FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2014/0240**
Property	:	**1 Fraserburgh House, 2 Vernon Road, London E3 5HF**
Applicant	:	**London Borough of Tower Hamlets**
Representative	:	**Ms N Muir, Counsel**
Respondent	:	**Ms A Charles**
Representative	:	**In person**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**Mr Danvers (in-house lawyer), Mr Crompton (Head of Finance), Mr Whiteside (Head of Leasehold Services), Mr Spenceley (Head of Environmental Services), Mr Augustin (Caretaking Manager), Mr Exley (Insurance Manager), Mr Peirson (M&E Team Leader), Ms Wallis (Head of Neighbourhoods), Mr Bloxan (supporting Respondent) and Mr & Mrs Watts (observers)**
Tribunal Members	:	**Judge P Korn (chairman)** **Mr C Gowman MCIEH MCMI BSc** **Ms S Wilby**
Date and venue of Hearing	:	**10th to 12th November 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19th December 2014**

DECISION

Decisions of the tribunal

(1) It is noted that the Applicant has conceded that certain charges are not payable. These amount to £61.08 and are identified in more detail in paragraph 6 below by reference to the relevant pages of the hearing bundles in which they are individually listed.

(2) It is also noted that the county court claim includes the sum of £20.00 by way of ground rent, the payability of which it is outside the tribunal's jurisdiction to determine.

(3) The remainder of the claim, namely the sum of £4,201.15, is payable in full.

(4) The Respondent is ordered (a) to make a £500.00 contribution towards the Applicant's costs pursuant to paragraph 13(1)(b)(ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Rules**") and (b) to reimburse to the Applicant the £190.00 hearing fee pursuant to paragraph 13(2) of the Rules.

(5) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or fees.

The application and background

1. The Applicant seeks and, following a transfer from the county court, the tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged to the Respondent.

2. The county court claim was for £4,282.23 (plus county court interest and costs). This sum includes £20.00 of ground rent, the payability of which it is outside the tribunal's jurisdiction to determine. The remaining £4,262.23 breaks down as follows (the figures given being the amount stated to be outstanding and therefore forming part of the claim):-

- Estimated service charge 2009/10 £643.93
- Service charge balancing adjustment 2009/10 £69.45
- Insurance charge 2010/11 £144.66
- Estimated service charge 2010/11 £606.90

- Service charge balancing adjustment 2010/11 £257.39
- Insurance charge 2011/12 £145.95
- Estimated service charge 2011/12 £690.60
- Service charge balancing adjustment 2011/12 £328.04
- Insurance charge 2012/13 £145.95
- Estimated service charge 2012/13 £722.50
- Service charge balancing adjustment 2012/13 £506.86

3. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") is dated 15th January 1990 and was originally made between the Applicant (1) and Maurice Alfred Tucker (2).

4. Since July 2008 the Applicant has employed an ALMO, Tower Hamlets Homes ("**THH**"), to manage its leasehold properties and those of its properties held by secure tenants.

Preliminary observation

5. Within the large amount of paperwork in the hearing bundles and during the course of a 3 day hearing a large number of individual points have been raised. It is not considered practical or desirable to refer specifically to all of these points, and therefore only those points considered most relevant and/or to have some potential merit will be mentioned.

Conceded points

6. In written submissions and at the hearing the Applicant, having reviewed its charges, accepted that there were certain charges which were incorrect or duplicated or in respect of which there was an element of doubt. Most of these relate to repair and maintenance and are individually listed on pages 638 to 630 of the core hearing bundle and between them total £59.67. The other such item is a £1.41 climate change levy. The total amount conceded by the Applicant is therefore £61.08.

Applicant's case

7. The Applicant's case is set out in written submissions and summarised in its written Skeleton Argument. This refers to the documentation in the hearing bundle relied upon by the Applicant, including the various service charge demands, breakdowns and certificates. It notes the Respondent's allegation in her written statement of case that the Applicant is in breach of certain covenants under the Lease but states that no particulars of the alleged breaches have been provided.

