FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CG/LSC/2017/0010**
Property	:	**Flat 10, 10-26 Little Norton Drive, Painted Fabric Estate, Sheffield, S8 8HH**
Applicant	:	**Sheffield City Council**
Representative	:	**Mr Justin Bates (Counsel)**
Respondent	:	**Geoffrey H Bingham**
Type of Application	:	**Landlord and Tenant Act 1985 – Section 27A**
Tribunal Members	:	**Judge J. E. Oliver** **Tribunal Member J. Jacobs (Valuer)**
Date of Determination	:	**13 September 2018**
Date of Decision	:	**12 October 2018**

DECISION

Decision

1. The Service Charge for Flat 10, 10-26 Little Norton Drive Sheffield and for the years 2008-2107, in the sum of £3570.19, is reasonable and payable by the Respondent.
2. No order is made pursuant to Section 20c of the Landlord & Tenant Act 1985.

Application

3. On 11 August 2016 Sheffield City Council ("the Applicant") issued proceedings in Sheffield County Court for the recovery of the non-payment of service charges, for the years 2008-2017 inclusive, in respect of Flat 10, 10-26 Little Norton Drive, Sheffield ("the Property"). The amount of unpaid service charges totals £3570.19. The claim is for £5636.49 to include interest and costs.
4. Mr Geoffrey Bingham is the leaseholder of the Property and the Respondent in the application before Sheffield County Court ("the Respondent").
5. On 3 May 2017 Sheffield County Court transferred the application to the First-tier Tribunal for it to determine upon the reasonableness and payability of the service charges as claimed.
6. On 6 October 2017 the First-tier Tribunal issued directions in respect of the application and provided for the filing of statements by both parties and for the matter thereafter to be listed for a hearing.
7. The application was subsequently heard on 13 September 2018 following earlier hearings having been adjourned for inclement weather and the difficulty of the Respondent travelling to a hearing venue.

The Lease

8. On 29 June 1992 the Respondent's mother, Mrs Nellie Bingham, purchased the Property under the Right to Buy Scheme. The Respondent became the owner of the Property upon his mother's death.
9. The Lease is dated 29 June 1992 and is made between The Sheffield City Council (1) and Nellie Bingham (2) ("the Lease").
10. Clause 1 provides for the Lessee of the Property, namely the Respondent, in addition to the payment of the annual ground rent of £10 per annum, to pay as follows:

    (B) In addition to the rent a service charge (hereinafter called the Service Charge") to be determined and levied in accordance with the provisions contained in Part III of the said Schedule hereto
    (D) In addition to the rent a charge (hereinafter called "the Estate Charge") being such reasonable contribution as the Council shall from time to time require ..... to the costs and expenses and outgoings lawfully incurred or to be incurred by the Council in respect of the upkeep or regulation for the benefit of the locality (that is to say the Housing Estate of the Council) of which the building forms part or any part of such locality of any land building structure works ways or

watercourse such Contributions too be made of such of the benefits to the said locality or parts thereof of the type described in the column headed "The Benefits Referred to" of the SCHEDULE OF BENEFITS hereto annexed as are indicated by means of a tick or the word "Yes" or other affirmative indication in the column headed "Where applicable or not" thereof as being applicable to such locality or part thereof and such Contributions to be determined in accordance with Part V of the said Schedule hereto and collected by the City Treasurer or other duly authorised officer of the Council

11. The Schedule of Benefits indicates the Property has the benefit of the upkeep of landscaping and play areas, the maintenance, lighting and cleaning of the communal areas, the provision of a TV aerial facility and an Administration Charge, that is described as 10% or £5 *"whichever is the greatest".*
12. Clause 3 (b) is a covenant by the Respondent to *"pay upon demand being made therefor by the Council the Service Charge the Television Signal Charge and the Estate Charge at the times and in manner hereinafter appearing".*
13. Paragraph 1 Part III of the Schedule provides as follows:

" the Service Charge payable by the Lessee shall be a fair proportion to be determined by the City Treasurer or other duly authorised officer of the Council (in accordance with such formula as the City Treasurer or other duly authorised officer of the Council shall determine) of all costs expenses and outgoings incurred or estimated to be incurred by the Council in respect of or for the benefit of the Building (such fair proportion representing that part of the said costs expenses and outgoings incurred or to be incurred by the Council in complying with their obligations contained or implied herein for the benefit of the Lessee ...."

