



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

Case Reference : BIR/00CS/LIS/2013/0045

Property : 69 Wesley Court
Woodcroft Close
Cradley Heath
West Midlands
B64 6LH

Applicant : Sandwell Metropolitan Borough
Council

Representative : Mohammed Abdul-Jabbar,
Solicitor for the Council

Respondent : Mr Glyn Andrew Davies

Representative : Not represented and barred

Type of Application : Under Section 27A of the Landlord Tenant
and Tenant Act 1985 for a determination of
liability to pay and reasonableness of
service charge

Tribunal Members : Judge T N Jackson
Mr D Satchwell FRICS

Date of Inspection : 17 July 2014

Date of Consideration : 18th March 2015

DECISION

Background

1. This is a decision on an application made to the Tribunal by Sandwell Metropolitan Borough Council, ("the Council"), the freeholder of 69 Wesley Court, Woodcroft Close, Cradley Heath, West Midlands B64 6LH ("the subject property"). The application, dated 14th October 2013 and received by the Tribunal on 16th October 2013, is under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay and reasonableness of service charges. The Respondent is the leaseholder of the subject property.
2. The Application relates to service charge years 2005-13 inclusive. However, as County Court proceedings were taken against the Respondent in 2010 and judgement granted, the Tribunal only has jurisdiction to deal with service years not already considered by a court. By letter dated 25th October 2013, the Council confirmed that it wished to pursue determination for the service years 2010 to 2013 inclusive only.

Barring of Respondent

3. By Order dated 19th February 2014, the Respondent was barred from taking any further part in the proceedings as from 1st February 2014 following failure to comply with the original Directions issued by the Tribunal on 29th November 2013 and Direction 1 of the Directions Order 2 issued on 15th January 2014.

Inspection

4. The Tribunal inspected the property on 17th July 2014 in the presence of Mr Bryan Low, Manager of Caretaking and Cleaning and Ms Ann Millross, Finance Officer, both officers employed by the Council.
5. The development comprises a purpose built fifteen storey block of 93 self- contained flats of traditional construction. There are no shared facilities other than limited communal gardens. There is limited allocated parking on site. The subject property is on the eleventh floor of the block which is served by a lift. A flat on the ground floor is used as a welfare facility and equipment storage for the caretakers and cleaners.

The Lease

6. By Lease dated 9th January 2006 between the Council and the Respondent, the subject property was leased to the Respondent for a term of 125 years from 1st April 2005 at a rent of £10 per annum.
7. Clause 4(c) provides that the Respondent covenants with the Council:-

- a. "to pay annually by way of further or additional rents including an inflation allowance
 - (i) a reasonable part of the cost relating to matters referred to in the Proviso to Schedule B to this lease
 - (ii) a reasonable part of the costs incurred or to be incurred by the Council in respect of service and maintenance charge and for the carrying out repairs to the Property and to the Building and to other property within the repairing obligations of the Council under Clause 6 of this Lease and to the making good of structural defects in accordance with the Notice given to the Purchaser under Section 125 of the Act as amended
 - (iii) a reasonable part of the costs of insuring against risks involving such repairs or the making good of structural defects and a provision for service and maintenance charges as hereinbefore referred to Provided that if the Council shall not insure against such risks then the Purchaser shall pay to the Council a reasonable sum in lieu of such contribution
 - (iv) a reasonable part of the costs of the insurance within the insuring obligations of the Council under Clause 6 hereof including the rebuilding or reinstatement thereof
 - (v)

8. Clause 1 defines "the Building" as "the block of 92 (of which the Property forms part) shown hatched black on the plan annexed to this Lease" and defines "the Property" as "the flat (outbuildings and land if any) more particularly described in Schedule A to this Lease".

9. The Tribunal notes that there is an error in the Lease as it refers to a block of 92 whereas the block is of 93 flats.

10. Clause 6 provides that the Council covenants with the Purchaser:-

- a) to keep in repair (including decorative repair) the structure and exterior of the Property and the Building and the Common Parts (including drains gutters and external pipes) and to make good any defects affecting that structure
- b) to keep in repair any other property over or in which respect of which the Purchaser has rights as specified in paragraph (a) of Schedule B hereto (*ie rights in accordance with Part 1 of Schedule 6 of the Housing Act 1985 –Tribunal's italics*)

- c) to rebuild or reinstate the Property and the Building 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
- d) to insure the Property in the joint names of the Council and the Purchaser and (upon written request) any mortgagee from time to time of the Property and also to insure the Building in their respective full rebuilding costs against the destruction or damage of the whole or part of the Property or of the Building by any of the risks specified in sub-clause 9 (c) hereof and such other risks as may from time to time be reasonably determined by the Council
- e) that subject to the Purchaser duly discharging his obligation under Clause 4(c)(iii) hereof the Council will duly provide and maintain at a reasonable level and so far as practicable the services mentioned in Schedule D hereto and will keep in repair any installation connected with the provision thereof
- f)

10 Schedule D sets out the Council's Services:-

- a. "Caretaking/ Concierge
- b. Communal Area Cleaning
- c. Entry Comm System
- d. Communal Electricity
- e. Communal TV Reception Equipment
- f. Lift
- g. Security Equipment (Cameras etc)
- h. Grass Cutting/ Flower Beds
- i. Housing Management".