8. The Applicant also notes that the Respondent has questioned (a) the Applicant's use of gross rateable value ("**GRV**") as a method of service charge apportionment between flats, (b) the apportioning of administration and leasehold management charges as fixed charges, (c) whether estate charges are all referable to this particular estate, (d) whether charges are made for any services which are not applicable to her building, for example because they are generic social service charges and (e) whether some charges are duplicate charges and/or unreasonable or unlawful. In order to avoid repetition, many of the Respondent's specific concerns are referred to in this section and are only expanded on in the section headed "Respondent's case" to the extent (if at all) that the Respondent has made pertinent follow-up points.

Use of GRV

9. Regarding the use of GRV, under the Fifth Schedule to the Lease the Service Charge is defined as *"a reasonable proportion of the Total Expenditure as it [sic] attributable to the Demised Premises"*. The Applicant argues that this does not require the Applicant to favour a particular method of apportionment, it simply needs to choose one which is reasonable. Of the leasehold properties managed by THH on behalf of the Applicant many are held under leases which require leaseholders to be charged on the basis of GRV, whilst the remainder require leaseholders to be charged on the basis of a reasonable proportion. Given that many leases specify GRV it was considered sensible to use GRV for all leasehold properties as many costs are apportioned across the housing stock as a whole and it would not be practical to use two different methods of apportionment.

10. As to whether GRV is a reasonable method of apportionment, the Applicant notes that there are many ways of apportioning service charges but that the Respondent suggests that apportionment should be on the basis of the number of occupiers. In the Applicant's view this method is impractical as it is difficult to ascertain how many occupiers there are at any one time and not feasible to change the apportionments every time someone moves in or out of a flat. In support of its approach the Applicant has referred the tribunal to the previous tribunal case of *City of Westminster v Morley & others (LON/00BK/LSC/2009/0573).*

Management charges

11. The cost of managing the Applicant's housing stock is made up of salary costs for THH staff and overheads/costs payable to the Council pursuant to various service level agreements. The Lease does not require the Applicant to charge a specific fee for administration or management, and the Applicant charges the Respondent a proportion of THH's fee for managing the whole property portfolio. Referring to the Upper Tribunal decision in *South Tyneside Council v Ciarlo (2012) UKUT 247*, the Applicant states that it is open to the Applicant and THH to agree how the managing charge should be allocated and they are entitled to base it on a reasonable and carefully worked apportionment of global costs (i.e. of aggregate costs across the whole portfolio). At the hearing Ms Muir also referred the tribunal to the Upper Tribunal decision in *London Borough of Southwark v Gary Paul and others (2013) UKUT 0375* and the Court of Appeal decision in *Ian Morris v Blackpool Borough Council and another (2014) EWCA Civ 1384* in support of the method of charging.

12. One category of management charge is the administration / leasehold management charge, which relates to management services only benefiting leaseholders. It covers billing, query handling, consultation etc and the cost is split equally between all leaseholders. There is also a housing management charge (also sometimes called management or general management) which covers pest control, anti-social behaviour, resident engagement etc and relates to management services benefiting both leaseholders and tenants. The part of the housing management charge attributed to leaseholders is apportioned on the basis of GRV.

Whether the services are all properly chargeable under the Lease

13. The Respondent has raised the question in written submissions as to whether resident engagement services are payable under the Lease. Resident engagement includes the cost of providing information to residents and engaging in informal consultation, which the Applicant states are services required to be provided under government legislation but in any event are good practice for a landlord. In the Applicant's view, applying the case of *Blackpool BC v Cargill (2014) EWCA Civ 1384*, they are payable under clause 5(5)(o) of the Lease, which is a landlord's covenant (subject to payment of the service charge) to *"do all such works installations acts matters and things as in the absolute discretion of the Lessors may be considered necessary or advisable for the proper management maintenance safety amenity or administration of the Building"*.

14. As regards the charges for customer access services, this covers the cost of one-stop shops, complaint handling and queries. It was acknowledged that this service is used more by tenants than by

leaseholders and therefore leaseholders only meet 8% of the cost despite making up 40% of the flats.

