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THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

THE LANDLORD AND TENANT ACT 1985 (as amended), Sections 27A and 20C

Case Reference: LON/00BE/LSC/2009/0692

Decision

Premises: 63 Marston, Deacon Way, London SE17 1UW

Applicant: The London Borough of Southwark

Respondent: Mrs Mojisola Ojeikere

Appearances:

For the Applicant: Mr O Strauss, Legal Officer Southwark Council

For the Respondent: Mrs Ojeikere

Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr P S Roberts Dip Arch RIBA
Mrs L West JP MBA

Date of decision: 16 August 2010

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Applicant: The London Borough of Southwark

Respondent: Mrs Mojisola Ojeikere

The Tribunal's decision

Background

1. The application is for a determination of the reasonableness and payability of service charges under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act"). The applicant is The London Borough of Southwark ("the Council"). The respondent, Mrs Ojeikere, is the lessee of the flat known as 63 Marston, Deacon Way, London SE17 1UW ("the flat") by way of a lease dated 24th November 2003 ("the lease").

2. Proceedings for a money judgment were commenced by the Council in the Lambeth County Court on 24th August 2009 claiming unpaid service charges in the sum of £1,891.06 and statutory interest. The Tribunal does not have jurisdiction to consider the claim for statutory interest. A defence and counterclaim was filed and by an Order of District Judge Zimmels dated 20th October 2009, the case was transferred to the Leasehold Valuation Tribunal.

3. The flat is contained within a large block of flats. The flat is soon to be sold back to the landlord under a compulsory purchase buy back scheme. The block is part of the Heygate estate. It is intended that the estate will be demolished and there will be other housing uses for the site as part of a regeneration scheme. The Tribunal was informed by the Council that there are about 23 leaseholders and about the same amount of tenants resident on the estate, that the Council were awaiting the CPOs to come through, but the process had been complicated. Currently about 300 flats were3 in occupation throughout the estate.

4. The issues initially in dispute in the County Court proceedings, were the respondent's liability to pay and/or the reasonableness of general service charges in the sum of £1,891.06 for the estimated service charges for the year 2008 / 09 and the estimated services charges for the first half of the service charge year 2009 / 10. The service charge year runs from 1st April in

each year until the following 31st March. However, various issues have been raised by the respondent in the counterclaim and in her statement of case in the LVT proceedings which have extended the matters in dispute and the years in issue from 2003 to 2010 inclusive. The Council submitted that the issues to be determined should be limited to 2008 / 09 and 2009 / 2010. But requested that end of year accounts for 2008 / 09 should be considered as these were now available. Having heard submissions from both parties the Tribunal considered that it was reasonable and proportionate that the service charge years from 2003 should be considered in these proceedings and that up to date accounts should be considered so that the global service charge issues may be determined between the parties

The lease

5. Mrs Ojeikere purchased her leasehold interest in the flat as part of a Right to Buy process under the Housing Act 1985. A copy of the lease of the flat was included in the main hearing bundle. The lease was dated 24th November 2003 and was for the term of 125 years commencing on that date and expiring on 23rd November 2128. A copy of the lease of the flat was included in the main hearing bundle. The parties to the lease were the applicant as lessor and the respondent as lessee. The lease contained provisions for the payment of a ground rent by the lessee.

6. The relevant terms of the lease so far as the present case is concerned were referred to in the applicant's statement of case dated 19th February 2010.

7. to Clause 2(3)(a) of the lease contained a covenant by Mrs Ojeikere as lessee pay the Service Charge set out in the Third Schedule to the lease at the times and in the manner there set out. The Council has an obligation under clause 4(2) of the lease to keep in repair the structure and exterior of the flat and the building. The Council covenanted to contribute a proportion of the cost by way of clause 7(1) of the Third Schedule to the lease. Pursuant to Clause 7(3) of the Third Schedule Mrs Ojeikere as lessee, covenanted to contribute towards the Council's costs of or incidental to providing the services specified in the lease.

8. The "services" defined in the lease include:

(i) Central heating;
(ii) Hot water supply;
(iii) Lift;
(iv) Caretaking, lighting and cleaning of common areas;
(v) Maintenance of common television aerial or landline;
(vi) Estate lighting;
(vii) Maintenance of gardens or landscaped areas;
(ix) Un-itemised repairs.

9. Under Clause 2 (3)(a) of the lease Mrs Ojeikere covenanted to pay the Service Charge contributions set out in the Third Schedule to the lease at the times and in the manner there set out.