14. Paragraph 3 (29) of the Lease provides a covenant by the Lessee as follows:

"Subject (so far as is applicable) to the paragraphs 16A to 16D of Schedule 6 of the 1985 Act to pay to the Council from time to time as part of the Service Charge a reasonable part of the costs and expenses which the Council may from time to time incur or estimate to be incurred in carrying out repairs and improvements to the structure and exterior of the demised premises and the Building (including drains gutters and external pipes) and making good any defect affecting that structure and keeping in repair and improving communal areas and other parts of the Building or other property over or in respect of which the Lessee is hereby granted rights or services or the use and enjoyment thereof which are to be provided by the Council and to which the Lessee is entitled (whether alone or in common with others) in order to maintain the same at a reasonable level and of keeping in repair and improving any installation connected with the provision of those services".

15. Section II of Part III contains the administrative provisions relating to the payment of the Service Charge and sets out that the Service Charge shall be paid in advance on 1 October in each year. Paragraph 5 thereafter provides:

"Each payment of the Service Charge shall be determined by the City Treasurer or other such duly authorised office of the Council before the commencement of each accounting year (except the first payment falling due on the date hereof) as a fair proportion of the said costs expenses and outgoings referred to in the foregoing paragraph 1 of Section I of this Part of this Schedule which the said City Treasurer or other duly authorised officer of the Council shall prior to each such determination estimate as having been incurred or to be incurred by or in respect of the Council in the forthcoming accounting year"

16. Paragraph 2, Part III thereafter sets out the Council's obligations and the Lessee's liability to pay the Service Charge in respect of the Property, including, at Paragraph 2(E), an obligation to pay administrative costs as follows:

"The administrative costs (including audit and management costs) of managing the Building including the costs of employing and paying employees of the Council or professional advisers agents or contractors in and about the performance of any of the obligations on the part of the Council in this Lease or implied".

17. Clause 4 of the Lease contains the covenants on behalf of the Council, to include at Clause 4(4)(1), an obligation to provide for the insurance of the Property as follows:

"to take out and maintain throughout the term hereby granted an insurance policy in respect of the demised premises and the structure and exterior of the Building bounding the same in the joint names of the Council and the Lessee in the full reinstatement value thereof from time to time determined by the Council with a reputable insurance company ..."

The Law

18. Section 27A(1) of the 1985 Act provides:

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.

19. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

20. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

21. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *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 provision 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.*

22. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *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*

23. Section 20C of the 1985 Act provides that a tenant may apply for an order that any costs incurred by a landlord in connection with proceedings before a First-tier tribunal are not to be regarded as relevant costs when determining the service charge. If such an order is made the Landlord cannot recover those costs within the service charge.

Inspection

24. The Tribunal inspected the Common Parts of the Building and grounds in which the Property is situate. Two Council officers attended on behalf of the Applicant. The Respondent did not attend and was not represented. The Property is a ground floor 2 bedroomed flat within a block of 9 flats over three floors. The Property was built in the 1960's and is within a development of similar type and age of properties. The

Tribunal inspected the entrances, hallway and gardens. The Tribunal was advised the block is within a scheme of work that will see it updated to include a door entry system at some future point. The hallway and stairs are cleaned 4 times a year. The garden areas were in need of some maintenance although it was explained the grass-cutting programme had been affected by this year's unusual weather. The Tribunal was advised the Respondent makes no charge for the gardening service within the Service Charge.