15. The Respondent disputes liability for payment towards the cost of cleaning estate roads but these costs are payable in the Applicant's view by virtue of clause 5(5)(d) of the Lease which contains a landlord's covenant to *"keep clean ... the Common Parts"*. Leaseholders are not charged for services provided to the public house and play group as no services are provided to them, and no caretaking services are provided to units such as garages or pram sheds. THH does not charge leaseholders for the time spent sweeping and litter-picking from parking spaces.

Duplicate charges

16. In written submissions the Respondent had argued that there was duplication between services funded by council tax and services funded by leaseholder charges. The Applicant submits that this is simply incorrect. In relation to antisocial behaviour for example the Applicant's obligations under the Lease are separate and distinct from the Council's role as local authority. As regards bin charges, waste collection and recycling is covered by council tax but this still leaves paladin bin hire and maintenance costs which need to be recovered through the service charge.

17. The Applicant accepts that there are a small number of possible duplicate charges totalling £59.67. The Applicant concedes that these are not payable and they are referred to in paragraph 6 above. However the Applicant does not accept that there is any duplication between horticultural/grounds maintenance charges and caretaking charges; the horticulture team is responsible for maintenance of communal shrubs and plant beds and cutting of communal grass and weed spraying whilst the caretaking team is responsible for cleaning other communal areas such as internal parts of buildings and hard standing external areas.

Reasonableness of charges

18. The Applicant submits that the Respondent has given very few particulars to support her claim that the charges are unreasonable, and nor has she stated what a reasonable charge would be in her view. Many of her complaints are based on a report entitled the Beever and Struthers Report which is a generalised report prepared by a firm of chartered accountants focusing extensively on the 2008/09 service charge year and relating not just to the Respondent's building but to the whole of the Applicant's housing stock. In any event, the Applicant states that since the report was undertaken its recommendations have been implemented where considered appropriate.

19. The Applicant has also referred the tribunal to a benchmarking report carried out by HouseMark in November 2013 which concludes that the Applicant's overhead costs are good value for money compared to other housing providers in the area.

20. In relation to the queries raised by the Respondent on certain repair charges, these have been addressed by the Applicant in the Scott Schedule and the Applicant has asked the Respondent to identify which queries (if any) she considers to be outstanding. As a general point, most routine repairs are provided under the 'Mears' contract which is a qualifying long term agreement on which the Applicant has consulted and which has been market-tested. Prices are based on a schedule of rates produced by the National Housing Federation, and Mears provide a 39% discount on the standard schedule of rates. THH then adds a management uplift for the cost of monitoring and managing the contract.

21. As regards the proposition that it would be more economic to renew roofs and drains rather than repair them, the Applicant does not accept that this is necessarily the case and submits that the Respondent has produced no evidence to suggest that renewal would be cheaper than routine patch repairs and maintenance. As regards the cost of scaffolding, there is no additional cost for it remaining in place longer than necessary.

22. As regards bin hire, the Respondent has provided no comparable evidence to show that cheaper bin hire could be obtained elsewhere. As regards the quality of the refuse disposal service, the Respondent argues that the Applicant has failed to take reasonable steps to manage the problem but the Applicant submits that she has not explained what she thinks should be done instead nor offered a cost benefit analysis of her preferred approach.

23. As regards cleaning, the Respondent complains that the cost has increased but in the Applicant's submission all that has happened is that has been apportioned in a different way with a view to achieve greater fairness. In addition the Applicant states that costs were not fully recovered until 2011/12 and so the Respondent simply benefited from a subsidy in earlier years.

24. As regards electricity, the Applicant only charges leaseholders in respect of invoices actually received from the electricity suppliers.

25. As regards building insurance, the cost has remained the same for each year of dispute at £145.00 per annum for the Property. The policy for leaseholder units was tendered and published in the Official Journal of the European Union, and Ocaso S.A. was selected as the insurer offering the required cover for the lowest price.