The Hearing

- 11 Neither party requested a hearing.
- 12 Following the inspection, the Tribunal issued Directions Order 4, dated 17th July 2014, seeking further information from the Council. The Council provided the information on 11th September 2014. The Tribunal reconvened on 12th November 2014 to consider the matter. The Tribunal issued Directions Order 5, dated 10th December 2014, seeking further information from the Council and this was provided on 16th January 2015. The Tribunal reconvened on 18th March 2015 to consider the matter.

Council's submissions

- 13 The Council submits that the service charges are payable as they fall within the provisions of the Lease referred to above.

- 14 The Council has provided an explanation for and a calculation of the costs of each head of service charge for the service charge years as set out below :-

	2010-11	2011-12	2012-13	2013-14
Caretaking/janitorial	£258.44	£258.44	£258.44	£269.22
Communal area cleaning	£161.83	£207.36	£213.59	£217.85
Entry comm system	£5.00	£81.60	£84.00	£85.68
Communal electricity	£84.53	£84.54	£91.11	£115.84
Communal TV reception equipment	£17.76	£19.00	£19.20	£19.58
Lift service provision	£10.00	£10.00	£10.00	£10.00
Security equipment/CCTV	£102.50	£302.40	£311.52	£317.75
Repairs	£0	£69.02	£71.16	£143.21
Lift maintenance	£33.57	£39.93	£36.64	£21.54
Grass cutting/grounds maintenance	£1.42	£1.42	£1.42	£1.45
Buildings insurance	£54.85	£84.07	£85.49	£102.31
Management	£80.00	£116.55	£119.28	£130.85
Ground rent	n/a	n/a	n/a	n/a
Electro-mechanical equipment	£10.70	£7.71	£9.93	£10.49
	£830.60	£1292.04	£1321.78	£1455.77

- 15 The additional information provided in response to Directions Order 4 included details of invoices for services supplied; internal recharges with detailed breakdown as to their calculation; schedule of completed repairs for each of the service charge years, details of works carried out on repairs which cost over £1000 for the block; confirmation that there were no qualifying agreements covering any of the services provided; details of the arrangements for the lighting of the exterior and communal areas of the block, during day and night; details of the calculation of the service charge proportion charged and confirmation that it was paid in respect of all units in the block and clarification of the annual percentage increase referred to in the Council's statement dated 21st February 2014 regarding caretaking/janitorial, cleaning, and entry communication system.
- 16 The additional information provided in the response to Directions Order 5 included further information regarding the charges for communal electricity, lift maintenance, repairs, caretaking, cleaning and the entry communication system.

Respondent's submissions

- 17 The Respondent did not make any written submissions prior to being barred from the proceedings.

Deliberations

Construction of the Lease

- 18 The property is the only flat in the block of 93 flats that has been bought under the Right to buy legislation. The Council states that it became a leaseholder manager by "default" as a result of that legislation and the leaseholder element represents less than 5% of the total housing stock managed. Processes and procurement are undertaken to minimize the costs to the majority. The Council states that it seeks to recover reasonable charges from leaseholders and there are certain elements of costs that it does not include in its service charges "on the basis of the time taken to sift through thousands of invoices".
- 19 Whilst the Tribunal understands the needs for economies of scale in managing a large housing stock and appreciates the practical difficulties that may arise from keeping separate accounts for what may appear to be a small percentage of housing stock, whether the keeping of such separate accounts is necessary to recover service charges is determined by the terms of the Lease.
- 20 In *Norwich City Council v Redford and others (2015) UKUT 0030 (LC)*, the case involved the costs of a city wide contract for the maintenance of communal lighting of all blocks owned by the Council. The Council, in its service charge, sought to apportion the costs by reference to the rateable value of all the blocks it owned. The Upper Tribunal held that as the lease in the particular case referred to charging proportionately for certain costs by block or by estate, and made no reference to paying a proportion of city wide costs, that the costs did not comply with the lease and were not payable.
- 21 HHJ Robinson stated:-
"Even accepting that a lessee about to enter into the Lease would have been aware that the Council owned many blocks of flats throughout the city, I consider that he would have expressed considerable surprise if told that, on the proper construction of the definition of the Council's Expenditure, the Council could include in it money spent providing communal lighting to other flats in the city outside the Estate or vice versa which is the effect of the Council's construction" [para 20].
- 22 The Tribunal notes that Clauses 4 and 6 of the Lease refer only to the Property and the Building, both of which are defined. The exception is Clause 6 (b) which refers to rights under Part 1 of Schedule 6 of the

Housing Act 1985, namely rights of support, passage of water etc. The Tribunal notes that with the exception of Clause 6 (b) above, the Lease makes no reference to any wider category of property than “the Building” and there is no provision for the apportionment of costs between any wider category of property and the Building.