10. Pursuant to Schedule 3, paragraph 2(1) the Council is obliged to provide a reasonable estimate of the amount which will be payable by the lessee for the year. Under Schedule 3, paragraph 2(2), the lessee covenanted to pay the estimated sum in advance on account by equal payments on 1st April, 1st July, 1st October and 1st January in each year. However, Mrs Ojeikere's evidence was that in practice the Council had always accepted monthly payments from her towards the service charge of between £100 and £200 per month.

11. In accordance with paragraph 6(1) of the Third Schedule to the lease the Service Charge payable by the lessee shall be a fair proportion of the costs and expenses in paragraph 7 of the Third Schedule, incurred in that year. Under paragraph 6(2) of the Third Schedule to the lease, the Council may adopt any reasonable method of ascertaining the lessee's proportion as well as different methods in relation to different items of costs and expenses.

12. Paragraph 7 of the Third Schedule of the lease specifies the costs and expenses for the purposes of the Service Charge. This included the carrying out of all works required under sub-clause (2) to (4) of Clause 4 of the lease, and providing the Services. It also included the maintenance and management of the building and the estate (but not the maintenance of any other building comprised in the estate). If no managing agents were employed the Council are entitled to add 10% to service charge costs for administration (Paragraph 7(7).

13. The Tribunal were informed in the Council's statement of case that in respect of apportioning revenue service charges, the Council uses a bed-weighting method of 4 per flat with an additional point for each bedroom. The subject flat is a 2 bedroom property attracting a bed weighting of 6 units. There are 574 units in the block and Mrs Ojeikere's contribution is 6/574. The bed-weighting method in relation to revenue charges had been agreed with a leaseholder's representative body. The Council considered that this is a reasonable method, and the reasonableness of the method of apportioning the revenue charges under the lease was not disputed.

14. In addition to the provisions for payment was an on account estimated service charge, the Third Schedule contains provisions for the Council to ascertain at the end of the service charge year the actual service charge payable for that year, and includes provisions for a balancing payment by the lessee or a credit to the next on account payment to reflect this. The estimated service charges are based upon previous actual service charges. Invoices for the actual costs of the services provided throughout the service charge year are apportioned according to the bed-weighting method.

15. A substantial proportion of the flats are now unoccupied as a result of the regeneration process. The evidence at the hearing was that the Council met the cost of the provision of services to the unoccupied flats.

Statutory Provisions

16. Section 18 of the Act provides:

In the following provisions of the Act "service charge" means an amount payable by a tenant of a dwelling as part 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.

(1) 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.

17. Section 19 of the Act provides:

(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 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.

(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 are incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

18. Under Section 27A of the Act, an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable.

19. Under Section 20C of the Act, a tenant can make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with any proceedings before a Leasehold Valuation Tribunal 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 person specified in the application.

The Hearing

20. A hearing was held at which Mrs M Ojeikere attended in person. She gave oral evidence and made submissions. The Council were represented by Mr O Strauss, a Legal Officer employed by the Council who made submissions. Mrs G O'Sullivan, Contracts Manager, Miss S Cheng, Sales and Acquisitions

Manager, Mr G Dudhia, Service Charge Manager, Mr N Mellish, Service Manager Southern Cleaning, and Mr D Rankine, Repairs Control Centre Manager, and Ms A Masterman, engineering Contracts Manager, attended the hearing and gave evidence.

21. Ms Cheng explained the general background to the regeneration proposals which included the Heygate estate. In 2005 an executive decision was taken for regeneration. This had been mooted for a number years since the late 1990's. It was proposed that the estate will be demolished and that there will other housing uses provided on the site. The process of compulsory purchase was proceeding but was complicated. There were at the time of the hearing, about 23 leaseholders and about the same amount of tenants in occupation. She said that the regeneration process had been brought forward a year considering the services systems were failing and an enhanced package was offered to leaseholders.

22. In respect of the charge for 2003 / 2004, Mr Strauss explained that Mrs Ojeikere had been charged for the proportion of the service charge years during which she was a lessee. The proportion of the year during which she held the lease was 0.35%.