Witness evidence

26. At the hearing Ms Muir for the Applicant asked the Applicant's witnesses to confirm the accuracy of their witness statements and to make themselves available to be cross-examined. It is not considered necessary to summarise the contents of each witness statement, save to the extent that the Respondent specifically challenged the relevant evidence in a manner which needs to be recorded or the tribunal itself raised a challenge during the hearing.

Mr Crompton (Head of Finance)

27. In response to cross-examination, Mr Crompton said that as things currently stood the Respondent paid less under the GRV apportionment method than under a unitary method, i.e. one in which all leaseholders pay the same. The Respondent asked Mr Crompton whether the GRV was an inappropriate method of apportionment because an area might become more or less desirable and therefore its GRV would not reflect the reality, but Mr Crompton replied that the GRV was only a comparison within the estate or (in respect of a limited number of service charge items) within the borough.

28. The Respondent queried whether it was fair to charge the same proportion of the cost of leasehold services to all leaseholders when some individuals or blocks required more intensive management than others. Mr Crompton said that the charging method was fair because the service was equally accessible to all, and the Respondent had in fact benefited greatly from the flat rate approach as an enormous amount of time had been spent over time dealing with her own queries and concerns. She then put it to Mr Crompton that perhaps the overall cost of dealing with queries was made higher by THH providing a poor service leading to the need for multiple queries from leaseholders, but Mr Crompton did not accept this, and indeed there was evidence of increased leaseholder and tenant satisfaction from surveys.

29. Regarding the Respondent's concerns about fly-tipping, Mr Crompton said that generally it was not possible to catch the culprits and the items had to be removed, and this was a cost which was reasonable to spread amongst leaseholders. The items concerned were not ones that the Council as local authority will remove free of charge.

30. In response to a question about the service level agreements, Mr Crompton said that the level of service is assessed by a manager who analyses how well the service is working and whether the charging rates are reasonable. As regards the list of services set out in the service level agreements, this was simply a list of possible services and the Applicant only pays for what it actually uses and then only charges leaseholders those items which are recoverable under their leases.

31. Regarding the big increase in electricity charges from 2010/11 to 2011/12, Mr Crompton said – having been given some time to analyse the issue – that the latter represents an actual reading and that maybe it was high simply because previous estimates were too low. In any event, the Applicant went to the market every year to try to ensure that the amount being paid for electricity was competitive.

Mr Spenceley (Head of Environmental Services)

32. Mr Spenceley confirmed various points covered by the Applicant's written statement of case and skeleton argument. In response to cross-examination, he said that whilst the estate road served the car park it was also used by pedestrians living on the estate and needed to be kept clean and safe for them. It was also used for access to empty the bins.

33. Regarding the Respondent's argument that fly-tipping charges should be closer to those charged by the Council to private residents, Mr Spenceley said that the service offered by the Council to private residents was subsidised.

34. In relation to cleaning, Mr Spenceley said that charges were based on time spent and on an analysis as to what was a reasonable amount of time to spend. There was periodic checking of cleaners' timesheets. In relation to the increase in caretaking charges from 2011/12, this was due to a change in methodology because previously the Applicant had been undercharging. There was some discussion as to whether the caretaker could carry out certain tasks such as de-weeding and emptying dog bins.

Mr Exley (Insurance Manager)

35. Mr Exley confirmed various points covered by the Applicant's written statement of case and skeleton argument. The Respondent raised a few minor questions which he answered.

Mr Peirson (M&E Team Leader)

36. Mr Peirson said that the communal extractor fan is a centrally ducted system to extract odours from toilets and bathrooms. There was a contract in place to carry out servicing to the cyclical roof fans, and the cost was higher in 2012/13 because as well as standard servicing some repairs were needed and a rebalancing of the system. The Respondent put it to him that the extractor fan was not fit for purpose but he replied that it had been demonstrated to her that it worked and that it was designed to work at a constant trickle level.