- 23 The Tribunal determines that in the absence of any express provision in the Lease, and on the normal and ordinary meaning of Clauses 4 and 6, in order to be payable, all costs within the service charge must relate to costs arising from the subject property or the block of flats in which it is situated .
- 24 With the exception of repairs, electromechanical equipment and buildings insurance, the elements of service charge claimed fall within Schedule D of the Lease. The requirement to pay the costs of repairs and building insurance fall within Clauses 4 (c) (ii) and (iii and iv) respectively. The Tribunal determines that electromechanical equipment ie bin room sprinklers, dry risers, valves, fire extinguishers and associated legionella testing falls within repairs under Clause 4 (c) (ii).

Evidence generally

- 25 Through Directions Orders 3, 4 and 5, the Tribunal has attempted to obtain relevant evidence and explanations from the Council as to the basis for its calculations and the service charges claimed. However, the evidence provided, whilst at great length and in substantial , though often irrelevant detail, has often been contradictory and conflicted with previous information provided or has included inaccuracies, including calculations where the resulting figures have conflicted with the amount of service charge claimed. Repeated requests have had to be made for information to be provided or clarified.
- 26 Bearing in mind the already substantial delay in concluding this matter, the Tribunal considers that it is in the interests of justice to determine the matter on the basis of the information already provided, rather than seek further clarification which is likely to result in further contradictory evidence.

Caretaking/janitorial

- 27 The Council states that this charge is based on an employed member of staff providing 24 hours on site for every 7 day period. The Council states that the hourly rate is a composite rate covering call out 24/7. However this appears to conflict with a further statement that 15 hours are allowed for weekdays and 8 hours at the weekend. The costs include provision for 60 hours additional work for ad hoc call out throughout the year and similar for deep cleansing and graffiti removal.

- 28 Despite the conflicting evidence above, there is consistency in the calculations which show a caretaking service at the block of 18 hours per week
- 29 The Tribunal was provided with detailed schedules setting out the staffing costs, hourly rates, costs of supplies and overheads to provide the service. The staff costs are fixed and based on local authority pay scales. The calculation includes a proportion of the costs of 1 Wesley Court which is used as a facility and equipment store. Evidence was provided of call outs.
- 30 The Tribunal considered the detailed breakdown of costs for caretaking across the Council's area, its apportionment to 69 Wesley Court based on the hours spent at the block and the subsequent division by the number of flats in the block, and was of the view that the resulting figure for the service charge for each year was reasonable.
- 31 **The Tribunal notes that the actual service charges claimed for caretaking in the Council's application are below the resulting figures described above and therefore considers the service charges claimed for each year were reasonably incurred and reasonable in amount.**

Communal area cleaning

- 32 This charge is stated to be based on an employed member of staff providing 18 hours per week on site. The hourly rate of £15.94 includes all supervision and materials. However, the number of hours stated conflicts with the detailed calculations which show that 15.36 hours cleaning per week is provided at the block and this was consistent throughout the calculations for each service charge year and the Tribunal therefore prefers this evidence.
- 33 The Tribunal was provided with the same details in relation to cleaning as detailed in paragraphs 29 and 30 above and for the same reason, considers the costs to be reasonable.
- 34 **Again, the actual service charges claimed for cleaning in the Council's application are significantly below the resulting figures arising from the calculations referred to above and the Tribunal therefore considers that the service charge for each year in question were reasonably incurred and reasonable in amount.**

Entry communication system/ Security equipment/CCTV

- 35 This charge is based on the cost of providing closed circuit TV cameras, a control room with staff to monitor the cameras and a concierge service staffed by Council staff. The concierge element was not charged until 2011.