Items in issue

23. At the hearing the main items in issue were:

(A) Lifts
(B) Heating
(C) Care and Upkeep
(D) Repairs
(E) Estate Lighting
(F) Administration Charge

The parties' cases and the Tribunal's findings and conclusions

(A) Lifts

24. Mrs Ojeikere said that for as long as she has been in the block only one of the lifts has worked. The other lift has persistently broken down. She said that she has suffered going up and down the stairs when the lifts were not working. She said that there was no point in calling the call centre to complain, so she emailed instead. She had made complaints since December 2009 and had asked Ms O'Sullivan's colleague to inspect. She referred to emails contained in the hearing bundle, for example an email dated 17th February 2010 addressed to the housing repairs team. In this she complained about the heating, water, electricity and lifts in the block. She stated in this email that the problems with the lifts had not been resolved. She said that the lifts had only worked for a couple of days when she complained in December 2009. In an email dated 26th February 2010 Mrs Ojeikere stated that the lifts had not worked since March 2010. A copy of an email dated 26th

February 2010 in response from the Council to Mrs Ojeikere informed her that due to a health and safety issue both lifts were still under inspection, and apologised for the inconvenience.

25. Mrs Ojeikere referred to other correspondence in the hearing bundle, such as a letter dated 8th August 2005, in which her complaint in respect of the lift breakdowns was addressed by a technical officer at the Council. A report on the lifts in the block was dated 5th August 2005.
1040 /1041 – Marston
Lift 1041 was shutdown on 3/7/05 as the motor required rewinding and new bearing installed, the lift was reinstated on 26/07/05. The motor had to be removed and sent to manufacturer to be repaired which caused the delay.
Since the lift has been back in service there have only been a small number of calls on this lift due to obstructions in the lift track and misuse.
Lift 1040 is in good working order.

26. Mrs Ojeikere did not consider that the 50% reduction in the lift costs for 2008 /2009 and 2009 / 2010 as conceded by the applicant was acceptable, and submitted that the lift charges for 2003 - 2010 inclusive were unreasonable.

27. On behalf of the Council, Mr G Duncumb, Project Manager, provided a witness statement dated 18th March 2010. Mr Duncumb was unable to attend the hearing, and Ms O'Sullivan attended in his place.

28. In his witness statement, Mr Duncumb said that the lifts serving the block are numbered 1040 and 1041. Lift 1041 has been on permanent shutdown due to total failure of the mechanism. A decision had been taken not to repair that lift. The Council considered that the costs involved would be disproportionate to the benefits. The block is earmarked for demolition and largely depopulated by residents. Lift 1040 had also experienced ongoing technical problems. The Council had endeavoured to maintain service on that lift. However, due to the lift being at the end of its life cycle and the associated difficulties in sourcing replacement parts, the lift has had periods of non-operation. Costs had been incurred in carrying out asbestos removal works, replacement of mechanism, clearing of debris from the lift pit, repair / replacement of door mechanisms. He stated that due to lack of service on lift 1041 and periods of non-service on lift 1040, the Council was prepared to offer Mrs Ojeikere a reduction of 50% of the charges in respect of the lift. Ms O'Sullivan confirmed that the offer of the 50% reduction applied to the service charge years 2008-2009 and 2009-2010.

29. Ms O'Sullivan, who has been the Contracts Manager for the lifts section for the last ten years, said she agreed with the contents of Mr Duncumb's witness statement. There are very few residents in the block. There are two lifts in the block. One of the lifts in the block has been out of action since November 2009. The other lift in the block was out of action for a period in December 2009 to early January 2010 due, amongst other things, to investigation of asbestos in the shaft. Crumbling asbestos had been found in the wall of a shaft in another block; asbestos was also found in the subject block. However it did not need to be treated, just labelled. The Council would endeavour to keep one lift operative in the block. She said that it had been recorded that lift

1040 was working on 7th January 2010 and the lift had been inspected two and a half weeks before the hearing and was in service then. She said that there is vandalism on the Heygate estate and that doors were jammed open when tenants were moving furniture. There were also difficulties as the lift does not begin to work automatically after a power failure and the Council's contractors have to attend. The Council are obliged to ensure the lift is working because of fire regulations. Before November 2009 both lifts in the block were working. Ms O'Sullivan said that she did not dispute that the lifts have broken down. The Council have repaired the lifts but it has been difficult to obtain parts.

The Tribunal's conclusions – Lifts charges

30. There are two lifts in the block. Lift 1041 was taken out of service in November 2009. The Council have endeavoured to keep lift 1040 in service. However from the end of November 2009 until January 2010, the lift 1040 was out of service whilst investigations in connection with asbestos took place. The lift was back in service by 7th January 2010. The lift 1040 was in service in April 2010 and the Council's evidence was that there have been no call outs since.