Ms Wallis (Head of Neighbourhoods)

37. Ms Wallis confirmed various points covered by the Applicant's written statement of case and skeleton argument. On the question of whether there should be cyclical maintenance of the roof she said that the roof was believed to be in good condition and therefore that it was more cost-effective to deal with problems on a responsive basis. She confirmed that the roof is periodically inspected.

38. Regarding scaffolding, the Applicant decides according to the nature of the work and health & safety considerations whether scaffolding is needed, and it can work out cheaper because it is a fixed cost. Regarding unblocking of drains, Ms Wallis did not accept that the Applicant had not been proactive enough. The drain problems were generally caused by people's actions and therefore in the main the service had to be a reactive one, although the Applicant did from time to time explain to residents how to avoid problems.

39. In answer to a specific question as to why a particular charge for water pressure and flow rate testing was so high (works order issued 18th October 2011; amount £2,352.00), Ms Wallis was unable to explain this.

40. In cross-examination, the Respondent asked Ms Wallis about some money spent on graphics on tarmac. Ms Wallis said that this had been requested by residents and had come out of the neighbourhood action budget. The Respondent said that she was not consulted on this, but Ms Wallis said that consultation did take place.

41. The Respondent also questioned whether it had been necessary to carry out work to replace certain railings. Ms Wallis said that it had been necessary – the original wooden railings had rotted and cars were cutting across, leading to complaints.

42. The Respondent put it to Ms Wallis that damage to parts of the estate had been caused by individual tenants from time to time and that therefore the cost should have been recovered from those tenants. Ms Wallis said that the Applicant would have investigated at the time and would have tried to recover the cost direct from the perpetrators if it had been possible to identify them with sufficient certainty and economic to pursue them. Mr Crompton added that in his experience it was not generally cost-effective to pursue these matters direct with individual tenants unless the problem was persistent or there was evidence of malice.

Respondent's case

43. The Respondent's main written statement of case consists of a general two page summary of her concerns followed by nearly 400 pages of copy correspondence and other documentation. There is also a 66 page Scott Schedule and a follow-up statement. These written submissions have been considered by the tribunal.

44. Over the course of the 2½ day hearing (not including the ½ day spent on the inspection) the Respondent was invited to clarify – and did state – what her main concerns were. The majority of these concerns were covered in the course of her cross-examination of the Applicant's various witnesses (see above), and she was also given the opportunity to explain her case in more detail to the extent that any salient points were not fully brought out by her cross-examination of witnesses.

45. Regarding the use of a fixed rate in relation to some of the costs, the Respondent referred to the previous tribunal case of *London Borough of Tower Hamlets v Leaseholders of various premises in the London Borough of Tower Hamlets (LON/00BG/LSC/2006/0438-0441).* In that case the tribunal stated that it had *"considerable reservations about the methodology, principally because this averages management charges over all types of property within broad local areas"* and *"substantial reservations about a methodology which does not take account of the differences between the nature and extent of the services provided for different Buildings".*

46. The Respondent also referred the tribunal to clause 7(2) of the Lease which states that *"nothing in this Lease shall impose any obligations on the Lessors to provide or install any system or service not in existence at the date hereof"* but did not explain how this was relevant to the reasonableness of the charges forming the basis of the Applicant's claim.

47. The Respondent drew the tribunal's attention to a specific point made by her in written submissions as to whether the building insurance premiums were too high due to a higher than average loss ratio.

48. The Respondent raised further points regarding resident engagement costs which it was agreed would be put to Mr Whiteside, Head of Leasehold Services. Mr Whiteside said that resident engagement included activities such as running service development groups and did not include activities such as job fairs which did not specifically benefit leaseholders. He added that this had been explained to the Respondent in writing in October 2013 and that more information had been provided to the Respondent than to anyone else ever in his memory.

49. The Respondent referred to the issue of the Service Charge Account Pack. She had been told that this did not exist but she subsequently found a copy of it. In response Mr Whiteside said that this was simply a confusion of terminology.

50. As a general point the Respondent said that the Applicant should not have issued a claim in the county court but instead should have tried to resolve the dispute another way. She also said that the Applicant did not have a dispute resolution process but Mr Whiteside countered that details of its dispute resolution process were clearly set out on its website.