The Issues

25. In his written statement the Respondent outlined the areas of dispute as follows:
    (1) Evidential Burden of Proof-in his written submissions the Respondent stated the Applicant had not complied with the Tribunal's directions in that it had not filed service charge accounts and budgets for the year, such that it could not be established that the amounts charged had been incurred and property recharged. Further, under the Civil Procedure Rules the Applicant had not satisfied the burden of proof regarding the existence of the costs due.
    (2) Limitation-the claim for the payment of the service charges incurred before 11 August 2010 was statute barred.
    (3) The Estimate-No estimate has been produced for any of the service charge years as required by the terms of the Lease.
    (4) Information and Apportionment -the information provided by the Applicant pursuant to Clause 5 (6)(iv) is insufficient.
    (5) Insurance- the demand for insurance costs does not comply with either the Lease, nor with the Landlord & Tenant Act 1985 ("the 1985 Act").
    (6) Window Replacement Invoice 894878- the cost of the replacement windows charged to the Property has been incorrectly apportioned within the Block.
    (7) Management Fee- the Applicant's costs are properly recoverable within the Administration Charge and should not be charged for gain as a Management Charge.
    (8) Citywide Charging-the Lease does not provide for any costs to be charged upon a citywide basis.
    (9) Section 20C-the Respondent makes an application for an order pursuant to Section 20c of the 1985 Act.

The Hearing and Written Submissions

26. Mr Bates of Counsel attended on behalf of the Applicant. Also attending on behalf of the Applicant was Mr Nathan Robinson, who had filed a statement, Ms Jo Stacey, Mr Lee Hall and Ms Catherine Hill.
27. The Respondent, Mr Bingham attended in person.
28. At the outset of the hearing, the Respondent confirmed that he did not challenge the amounts charged within the Service Charge demands. His issue was the failure by the Applicant to charge the Service Charge in accordance with the provisions of the Lease.

29. The Tribunal thereafter considered each of the issues as referred to by the Respondent within his written statement.

Evidential Burden of Proof

30. The Tribunal advised the Respondent at the outset of the hearing that it was governed by the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and not by the Civil Procedure Rules and therefore further submissions in respect of this issue were unnecessary. Whilst the Applicant had not filed accounts in accordance with the Tribunal's directions, this was not material to the issues; the Respondent was not challenging the amounts charged.

Limitation

31. The Respondent submitted Section 19 of the 1985 Act service charges are "*invested with the character of rent*". Consequently the limitation for the payment of rent was 6 years and any amounts claimed prior to the 6 years was not payable.
32. Mr Bates argued the Lease specified the service charge was payable "in addition to rent" and was therefore not rent to be affected by a limitation period of 6 years. Further, he submitted the 1985 Act was not relevant upon this issue; the Lease was the necessary authority. In his submission, the service charge was not rent and the relevant limitation period was 12 years.

The Estimate

33. The Respondent referred the Tribunal to Section II of Part III of the Lease and submitted that the payment of the Service Charge required there to have been an estimate of costs. The Applicant had not provided such estimates and was therefore in breach of the terms of the Lease. The Respondent referred the Tribunal to **Mark Skelton & Others v DBS Homes (Kings Hill) Ltd [2015 UKUT 0379 (LC), [2017] EWCA Civ 1139.** The Respondent submitted that this confirmed that an estimate was necessary to validate a demand for the payment of the Service Charge. The fact the Applicant used an actual basis for the Service Charge did not remove the need to provide estimates. The Tribunal was also referred to the decision of the Upper Tribunal **London Borough of Southwark v Woelke [2013] UKUT 0349 (LC).** In particular the Respondent referred to the judgement of Deputy President Martin Roger QC at paragraphs 49 and 50 and in particular:

"While I accept that the obligation on the leaseholder in paragraph 2(2) to make advance payments on account of the Service Charge is rightly regarded as being for the sole benefit of the appellant, and therefore is capable of being waived in whole or in part, I do not think the same can be said of the obligation to provide a reasonable estimate of the amount payable by the Leaseholder by way of Service Charge in the forthcoming year. One important function of the

estimates so to provide the leaseholder with advance warning of the contribution he will be expected to pay for the services to be provided in the forthcoming year."

34. Mr Bates stated the Applicant used an actual basis for the Service Charge, save in respect of insurance. This is charged in advance but the amount is known at the beginning of the Service Charge year and so, again, the amount is known when charged. None of the charges are estimated. The Tribunal was referred to 3(29) of the Lease that provides for the Service Charge to be charged either on an actual or estimated basis. The Applicant has always charged on an actual basis. Mr Bates referred the Tribunal to **Sheffield City Council v Holme MAN/00CG/LIS/2015/0004.** The Lease in that case had the same provisions as the current matter and there it was clearly stated the Applicant has two methods of demanding the Service Charge and had chosen the actual basis. The requirement for the provision of an estimate, would only be necessary if the Applicant was to charge on the alternative basis i.e upon an estimated basis.
35. Mr Bates argued the cases of **Skelton** and **Woelke** were not relevant in this case because the provisions of the leases in those cases were entirely different to the current matter.

