applicant in relation to the service charge and not in relation to the way in which works were carried out and supervised. The Tribunal does not therefore see any reason to reduce the overhead charges. Miss Mills confirmed that an appropriate reduction in the overhead had been or would be made in relation to the mischarges.

Issue 5: The payability and/or reasonableness of various items of repair works and care and upkeep charges for the years 2010-11 and 2011-12

38. The Applicant challenged certain other specific items on the basis that the charges could not be substantiated, were misallocated or were unreasonable.

The Tribunal's decision

39. The Tribunal determines that the amount payable in respect of the specific disputed items for 2010-11 and 2011-12 is £615.62.

Reasons for the Tribunal's decision

40. In the course of the hearing, the Respondent conceded the charge of £12.34 for a wooden panel in 2010-11 on the basis that, having checked the system it appeared that the Applicant was correct that this had been wrongly attributed to the Applicant's block.

41. The Applicant challenged a charge of £3.64 in relation to repair works on the basis that the repair charge was substantiated by 6 works orders with the same description. This appeared to be the same challenge as

in relation to general issue 3 and arose from the Applicant's misreading of the information provided. These orders were in fact 6 component charges of one works order. The amount did not appear to be excessive and was not in any event challenged on any basis other than that it was repeat work which it was not. The sum of £3.64 is therefore payable and reasonable.

42. The Applicant challenged a charge for care and upkeep of £274.06. The Applicant asserted that his charge in this regard was £97 higher than that of his neighbour. Of course, the Applicant's contribution to the service charge is based on a formula which might be different to that of his neighbour although he asserted that it was not. The Respondent explained that this charge is calculated using hours given in timesheets submitted by the cleaning staff. The cost per hour is calculated by adding overheads and the care and upkeep contract cost and dividing by total number of hours worked in the Respondent's area annually. At the hearing, the Applicant accepted that his original query was now answered by the greater level of detail in the Respondent's statement. In light of the Respondent's evidence as to the basis of this charge and the lack of any evidenced challenge to this figure by the Applicant, the Tribunal accepts that the charge of £274.06 is payable and reasonable.

43. The Applicant challenged charges for care and upkeep in relation to bin hire and provision of bin bags. In relation to 2010-11, it was explained by Miss Mills that the £274.06 included these items. In relation to 2011-12, this was a separate charge of £8.33 for bin hire and £15.93 for provision of bin bags. The Applicant's complaint in relation to bin hire was that the charge was for "paladin bins" but that paladin bins were not used. In relation to provision of bin bags, the Applicant complained that he could procure these himself from the local supermarket much more cheaply. In response, Miss Mills accepted that the bins supplied might be of a different type to that stated but the Respondent's case was that extra bins were hired to cope with refuse overflow on the estate and that it was entitled to charge for this under the Lease. In relation to provision of bin bags, the Respondent accepted that the Applicant probably could procure these more cheaply but the Respondent's charge included other costs like delivery of the bags to the Property and printing of bags to aid enforcement action against rubbish dumping. The Tribunal accepts the Respondent's evidence in this regard. The Lease clearly includes provision for the Respondent to supply this service and charge for it via the service charge. The fact that the Applicant might not want the service does not mean that others on his estate do not. If he considers that the Respondent should cease providing bin bags then it is open to him to raise that either directly or probably more appropriately via the residents association so that others can voice their opinion in relation to this service. The figures of £8.33 and £15.93 for 2011-12 are therefore payable and reasonable.

44. The Applicant challenged an item of boiler repair work in 2010-11 of £67.62 on the basis that it was unsubstantiated because the location of

the repair was ambiguous. When the Applicant had queried the location of the work with the contractor, he was told that it was to pit no 3. Mr Clark had been unable to tell the Applicant where pit no 3 was. At the hearing, Mr Clark confirmed that this pit was in the Salisbury plant room. The Applicant did not dispute the amount of the charge or whether the repair had been carried out but argued that he should not have to pay this as he had to come to the hearing in order to get this confirmed. Since the Applicant does not dispute that the repair was carried out and therefore that the Respondent has had to pay for it nor that this is properly attributable to the service charge for the Property, the Tribunal declines to reduce this charge or rule that it is not payable. The appropriate way to mark the conduct of the Respondent in relation to management and response to the Applicant's queries is to reduce the administration charge as the Tribunal has done and via the Tribunal's jurisdiction in relation to costs and fee refunds. Accordingly, the Tribunal finds that the sum of £67.62 is payable and reasonable in relation to this item.