31. It is not in dispute that the costs have been incurred in connection with the lifts.

32. The Council did not dispute that there have been some problems with the lifts over the years. However, the Tribunal accepts their evidence that some of the problems have been caused by such matters as obstructing the doors, and that when problems have occurred reasonable efforts have been made to repair at least one of the lifts. Over the last two service charge years there have been difficulties obtaining parts, and asbestos investigations were needed. A decision was taken to shut down one of the lifts in November 2009. However, the Tribunal does not consider that this was disproportionate having regard to the substantial reduction in the number of occupants in the block. The Council did not seek to deny that there were problems with the lifts, but rather sought to explain the situation. There was a factual dispute about the period during which the lift 1040 was out of service. The Tribunal has been unable to resolve this. However, even if this was for the period contended by Mrs Ojeikere, the Tribunal considers that in all the circumstances a reduction of 50% of the lift costs results in a reasonable charge for lifts in the two service charge years 2008-2009 and 2009-2010.

33. In respect of the earlier service charge years 2003 – 2008 inclusive, the Tribunal finds that although there was evidence of breakdowns, repairs were carried out as shown for example in the report dated 5th August 2005, and the Council have given a reasonable explanation for the reasons for breakdowns and service provided in those years. The Tribunal accepts the evidence on behalf of the Council that although lifts have broken down from time to time, the Council has carried out necessary works and is entitled to recharge a proportion of the cost to Mrs Ojeikere under the provisions in her lease.

34. The following sums are reasonable and reasonably incurred and are due and payable by Mrs Ojeikere to the Council in respect of lift charges (unless already paid by her).

	£	
2003/2004	12.73	
2004/2005	78.90	
2005/2006	142.17	
2006/2007	130.55	
2007/2008	137.47	
2008/2009	128.46	(50% reduction of the original charge of £256.91)
2009/2010	64.57	(50% reduction of the estimated service charge for the year ended 31st March 2010 of £129.14)

It should be noted that the charge for 2009/2010 is an estimated charge and is subject to adjustment in accordance with the terms of the lease when the actual costs for the year are determined. However the Tribunal would expect, given the assurances by the Council at the hearing that the total actual charge for lifts at the end of the year would be subject to a 50% reduction.

(B) Heating

35. Mrs Ojeikere said that the boilers should have been replaced. She considered that the Council had let the heating system on the estate fall into disrepair. She said that this situation was not new.

36. In her statement of claim Mrs Ojeikere commented that the heating was "always breaking down in winter" .

37. She referred to the record of complaints documents in respect of the block and in particular to a note dated 22nd December 2004 which stated that the person recording spoke to T Brown and he said the heating at Heygate is so bad it is unfair to raise a recall job. However this entry was incomplete and the context was unknown.

38. At the hearing Mrs Ojeikere said she considered the concession by the Council of a 50% reduction for heating charges for 2008 /2009 and 2009 / 2010 to be acceptable. She maintained her position that the hearing charges were excessive for the previous service charge years.

39. On behalf of the Council, Mr Strauss said that the Council were prepared to reduce the charge for heating to Mrs Ojeikere for 2008 / 2009 and 2009 / 2010 by 50% to reflect the slide in performance of the heating system.

40. Mr Chipp provided a witness statement. The Tribunal were informed that Mr Chipp was unwell and therefore Ms A Masterman attended the hearing to speak to his witness statement and provide additional oral evidence. Ms Masterman said that she had read Mr Chipp's witness statement and had no issue with the contents.

41. She is the Engineering Contracts Manager in the Council's Engineering Services Department, and is Mr Chipp's superior. She said that the Heygate estate is part of a regeneration project. Extraordinary efforts had been made to keep the district hearing system going and costs had been incurred because of the input needed. She accepted that the heating systems are old, worn out and at the end of their life. There are big gas boilers which were serving about 1400 properties. The substantial majority of these are now unoccupied. It is not possible to achieve a partial shutdown of the system. However if there is a problem with the plant room it may affect a smaller component rather than the whole estate. If the heating in the empty properties were turned off it would interrupt the delicate balance of the boilers and there could be burst pipes or other problems. The unoccupied properties were effectively on background heating.