Information and Apportionment/Window Replacement

36. In his written submissions the Respondent argued that whilst the Applicant recharges actual costs, no information is provided to show how those have been apportioned. Consequently, there is no evidence that any of the charges are apportioned fairly. The Respondent referred the Tribunal to Clause 5 (6)(vi). Further, paragraph 5, Part III provides for the Applicant to charge a proportion of those services referred to in paragraph 1 Part III of the Lease. This refers to the services provided to the Building. Accordingly, the Respondent should not contribute to any services that do not specifically relate to the Building.
37. At the hearing the Respondent confirmed the issue of apportionment was principally an issue regarding his liability for the cost of the installation of new UVPC windows at the Property.
38. The Respondent had been charged the sum of £2395.93 for this item of major work in 2010/2011. This was subsequently reduced to £2195.93 There was no issue that the consultation required by Section 20 of the 1985 Act had been carried out.
39. In his written statement Mr Robinson, a Leasehold Services Manager of the Applicant, confirmed the Respondent had only been charged for the seven windows replaced to the Property. This was further confirmed at the hearing.
40. The Respondent challenged this to advise that all the work to the other flats in the Block had been completed in the summer of 2010. The work to the Property had been undertaken in January 2011. The Respondent submitted the statement showing the cost charged to him did not give any figure to show the actual cost of the major work and how that amount had been apportioned, to then charge him the sum of £2195.93. The Respondent argued he had been charged 100% of the

cost of the replacement windows to the Property. In respect of the remaining flats in the Block, five are tenanted and the remaining leaseholders had already replaced their windows and so no work had been carried out to their properties. Consequently the Respondent argued he had borne 100% of the cost of the replacement windows and thus the cost had not been apportioned as required by the Lease.

41. The Respondent further submitted that the work had been carried out under the Decent Homes programme. The benefit of that should be included in any apportionment and it had not. Consequently the Applicant had benefited from this funding and from him within the Service Charge, thus amounting to "double recovery". The Respondent referred the Tribunal to **Sheffield City Council v Oliver [2017] EWCA Civ 225 ('the Oliver appeal").**
42. The Respondent also referred the Tribunal to paragraph 18, Part III, Schedule 6 of the Housing Act 1985 regarding the recovery of a contribution to an improvement, stating this provision renders void *"any reference to improvement contained in the Lease terms, such as 3.29 which makes reference to paragraph 18 of the Act, is void once the initial period as defined by paragraph 16C has expired. I therefore contend the Lease grants no authority to the Applicant for the recovery of expenditure related to works of improvement."*
43. At the hearing Mr Robinson explained that most work done to the Block would be divisible between the flats within the Block. However, for windows and doors serving individual properties, those costs were charged to the properties. This was considered to be fair.
44. Mr Robinson confirmed the Applicant did receive Decent Homes funding for major works but this was not available to leasehold properties and so the Respondent could not benefit from this.

Insurance

45. In his written statement the Respondent submitted that Clause 4(4)(1) of the Lease, as referred to at paragraph 17 above, requires the Applicant to insure both the Property and the Building. The insurance documents do not show this. Consequently the Applicant is in breach of the terms of the Lease and cannot recover the insurance costs under Clause 3 (30) of the Lease within the Service Charge.
46. At the hearing the Respondent made additional submissions upon this issue. The Respondent argued under the terms of Schedule 6 of the Housing Act 1985 ("1985 Housing Act") there was an implied covenant the landlord of a property must reinstate it. Consequently, because of that obligation, the requirement to insure is unnecessary. The Respondent submitted the Applicant was therefore selling unnecessary insurance for a commission.
47. The Respondent argued that Schedule 6 could not be ousted by the terms of the Lease and referred the Tribunal to **Mihovilovic v Leicester City Council [2010] UKUT 22 (LC)** where reference was made to Schedule 6 of the 1985 Housing Act and the implied covenant contained therein.
48. The Respondent further submitted that that any insurance for the Property and the Block should be in joint names. In this he referred to