Applicant's response

51. Ms Muir said that the Respondent had paid enough to cover the building insurance premiums and the ground rent but nothing else. She had acknowledged that services had been provided but had not offered to pay for them. She had been offered every opportunity to resolve any disputed issues. There had been meetings, telephone conversations and a large amount of correspondence. The Applicant had spent many hours dealing with her queries, none of which seemed to question the quality of the services. The Respondent's approach was to imply that if she did not understand something it followed that the cost was unreasonable.

52. As regards the information to which the Respondent was entitled, this was governed by the 1985 Act and she was not simply entitled to demand whatever information she wished. As regards the various queries contained in the Scott Schedule, none was new and many constituted nitpicking.

53. Most of the costs were incurred pursuant to long term qualifying agreements which had been consulted on and market-tested. The Respondent had not offered any comparable evidence. The electricity charges were based on meter readings and again the Respondent had not offered comparable evidence to show that the charges were above market rates. Cleaning charges have only risen because previously undercharged. Repair charges are based on a market-tested schedule of rates.

Inspection

54. Prior to the commencement of the hearing, and at the request of the Respondent, the tribunal inspected the estate of which the Property forms part. The Respondent was invited to point out any items of disrepair or other matters that she felt were relevant to the reasonableness or otherwise of the disputed service charges.

Tribunal's analysis and determinations

55. The Respondent has raised particular issues regarding the method of apportionment of the service charges. She objects to the use of GRV and also does not accept that certain charges should be apportioned across the Applicant's property stock as a whole.

Use of GRV

56. Regarding the use of GRV, as noted above the Lease entitles the landlord to charge *"a reasonable proportion of the Total Expenditure"*, and therefore the method of apportionment needs to be a reasonable one. The Respondent submits that costs should be based on the number of occupiers, but we agree with the Applicant that this is a wholly impractical method of apportioning service charges given that there will be changes in the number of occupiers at frequent intervals. In any event, there is no obligation to use any specific method, merely to select a reasonable one.

57. The Applicant says that some leases specifically require the use of GRV and offers this as one reason why the choice of GRV under other leases is appropriate. Whilst we understand what the Applicant means by this, in our view this is not a compelling reason by itself. If we were to conclude that using GRV as a method of apportionment was in principle unreasonable, it would not become (or necessarily become) reasonable simply by virtue of the fact that it is the method specified in a series of other leases.

58. The question therefore remains as to whether GRV is a reasonable method of apportionment. In the *Morley* case referred to by the Applicant, the tribunal accepted the use of bed space as a reasonable method of allocation, stating that the method fell within the parameters of a fair and reasonable method even though it was not the only one. Given that it considered the method to be a fair one it saw no reason to alter it, especially as it had been used for many years.

59. In the present case the method is not by reference to bed space but to GRV. This is a measurement which takes a number of different factors into account, including but not limited to the size of the property. It is an established method of determining value, albeit not the only method.

60. When a landlord is deciding the basis on which to apportion service charges between different units, one possibility is to apportion on the basis of actual use/consumption. However, whilst such a method might be both fair and easy to ascertain in relation to certain categories of service, it is far from clear that this would be a workable system in relation to all – or even a majority of – services. For example, if the

roof is repaired, in what sense does one unit consume or use that service more than others? Perhaps one could argue that it would be fair for each leaseholder to pay the same service charge, but it is not obvious that this would necessarily be fairer than leaseholders paying an overall percentage which reflected the size or value of their respective flats so that the leaseholder of a smaller or less desirable flat would pay less. In any event, the Applicant's evidence – which was not challenged on this point at the hearing – indicates that the Respondent would pay more if the charges were apportioned equally between flats.

61. Having considered the matter, we are of the view that using GRV – an established albeit not the most common method – as the method of apportionment is within the range of options that can properly be considered reasonable. The Respondent's suggested option is impractical, and for this tribunal to determine that the GRV method is unreasonable – with the resultant major upheaval that this would give rise to – we would require rather more compelling reasoning than that advanced by the Respondent.