42. She said that the Council are trying to provide a service 100% of the time but she assessed that it was providing a service 80% of the time. If the heating goes off the residents call the call centre. The Council's intention is to get the heating back on within a 4 hour response time, but if a new part is needed or a road needs to be dug up, it takes longer.

43. Ms Masterman accepted that the heating system had deteriorated more severely over the last two years and that there has been gradual deterioration over a longer period of time. All systems fail at some point and she considered that there is a 30 year life span for a district heating system. This system is 40 years old. She denied that there had been a decision by the Council to turn off the heating system.

44. Ms Masterman said that the Council are paying the gas bill for the empty flats, and that Mrs Ojeikere is not paying towards this through the service charge.

45. Mr Dudhia confirmed the contents of his witness statement dated 18th March 2010 and gave additional oral evidence. He referred to the sudden increase in the charges for heating in 2007 / 2008. There had been problems with the gas meter readings which had been read incorrectly for the previous 4 to 5 years. There had been under charges in the previous years. It had taken the Council about two years to negotiate the outstanding amount. He submitted that this cost was unforeseen and that the majority of the cost had been met by the Council, but some of the cost had been charged to the leaseholders. Also in 2007 / 2008 there had been expenditure of approximately £402,000 on extensive boiler repairs.

The Tribunal's conclusions – Heating

46. The Council conceded that the heating charges originally sought for 2008 / 2009 and the estimated charge for 2009 / 2010 should be reduced by 50% to reflect the level of service provided. Mrs Ojeikere considered that this was an acceptable deduction for those years.

47. Following the hearing the Council provided additional documentation, namely historical heating data prepared by Ms Masterman. This showed the first problematic year to be 2007 / 2008. 161 hours of heating was lost out of a possible 5112, which equated to 3.15%. The Council commented that they try to achieve 1.5% maximum loss.

48. However the situation became more serious in 2008 / 2009, when 211 hours were lost (4.12%). In 2009 / 2010, 356 hours were lost (6.95%).

49. It was noted that on this document under the sub-heading 'The end', that in 2010 / 2011 29 hours were lost in 19 days (6.39%) then the 'service lost entirely and permanently on 23rd April 2010. The service charge year 2010 / 2011 is not the subject of this claim, but this information confirms the rapid deterioration of the hearing system.

50. Having considered the evidence the Tribunal found that the heating service provided in the service charge year 2007 / 2008 was not of a reasonable standard. There were difficulties with the gas spike costs, extensive boiler repairs, and as stated on the Heygate Boiler House History document, the heating hours lost equated to 3.15%, rather than 1.5%, which the Council regarded as the maximum loss they should try to achieve. The Tribunal reduces the charge for heating for 2007 / 2008 by 25% to reflect this.

51. The following sums are reasonable and reasonably incurred and are due and payable by Mrs Ojeikere to the Council in respect of Heating (unless already paid by her).

	£	
2003/2004	169.37	
2004/2005	429.89	
2005/2006	472.91	
2006/2007	529.60	
2007/2008	1,015.01	(25% reduction of the charge of £1,353.35)
2008/2009	388.26	(50% reduction of the charge of £776.52)
2009/2010	434.42	(50% reduction of the estimated service charge for the year ended 31st March 2010 of £868.83)

(C) Care and Upkeep

52. Mrs Ojeikere submitted that there should be a deduction in the charges for care / cleaning and upkeep on the basis that a large part of the estate has been boarded up so costs should have fallen. This applied to 2007 / 2008, 2008 / 2009 and 2009 / 2010.

53. In a letter dated 11th September 2009 the Heygate Rehousing Team provided Mrs Ojeikere with block plans indicating areas of welding screen barriers in place on the Heygate estate. This stated that many residents had moved off the estate and large areas of the estate were screened off. The plans showed which landings were completely clear of residents and had sheet welding to prevent access to those areas.

54. At the hearing Mrs Ojeikere said that she did not dispute that the Council clean the block. However, a large amount of the building is boarded up and less cleaners are needed and the costs should go down. She said that at the time of the hearing there were 8 or 10 residents in the block of 104 flats.

55. Mr Dudhia said that the cleaning was undertaken by an in house contractor, on an arm's length contract. The contract is Borough wide. Time sheets are provided and it was possible to know what work was carried out on which estate and which blocks.