Green v 180 Archway Road Management Co Ltd [2102] UKUT 245 (LC). This was an appeal in respect of the leaseholders' share of the insurance relating to 180 Archway Road. The Respondent referred to paragraph 17 of the judgment that, in turn, quoted *Woodfall Landlord and Tenant, paragraph 11.093* as follows:
"A covenant by the tenant to insure in the names of the landlord is broken if the insurance is made in their joint names with that of the tenant. Similarly a covenant to insure in the joint names of the landlord and tenant is broken if the tenant insures in his name alone, but not if the tenant insures in the name of the landlord alone, for the addition of the tenant's name is purely for his benefit. A Covenant to insure in the names of A and B is broken by insuring in the names on A, B and C".

49. The Respondent thereafter argued that the insurance effected by the Applicant should be under one policy and that it should be in joint names. Whilst he did not dispute the insurance cost, he submitted the Block should be insured under one policy and the cost divided between the leaseholders and tenants of that Block. He had no evidence to show the general insurance policy was in existence.
50. Mr Bates argued the insurance for the Property was in the joint names of the Applicant and the Respondent and, further, it was not limited to the Property but also included the Building. He referred to **Sheffield City Council v Oliver MAN/00CG/LSC/2011/0076 ("Oliver").** At paragraph 107 the Applicant's arrangements for obtaining insurance for its leasehold properties were outlined as follows:

"Evidence in relation to this issue (insurance) *was provided by Mr Parker. He indicated that insurance was arranged pursuant to SCC's obligations under the lease for all its leasehold properties on a citywide basis. The provider was selected by competitive tendering, but each contract was for a four or five year period. Selection was based on a combination of price, service, administration, claims handling, and the willingness to enter into a long term agreement which included a notice period for price increases".*

It was confirmed this method continues to be used.

51. In **Oliver** reference was made to the tenanted stock held by the Applicant where it was confirmed this is covered by a city-wide policy to covering catastrophic loss. This policy has a £500,000 excess and therefore the Applicant, effectively, self -insures for the majority of claims. In **Oliver** it had further been argued that under the terms of the lease all the properties in the block should be insured under the same policy. The Tribunal had determined the lease did not provide for there to be one policy to cover the block, including tenanted properties and that the lease:

"required SCC to put in place a policy which covered the leasehold property itself, and the structure and exterior in so far as it pertained to that property, and which would re-imburse the leaseholder if that structure and exterior were damaged".

52. Mr Bates submitted that there in nothing in Schedule 6 of the 1985 Housing Act that prevents a leaseholder being charged for insurance, save within 5 years of buying a local authority property; that is not applicable in this case. Due to the fact there is no prohibition upon charging, reference must then be made to the Lease. Under Clause 4(4)(1) of the Lease there is an obligation upon the Applicant to procure insurance for the Property. The Applicant has complied with that covenant and has insured in the joint names of the Applicant and the Respondent. The premium is then recoverable under paragraph 1, Part III of the Lease.
53. In respect of the Respondent's arguments that any policy should be in joint names, Mr Bates argued the terms of the lease had been complied with. Whilst the Applicant had raised a doubt the general insurance policy existed, this had not been raise before the hearing and consequently no copy had been provided. It was, however, available for inspection at the Applicant's offices, should the Respondent wish to view it.