Apportionment of management charges

62. The Applicant has referred us to the Upper Tribunal decision in *South Tyneside Council v Ciarlo* and to the Upper Tribunal decision in *London Borough of Southwark v Gary Paul and others* in support of the method of charging. Reference was also made to the Court of Appeal decision in *Ian Morris v Blackpool Borough Council and another.*

63. For the sake of completeness, we are satisfied that a management charge is payable under the terms of the Lease, this being covered in particular by the definition of Total Expenditure in paragraph 1(1) of the Fifth Schedule. In our view, in a case such as this one where the Lease simply specifies that the proportion charged must be reasonable, the *Ciarlo* case is authority for the proposition that an apportionment of global management costs over a landlord's or its ALMO's entire housing stock meets this requirement of reasonableness provided that it is done in a careful and sensible manner. Similarly in *Gary Paul* the Upper Tribunal stated that borough-wide costs could properly form the basis of a reasonable apportionment. In any event, as noted by Mr Crompton, given the large amount of management time spent on the Respondent's complaints it would seem that she has greatly benefited from this method of apportionment as her proportion is not dependent on the amount of management time spent in relation to the Property or her block.

64. We note that the Respondent has referred us to the first-tier tribunal case of *London Borough of Tower Hamlets v Leaseholders of various premises in the London Borough of Tower Hamlets.* Whilst we accept that the tribunal had some reservations about the methodology in that

case, nevertheless it is a first-tier tribunal decision and therefore not as authoritative as the two Upper Tribunal cases mentioned above. In addition, it seems to us from reading that decision that the tribunal's conclusion was heavily influenced by the particular evidence given in that case and the quality and reliability of the evidence. In the present case, on the other hand, the Applicant's evidence on this point was convincing.

65. In our view, THH has provided a reasonable explanation as to why it apportions management charges across the portfolio and, on the evidence that was before us, it has allocated management charges to leaseholders in a careful and sensible manner in respect of the years in question. The Respondent has failed to provide any effective evidence to the contrary.

Water pressure testing charge

66. The Respondent has raised a specific question regarding a £2,352.00 charge for water pressure and flow rate testing which she felt was rather high on the assumption that it just relates to the Respondent's estate. However, we have examined the copy works order in the hearing bundle and note that the description of the work is to "attend on site and carry out pressure test and flow rate ... various Locations please see notepad for list of all locations". Therefore it would seem that the work was not confined to the Respondent's estate and therefore that the particular objection raised is not a valid one.

Other issues

67. Turning to other issues, the Applicant has set out its case very clearly in writing. Ms Muir for the Applicant brought out the salient points of the Applicant's case at the hearing and the Applicant's witnesses made themselves available for cross-examination by the Respondent at the hearing.

68. As already noted above, there is no shortage of paperwork covering the Respondent's own position regarding the payability or otherwise of the service charges. However, despite the Respondent having been given plenty of opportunity to explain her position, it has been a struggle to discern much in the way of actual substance. She has offered nothing by way of comparable evidence. She does not seem fully to have appreciated the extent to which the Applicant has been through a process of consultation and market-testing of costs itself. She has raised a series of individual points, many of which had already been dealt with in correspondence (albeit not to her satisfaction), which in the tribunal's view the Applicant has been able to answer in a satisfactory manner. The inspection of the estate did not reveal any substantive points which the Respondent was able to demonstrate were

relevant to the payability of the service charges forming part of the Applicant's claim.

69. The copy correspondence, written witness evidence and oral evidence reveals a quite extraordinary level of time spent by the Applicant in attempting to satisfy the Respondent on a range of issues, and in our view the Applicant has generally responded to the Respondent's complaints in a timely manner and seems to have made a genuine effort to address her concerns.

70. On a couple of specific points, we agree with the Applicant that clause 5(5)(o) of the Lease is sufficiently wide to cover resident engagement services and that the cost of cleaning estate roads is covered by clause 5(5)(d). In addition we do not accept the building insurance point made by the Respondent in relation to average loss ratio and consider the insurance premiums to have been reasonably incurred on the basis of the evidence before us.