45. Finally, the Applicant challenged a charge for repair to a heating pipe leak under the floor of 1 Salisbury Close in 2011-12 amounting to £246.04. He disputed this on the basis that the cost of repair and reinstatement of that leak was or might be within that flat and therefore he should not be asked to pay for it. He also argued that the cost would not be payable and reasonable if it were caused as a result of the Respondent's installation of a temporary boiler. The Respondent's response in the schedule was that the cost of this work related to the full charge of replacing a heating pipe and that all heating pipe repairs within and outside individual flats were rechargeable to leaseholders. At the hearing, Mr Jones accepted that the Respondent had confirmed that this work did relate to the temporary boiler but had also now clarified that the works to the pipe were to the communal system and that information given to the Applicant's neighbour that the cost included work inside an individual flat was unclear (although in fact the e mail to the other leaseholder did not actually appear to be unclear). The Applicant therefore accepted that this was payable and reasonable. The Tribunal therefore finds that the figure of £246.04 is payable and reasonable.

Application under s.20C and refund of fees

46. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision. Although the Tribunal has ordered the Applicant to pay a substantial proportion of the charges which remained in dispute by the date of the hearing, the Respondent has acknowledged that a number of charges should not have been made. In addition, whilst the Tribunal has acknowledged that the Applicant is partly at fault for this application having to be brought to resolve the items in dispute due to the voluminous and unfocussed nature of his queries, the major part of the responsibility for this application has been the Respondent's failure to engage with the Applicant's queries which could have been narrowed if not resolved by a face to face meeting with him at which the issues raised could have been discussed in more depth rather than simply giving the Applicant access to the spreadsheets.

47. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Although the Respondent indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge for the same reasons as in paragraph 46 above.

Name: L Smith **Date:** 24 February 2014

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 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.

APPENDIX 2

Relevant Lease Clauses

IN THIS LEASE the following expressions shall where the context admits have the following meanings:
"the building" means the building known as 1-32 Salisbury Close including any grounds outbuildings gardens yards or other property appertaining exclusively thereto
"the estate" means the estate known as Salisbury Estate .....
"the flat" means the flat and land (if any) shown coloured pink on the plan or plans attached hereto and known as number 4 on the 2nd floor of the building and including the ceilings and floors of the flat the internal plaster and faces of the exterior walls of the flat and internal walls of the flat (and internal walls bounding the flat shall be party walls severed medially) but excluding all external windows and doors and window and door frames the exterior walls roof foundations and other main structural parts of the building
"the services" means the services provided by the Council to or in respect of the flat and other flats and premises in the building and on the estate and more particularly set out hereunder:-
(i) central heating
(ii) caretaking lighting and cleaning of common areas
(iii) maintenance of estate roads and paths
(iv) estate lighting
(v) refuse disposal
(vi) maintenance of gardens or landscaped areas
(vii) unitemised repairs

2. The Lessee hereby covenants with the Council:-
(3) (a) To pay the Service Charge and the Capital Expenditure Reserve Charge contributions set out in Part I and Part II of the Third Schedule hereto respectively at the times and in the manner there set out
(13) To pay all costs charges and expenses (including Solicitors' costs and Surveyors' fees) incurred by the Councill for the purpose of or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court

3. The Council hereby covenants with the Lessee:-
(2) To keep in repair the structure and exterior of the flat and of the building (including drains gutters and external pipes) and to make good any defect affecting that structure
(3) To keep in repair the common parts of the building and any other property over or in respect of which the Lessee has any rights under the First Schedule hereto
(4) As often as may be reasonably necessary to paint in a good workmanlike manner with two coats of good quality paint all outside parts of the building usually painted and also all internal common parts of the building usually painted

(5) To provide the services more particularly hereinbefore set out under the definition of "services" to or for the flat and to ensure so far as practicable that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of these services
(6) To insure the building to the full insurance value thereof....

THIRD SCHEDULE
PART I: ANNUAL SERVICE CHARGE

1(1) In this Schedule "year" means a year beginning on 1st April and ending on 31st March

.....
2(1) Before the commencement of each year .... the Council shall make a reasonable estimate of the amount which will be payable by the Lessee by way of Service Charge (as hereinafter defined) in that year and shall notify the Lessee of that estimate
(2) The Lessee shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal payments on 1st April 1st July 1st October and 1st January in each year (hereinafter referred to as "the payment days")

.....

5(2) If the amount so paid in advance by the Lessee exceeds the Service Charge for the year .....the balance shall be credited against the next advance payment or payments due from the Lessee .....

6(1) The Service Charge payable by the Lessee shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year
(2) The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses

7 The said costs and expenses are all costs and expenses of or incidental to
(1) The carrying out of all works required by sub-clause (2) to (4) inclusive of Clause 4 of this lease
(2) Providing the service hereinbefore defined
(3) Insurance under sub-clause (6) of Clause 4 of this lease
.....
(6) The maintenance and management of the building and the estate (but not the maintenance of any other building comprised in the estate)
(7) The employment of any managing agents appointed by the Council in respect of the building or the estate or any part thereof PROVIDED that if no managing agents are so employed then the Council may add the sum of 10% to any of the above items for administration