Management Fee

54. In Mr Robinson's written statement to the Tribunal he advised the Applicant was entitled to charge this pursuant to paragraph 2(E), Part III of the Lease. The Management Charge "*is the difference between the Administration Charge and the cost [of] running the leasehold service*".
55. The Respondent challenged this and submitted that whilst the Applicant could charge an Administration Fee, per Clause 5 (6)(vi) of the Lease, it was not entitled to charge anything further. The Administration Charge was sufficient to enable the Applicant to discharge its obligations per Clause 2(E). The Respondent also submitted that some services were unnecessary, for example, providing newsletters and providing a forum for leaseholders. Consequently the charges were unreasonable.
56. At the hearing Mr Robinson explained the Administration Fee covers the cost relating to the preparation of the demands, printing costs and sending the demands out. The Management Fee thereafter covers the remaining costs, including sending out newsletters and the provision of the Leasehold Service. The Applicant puts a voluntary cap on this charge to ensure it is reasonable to the leaseholders with the result the Service Charge makes a loss. There is a fixed and variable element to the Management Fee. The fixed element is usually staff costs. The variable element is dependent upon the services provided. For example, if there is communal cleaning, the Service Charge will be slightly higher to cover that administration.
57. Mr Robinson confirmed that historically the Applicant had charged a fixed charge for management but this had then been changed. There had been several earlier Tribunal decisions upon this issue. A variable charge was now made dependent upon the services provided. The Tribunal was referred to the earlier decision between the parties **Sheffield City Council v Mr Geoffrey Bingham**

MAN/00CG/LSC/2011/0022 where the current charging method was approved.

58. Mr Bates argued the Applicant was entitled to charge a Management Fee, as provided for by Part III of the Lease. Further, whilst the Respondent had said some of the services were unnecessary, they were a reasonable method of dealing with a high number of leaseholders when alternatives forums i.e. meetings would be impractical. He also referred to **Bingham** when he said the Respondent had advanced the same arguments that were unsuccessful.

Citywide Charging

59. In his written submissions, the Respondent argued that there was no provision within the Lease for costs to be apportioned across the City. In this the Respondent referred to the charge for communal electricity. The Lease only provided for an apportionment within the Block.
60. Mr Robinson confirmed electricity is charged on a City-wide basis and is apportioned between all the properties connected to it. There are no meters to enable the Applicant to identify the electricity used in a particular block. The charge for electricity is for internal and external lighting (where applicable) in the communal grounds.

Determination

Limitation

61. The Tribunal considered the submissions made by the Respondent upon the issue of limitation but could not agree with them. The Lease clearly states in Clause 2 (B) (C) and (D) that the Service Charge is payable "in addition to the rent". There is nothing within the Lease that states the Service Charge is part of the rent. Section 18(1) sets out the meaning of a Service Charge. The charges made by the Applicant under the terms of the Lease fulfil this description and differ from the rent charged under the Lease that is fixed in the sum of £10 per annum. The two elements are entirely different. However, it is the Lease to which reference must be made and that is clear when it states the Service Charge is payable "in addition to the rent". Accordingly, the Service Charges are not subject to the limitation period of 6 years but 12 years and accordingly remain payable for the years in issue.

The Estimate

62. The Tribunal noted the submissions made by both parties upon this matter. The Respondent had argued that irrespective of the Applicant's method of charging the Service Charge, it was a requirement of the Lease that an estimate be provided. The Tribunal further noted the case law referred to by both parties.
63. The Tribunal accepted the Lease provides for two alternative methods of demanding the Service Charge. The wording of Clause 3(29), as referred to in paragraph 14 above, clearly states the Applicant has two methods of demanding the Service Charge. The Lease provides for a

charge either on an actual or estimated basis. In **Holme** it was confirmed the Applicant charges on an actual basis and Mr Bates stated that this has always been the case.

64. The Tribunal does not accept the Respondent's argument that the Service Charge demand must also have an estimate in order for the demand to be effective. He referred to Section II of Part III of the Lease, as set out in paragraph 15 above, that put an obligation upon the Applicant to provide an estimate. However, Section II refers to a demand for a Service Charge on an estimated basis and not on an incurred basis. Section II provides for a payment to be made in advance, for there to be estimates and for there to be balancing payments. This therefore does not apply to demands that are made on an incurred basis. Whilst the insurance is paid in advance, Mr Bates confirmed that this payment is known before being demanded and is therefore not estimated.
65. The Tribunal noted the cases of **Skelton** and **Woelke** as referred to by the Respondent but the Tribunal did not find those cases to be of relevance here. The cases related to leases containing different provisions to the Lease.
66. The Tribunal therefore determined that the challenges made by the Respondent, that the Service Charges were not payable due to a lack of estimates, was not successful.