71. As an overall point, we have considered the amounts charged under the various heads of charge in respect of the relevant years and consider these to be reasonable in the absence of a more persuasive challenge from the Respondent.

Conclusion

72. The Applicant has conceded amounts totalling £61.08, these being amounts which either are not payable or in respect of which it is accepted that there is an element of doubt as to whether they are payable. In our view, all other service charge amounts forming part of the claim were reasonably incurred and are payable in full. The Applicant has presented persuasive evidence as to the reasonableness of the different elements of its claim and the Respondent by contrast has failed to substantiate her challenges to the reasonableness of the service charge in a convincing manner despite the large amount of paperwork submitted and the large amount of time allocated for the hearing.

Cost Applications

73. At the end of the hearing Ms Muir for the Applicant applied for an order under paragraph 13(1)(b)(ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Rules**") that the Respondent be required to make a contribution towards the costs incurred by the Applicant in connection with these proceedings on the basis that (in the Applicant's submission) she *"has acted unreasonably in ... defending or conducting proceedings"*. The contribution requested is £500.00 even though the costs incurred by the Applicant were, according to Ms Muir, considerably more than that.

74. Whilst an order under paragraph 13(1)(b)(ii) of the Rules is not to be made lightly, we are satisfied that this is a case which warrants the making of such an order. The Applicant has been put to considerable trouble and expense by the Respondent, not just in the immediate lead-up to and during the hearing, but also prior to that. The Respondent has made no service charge payments, aside from in relation to building insurance, for a considerable period of time. Her challenges to the service charge have been detailed and persistent but in our view have been almost wholly lacking in any substance. The Applicant has in our view gone out of its way to provide her with the information that she has sought over a considerable period of time, only for her on many occasions either to refuse to accept the answers or simply to raise different questions. We reject the contention that the Applicant should not have issued a claim in the county court; on the contrary, the Respondent's approach to this whole matter seems to have left the Applicant with little choice.

75. It is arguable that the Applicant did not need to come to the hearing with so many witnesses or with such senior witnesses. However, the claim is only for £500.00, and we are satisfied that this amount is considerably less than the total cost incurred by the Applicant in making the claim and pursuing it through to, and at, the tribunal hearing. We are also satisfied that it is a reasonable amount to claim and that the Applicant reasonably incurred more than £500.00 in costs as a direct result of the Respondent's unreasonable actions in defending and/or conducting proceedings. Accordingly we order the Respondent to pay £500.00 to the Applicant pursuant to paragraph 13(1)(b)(ii) of the Rules.

76. Ms Muir also applied for an order under paragraph 13(2) of the Rules that the Respondent be required to reimburse to the Applicant the £190.00 hearing fee. For the same reasons as given above we are satisfied that the Respondent should be required to reimburse this hearing fee to the Applicant, and accordingly we order the Respondent to reimburse to the Applicant the £190.00 hearing fee pursuant to paragraph 13(2) of the Rules.

77. The Respondent herself also made an application at the end of the hearing under paragraph 13(1)(b)(ii) of the Rules for an order that the Applicant be required to make a contribution towards the costs incurred by the Respondent in connection with these proceedings on the basis that (in the Respondent's submission) it *"has acted unreasonably in ... bringing or conducting proceedings"*. We do not consider that the Applicant has acted unreasonably in bringing or conducting proceedings and therefore decline to grant such an order.

78. The Respondent also applied for an order under section 20C of the 1985 Act that the Applicant should not be entitled to add its costs incurred in connection with these proceedings to the service charge. As

the Respondent has not been successful on any of the issues in dispute (aside from the minor points conceded by the Applicant prior to the hearing) and in our view has not acted reasonably in defending or conducting proceedings it would not be appropriate to make a section 20C order against the Applicant. Therefore, the tribunal declines to make a section 20C order.

Name: Judge P Korn **Date:** 19th December 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

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

Section 20B

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

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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