56. Mr Mellish, the Service Manager of Southern Cleaning gave oral evidence. He said that the Communal areas cleaned are all still accessible. He accepted that when whole blocks are taken out of commission this affects the amount of cleaners. When whole landings are boarded up this would have an effect on the hours of cleaning, but this was not the situation in the block. He said that he had visited the block the previous Friday and no areas were boarded off, but even if these had been boarded off recently it would not affect the charge for cleaning which was reviewed annually.

57. The cost for 2007 / 2008 was based on the number of units in the block. In 2007 / 2008 the whole block was open. The hours charged would be adjusted by the Homeownership unit when the block was shut down.

58. Mrs Ojeikere said that this was incorrect as whole balconies in the block were boarded off with spikes and grey metal. The staircases were open and her balcony was not boarded off.

59. Mr Strauss submitted that it was accepted that some of the balconies are shut down. When the actual account for 2009 / 2010 is finalised the charge for this item will be based on the actual number of hours to service the balconies in the block.

The Tribunal's conclusions – Care and Upkeep

60. The particular service charge years in issue for this item were 2007 / 2008, 2008 / 2009 and the estimated charge for 2009 / 2010.

61. The Tribunal finds that areas of the block were not shut off in 2007 / 2008. Mr Mellish explained that for 2007 / 2008 the cost was based on the number of units. The letter from the Council dated 11th September 2009 indicated that there had been areas of welding in the block, however the Tribunal was unable to determine on the evidence provided when the Council commenced this. By the service charge year 2009 / 2010 areas of the block had been boarded off, and the Council has given an assurance that they will make the appropriate adjustments to the actual service charge for 2009 /2010 to reflect this when the actual hours worked are known. The Tribunal finds that taking into account the process of regeneration taking place, and the intended adjustment to be made, the costs incurred in the service charge years

2007 / 2008, 2008 / 2009 and the estimated charge for 2009 / 2010 for this item to be reasonably incurred and / reasonable in amount.

62. The following sums are due and payable by Mrs Ojeikere to the Council in respect of Care and Upkeep (unless already paid by her). The Tribunal has included the figures for 2003 / 2006 inclusive for clarity.

	£
2003/2004	92.47
2004/2005	276.24
2005/2006	291.22
2006/2007	285.02
2007/2008	305.84
2008/2009	524.29
2009/2010	395.02 (estimated charge)

(D) Repairs

63 Mrs Ojeikere, in respect of 2003 / 2004 submitted that she had been charged for a period when she was not a leaseholder.

64. In respect of 2004 / 2005, she submitted that it was unfair to bill leaseholders £6,000 to remove the security entrance doors to the block which she considered made it less secure. She considered that this charge was unreasonable.

65. In respect of the service charge for 2006 / 2007, Mrs Ojeikere referred to flooding of her flat. However compensation had been sought by her through another process for this and for any missed appointments.

66. She submitted generally in respect of the service charge years in issue that the un-itemised repairs printout showed charges for items which did not relate to her flat or the communal parts but to individual flats, for example to the windows of individual flats. She therefore considered that charges for this item were inaccurate and in some cases unreasonable.

67. Mr Rankine provided a witness statement dated 19th March 2010 which he confirmed in his oral evidence. Mr Rankine is employed by the Council's Reactive and Responsive Repairs Service as a Repairs Control Manager. He provided a works order history and notes in respect of the flat. On eight occasions the Customer Services Centre raised repairs relating to water penetration to the flat. Remedial works were carried out to the kitchen of the flat.

68. Mr Rankine said that there was no variation in the service provided to leaseholders across the borough. He referred to the repairs history provided. The vast majority of repairs were raised by the Customer Service Centre. In response to Mrs Ojeikere's concerns, he said that the Council differentiates between tenants and leaseholders, but not between leaseholders on different estates.

69. Mr Strauss submitted that although the definition of the flat excludes external windows and doors, it is the Council, as lessor, who are obliged to repair these as they are part of the fabric of the building under their repairing obligations. The repairs to the fabric of the building included repairs to external windows and doors, including the external windows of the flats.

The Tribunal's conclusions - Repairs (responsive minor repairs)

70. Having considered the evidence and submissions the Tribunal finds that the charge for 2003 / 2004 was for the proportion of the service charge year in which Mrs Ojeikere was the lessee. The Tribunal does not consider that removal of the security doors or the charges for this were unreasonable or unreasonably incurred having regard to the proposed regeneration of the block. The Tribunal accepts the submission of Mr Strauss that works to the external doors and windows form part of the Council's repairing obligations under the lease as they form part of the structure and exterior of the flats and the building.