Information and Apportionment/Window Replacement

67. The Tribunal considered the submission the Applicant should show the relevant costs, comprised within the Service Charge, in order for the Respondent to determine how they had been apportioned and, in particular, the Respondent's reference to Clause 5(6)(vi) of the Lease. This states:

    "reference to a "demand" for any sum made by or on behalf of the Council shall include the submission of an account by the City Treasurer or other duly authorised officer of the Council addressed to the Lessee or any successor in title or assign of the Lease and delivered to the demised premises by any means whatsoever...."

    It appeared to the Tribunal the Respondent had imported a wider meaning to the word "account" than was contained within the Lease. In this context, the Tribunal determined the word "account" to be a statement of the amounts due within the demand, for example, the amount charged for cleaning. It did not mean the demand had to be accompanied by a full set of accounts to show apportionment, or that the charges had actually been expended. If the Respondent's interpretation was accepted, this would likely result in additional costs in providing such information leading to an increase in the management costs. This would be disproportionate to the amounts involved.
68. The Respondent argued that he should only contribute towards work undertaken to the Building and nothing further. The Respondent referred the Tribunal to Paragraph 1, Part III to support this

contention. The Tribunal did not accept this. Clause 1 of the Lease contains a covenant by the Lessee to pay the ground rent and, in addition the Service Charge as referred to in Part III, the Television Charge in Part IV and the Estate Charge as referred to in Part V. Part III also refers to the other services to be included within the Service Charge and not simply those incurred in relation to the Building, Paragraph 2 of Part III refers to other services beyond the Building that are included within the Service Charge.

69. The Tribunal noted the Applicant's position regarding the apportionment of the cost of replacement windows. He had argued that this cost should be apportioned between all the flats in the Building. The Tribunal determined this did not reflect the terms of the Lease. Paragraph 1 Part III states the Service Charge *"shall be a fair proportion to be determined by the City Treasurer..."* . The Tribunal noted that in all works, save for the provision of windows and doors, are apportioned between the flats within the Block. The Tribunal had to consider whether the Applicant's decision to apportion the costs of windows and doors to the flats themselves was unreasonable. The discretion to deal with the matter this way is provided for by Paragraph 1 Part III of the Lease. The Tribunal did not consider the apportionment to be unreasonable. It noted that the Respondent had argued the same principle in his earlier proceedings in 2011. In that decision the Tribunal had stated:

"Under each Lease it is a matter of construction as to how charges should be apportioned. The Sheffield lease leaves this to be determined by the City Treasurer (or other duly authorised officer). Provided it is a fair proportion the leaseholder cannot complain. In our view this is fair"

Whilst the decision of the earlier Tribunal is not binding, the Tribunal agrees and determines the apportionment for the window replacement to be fair and payable by the Respondent.

70. The Tribunal did not accept the Respondent's submissions that he should have the benefit of the Decent Homes grant given to the Applicant for work undertaken to the Block. The Applicant confirmed the benefit of this grant is not available to leaseholders. The Respondent therefore cannot claim any benefit from it. The Respondent had referred he Tribunal to the **Oliver appeal.** The decision by the Court of Appeal in that case related to the Community Energy Savings Programme (CESP) and not to the Decent Homes Programme.

71. The Respondent's further submitted the Applicant could not charge for the costs of any improvements, relying upon paragraph 18, Schedule 6 of the 1985 Housing Act. Paragraph 18 in turn refers to paragraph 16E that states that where any lease provides for the payment towards improvements the liability to pay is restricted, as provided for within paragraph 16(E)(2), *"before the final payment is made"*. This is in respect of the discount repayable to the local authority should a Right to buy property be sold within 5 years of acquisition. Clearly this does not apply here. Mrs Bingham purchased the Property in 1991.

Insurance

72. The Tribunal considered the matters raised by the Respondent. Firstly, the issue that the Applicant failed to insure the Property as required by the Lease. Clause 4 of the Lease, as referred to at paragraph 17 above, states the insurance must include the Property and " *the structure and exterior of the Building bounding the same*". The insurance documents provided to the Tribunal describe the "Risk Address" as 10 Little Norton Drive Sheffield and the structure of the Building. It includes other risks including garages, greenhouses, communal areas etc. The only excluded item is the contents of the Property. The Schedule states the insured is the Applicant and "*their respective leaseholders*". Whilst the Respondent is not specifically named on the Schedule, the Tribunal finds that he is a Leaseholder as referred to. Consequently the Tribunal finds the insurance does comply with the requirements of the Lease to the extent of this challenge.
73. Secondly, the Tribunal considered whether Schedule 6 of the Housing Act 1985 removes the need for the Applicant to effect insurance of the Property and thus charge this item within the Service Charge. The Respondent referred the Tribunal to **Mihovilovic v Leicester City Council.** This is materially different to the current matter and does not support the Respondent's contention. In **Mihovilovic** the issues were whether the Council was entitled to charge for insurance within the Service Charge when it self-insured. This is not the case here where the Respondent is charged for insurance effected with an insurance company, as permitted under the terms of the Lease.
74. The Tribunal noted the Respondent relied upon the provisions of Schedule 6 to propose that because there was an implied covenant to reinstate a property there was no need for insurance. This, however, is not the meaning of Schedule 6. The implied covenant contained in paragraph 14 (2) of Schedule 6 is qualified by paragraph 14(3) of Schedule 6 that provides:

    "*There is an implied covenant that the landlord shall rebuild or reinstate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure*".

    Paragraph 16A(1) of Schedule 6 thereafter provides:

    "*The lease may require the tenant to bear a reasonable part of the costs incurred by the landlord-...*
    (b) in discharging or insuring against the obligations imposed by the covenant implied by virtue of paragraph 14(3) (rebuilding and reinstatement, etc), ..."

    Schedule 6, whilst containing the implied covenant referred to by the Respondent, also provides for there to be provision within a lease for insurance to cover the risks referred to in paragraph 14(1). The Tribunal therefore determines that Schedule 6 does not avoid the

Respondent's liability to pay the insurance premium within the Service Charge.

75. Thirdly, the Tribunal considered the Respondent's argument there should only be one insurance policy. The Tribunal noted this issue had already been determined in **Oliver** when it was rejected and it saw no reason to depart from that decision.
76. The Tribunal noted the comments made at the hearing regarding the Respondent's doubt there was a general insurance policy. The Tribunal accepted this was an issue not previously raised by the Respondent and therefore it was entirely reasonable for the Applicant to offer the Respondent to inspect the policy documents at a later date. There was no evidence brought by the Respondent to show there was no insurance in place as suggested.

Management Fee

77. The Tribunal did not accept the submissions made by the Respondent that the Applicant was not entitled to charge a Management Fee. Paragraph 2(E) Part III, referred to at paragraph 16 above, clearly sets out an obligation by the Lessee to pay the administrative costs of the Applicant which includes accounting, audit and management costs.
78. The Tribunal further noted, that in **Bingham** the Respondent had then raised the same issues regarding the unreasonableness of the Management Fee. There the Tribunal had determined that none of the services provided were unreasonable. The Tribunal again did not see anything submitted to it to suggest otherwise. Whilst the Respondent's main objection was the monies spent on leaseholder services, the Tribunal accepted that newsletters and a signposting service were reasonable methods of communicating with leaseholders within Sheffield. In a smaller development it would not be unreasonable for there to be leaseholder meetings where issues could be addressed. Here, this would be difficult and likely to be more expensive that the current scheme.
79. The Tribunal determined that the Management Fee for the years 2008-2017 to be reasonable and payable.

City-wide charging/Communal electricity

80. In respect of this issue, the Tribunal determined the method of apportionment to be within the terms of the Lease and thus chargeable. The Lease provides for the Applicant to charge for electricity, being part of the Service Charge on either a Building or Estate basis. This is in accordance with Clauses 2 and 3 of the Lease.

Section 20C

81. The Respondent had applied for an order pursuant to Section 20C of the 1985 Act that the costs incurred within the Tribunal proceedings should not be regarded as relevant costs recoverable as a service charge. The Tribunal noted the Respondent had not successfully challenged any of the service charges for the years 2008 to 2017. Accordingly, the Tribunal determined that such an order would not be made.

Judge J Oliver
12 October 2018