71. The following sums were reasonable and reasonably incurred and are due and payable by Mrs Ojeikere to the Council in respect of repairs (unless already paid by her).

	£	
2003/2004	10.40	
2004/2005	48.09	
2005/2006	78.29	
2006/2007	62.05	
2007/2008	61.08	
2008/2009	136.58	
2009/2010	133.39	(estimated charge)

(E) Estate Lighting

72. The Service Charge includes the costs and expenses of or incidental to providing the services, which includes the estate lighting.

73. Mrs Ojeikere was concerned that in the estimated service charge year 2005 / 2006 there was a charge for "Electricity Supply" of £42.70 and also a charge for "Estate Lighting" of £30.57. She submitted that there was no obligation for her to pay for "Electricity" under the lease. However the actual service charge breakdown for the year 2005 / 2006 did not include a charge for "Electricity Supply", but only for "Estate Lighting" in the sum of £71.43.

74. Mrs Ojeikere's estimated service charge for 2006 / 2007 included the sum of £24.78 for "Electricity Supply" and £11.51 for "Estate Lighting". Again this was not repeated in the actual expenditure accounts for that year. There was no charge for "Electricity supply", but a charge of £80.95 for "Estate lighting".

The Tribunal's conclusions – Estate Lighting

75. The Tribunal considers that the reference to "Electricity Supply" in the estimated service charge accounts was an error of description, corrected in the actual accounts for 2005 / 2006 and 2007 / 2008, to a single charge for "Estate lighting" in each year.

76. The Tribunal finds that the following sums were reasonable and reasonably incurred and are due and payable by Mrs Ojeikere to the Council in respect of Estate lighting (unless already paid).

	£
2003/2004	2.30
2004/2005	60.46
2005/2006	71.43
2006/2007	80.95
2007/2008	90.26
2008/2009	88.87
2009/2010	97.21 (estimated charge)

(F) Administration charges

77. Mrs Ojeikere submitted that the administration charge of 10% of the service charge costs was unreasonable. She said that she had received late and inaccurate invoices. She considered that the responses to her complaints regarding the lifts were unsatisfactory. She said that often when she called the call centre she was told that the system was down, and was not given a reference number and had had to call back. She had resorted to emailing. She considered that the management services provided were of a generally poor standard and that there should be a reduction in the administration / management charge to reflect this.

78. Mr Strauss referred to paragraph 7 (7) of the Third Schedule to the lease which included in the costs and expenses making up the Service Charge:
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.
He submitted that the Council were entitled to charge for administration at this rate.

79. It was noted that the administration charge of 10% is referred to in the Council's schedules for the hearing as 'management fee'.

The Tribunal's conclusions – Administration charges

80. Having considered the evidence, the Tribunal considers that for each of the service charge years 2003 - 2009 inclusive and the estimated service charge for 2009 /2010, the administration charge / management fee of 10% of the costs of the items making up the service charge is reasonable and

reasonably incurred and is payable by Mrs Ojeikere to the Council (unless already paid).

81. The adjustments to the service charge costs in this decision should be taken into account when calculating the 10% administration charge payable.

Section 20C application

82. Mrs Ojeikere an application for an order under Section 20C of the Act that all or any of the costs incurred, or to be incurred by the landlord in connection with any proceedings before the Leasehold Valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by her.

83. The Tribunal heard submissions from Mrs Ojeikere and Mr Strauss on the Section 20C application. We concluded that it was reasonable in all the circumstances for Mrs Ojeikere to oppose the Council's case and in particular in respect of the lifts and heating charges, which had resulted in a 50% reduction in the charges for 2008 / 2009 and 2009 / 2010, and in the case of the heating charges, a 25% reduction in 2007 / 2008. This had also resulted in the reduction in the administration charge by virtue of the reduction in the principal amount upon which that charge is calculated.

The Tribunal's conclusions – Section 20C application

84. The Tribunal concludes for the above reasons that it is reasonable to make an order under Section 20C.

85. The Tribunal orders that the costs incurred by the Council in connection with these proceedings before the Tribunal are not to be regarded as relevant costs taken into account in determining the amount of the service charges payable by Mrs Ojeikere under her lease of the flat.

CHAIRMAN: A Seifert Anne Seifert

Date: 16th August 2010

Members of the Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr P S Roberts Dip Arch RIBA
Mrs L West JP MBA