- 36 The block has a fob controlled entry door, an intercom system to a 24/7 concierge service and 24/7 monitoring of CCTV cameras. Not all blocks have each of the three elements. The salary costs are apportioned between the different elements. The concierge costs are split between the entry communication system and the CCTV equipment in a 16%/84% ratio.
- 37 The costs for each element are then divided between the individual blocks according to which of the three elements of the service they receive and subsequently divided by the number of flats in the block.
- 38 This block benefits from all three elements of the service.
- 39 The charge for the entry communication system had been on a historical charge of £5 for many years. From 2011/12, the charge was increased to £81.60 to reflect the actual costs incurred for maintenance and repairs. It has been increased by a percentage year on year. The service is provided by an external contractor.
- 40 The Tribunal has been provided with detailed evidence of the breakdown of costs for providing each of the three elements for each of the service charge years. The service charges invoiced are significantly less than the cost of the provision of the service.
- 41 **From the detailed breakdown of costs provided and from its general knowledge, the Tribunal considers that the service charges for each service charge year for the three elements of the service to a block of this type were reasonably incurred and were reasonable in amount.**

Communal electricity

- 42 The charge for a particular year is taken from the actual costs incurred for the block for the previous financial year. The cost is apportioned to each property by dividing the bill by the number of flats in the block. The Tribunal has been provided with detailed information for each service charge year in question, showing the electricity meter readings for the block. However, with the exception of actual readings on 6th December 2011, 9th March 2011, 12th April 2011 and 15th November 2012, the meter readings are estimates. The Council receives one invoice on a monthly basis for payment for all premises not just the block in question. Despite repeated requests by the Tribunal, it has not been provided with an annual invoice for each of the service charge years for the electricity at the block. The Tribunal notes that the electricity provider is one of the big six providers.
- 43 However, the Tribunal has been provided with schedules showing by month, the actual costs in accordance with the estimated readings

throughout the service charge years. The schedules do not show a full year but extrapolates the information to provide the full year cost.

- 44 The Tribunal noted that in service charge year 2012-3, there was an error in the extrapolation and the correct figure is £101.24 rather than the £91.11. A similar error had been made in service charge year 2013-4 resulting in a correcting figure of £102.97 rather than the £115.84. The Tribunal therefore corrects those figures and makes the appropriate amendments for those years.
- 45 **The Tribunal determines that the service charges for each of the service charges, as amended above, were reasonably incurred and reasonable in amount.**

Communal TV reception equipment

- 46 This charge is based on the actual cost of maintaining/repairing/future replacement of the system. The service is provided by an external contractor.
- 47 **The Tribunal is satisfied that the charges for each service charge year were reasonably incurred and reasonable in amount.**

Lift service provision

- 48 This charge is a historical charge and has remained at £10 for at least 10 years. The block contains two lifts.
- 49 **From its general knowledge of the costs of this service, and its inspection, the Tribunal determines that the charges for each service charge year were reasonably incurred and reasonable in amount.**

Repairs

- 50 From 2009/10, actual repairs for the block were charged in the financial year following the repair. No charge was levied during 2010/11 but the charge was then reintroduced in 2011/12 for repairs carried out in 2010/11 and the process has continued since then. The cost for communal repairs is apportioned to each property by dividing the cost by the number of flats in the block. Repairs to individual flats are attributed solely to the appropriate leaseholder.
- 51 The Tribunal has been provided with detailed information setting out the repairs carried out to the block in each service charge year. **The Tribunal determines that the charges for each service charge year were reasonably incurred and reasonable in amount.**

Grass cutting/Grounds maintenance

- 52 The charge is calculated on a price per square meter of the communal grassed area applicable to the leaseholder ie the total grassed area (613.10 square metres per the Lease) divided by the number of properties in the block.
- 53 The Tribunal has been provided with a copy of the Service Level Agreement of the internal provider, including a specification of the services to be provided across the Council's area and an estimate of the total cost. It has also seen the financial calculation for 6.66 square metres for each of the properties, although the Tribunal notes that this is based on 92 rather than 93 flats in the block. The correct square meterage for 93 flats is 6.59 m.
- 54 **The Tribunal has not seen the actual costs of providing the service for each service charge year, but considers that on the evidence available and from its own general knowledge, and its inspection, that the charges for each service charge year were reasonably incurred and reasonable in amount.**

Lift maintenance

- 55 The charge is based on the actual costs of the external maintenance contractor. Costs vary by year depending on the value of repairs undertaken each year divided by the number of properties.
- 56 The Tribunal has seen the invoice for the total cost of the provision of lift maintenance across the Council's area, together with a breakdown of each service charge year of the number of services carried out to each of the two lifts in the block and the associated costs. The Tribunal has also been provided with details of the cost of repairs to each lift over the service charge years.
- 57 The Council has accepted that clerical errors were made in the calculation of this charge in years 2011/2 and 2012/3 as the cost of lift provision for each year, namely £10, which is separately charged, was not deducted from the charge for lift maintenance. The charges for 2011-12 should have been £40.32 less £10 relating to lift provision and in 2012-13, £36.64 less £10 relating to lift provision. The Tribunal therefore adopts those figures in its determination.
- 58 **The Tribunal determines that the charges for each service charge year, as amended above, were reasonably incurred and reasonable in amount.**

Electro mechanical equipment

- 59 The charge is calculated from costs supplied by contractors for the provision of services for the maintenance and testing of

electromechanical equipment including lightning protection provision, bin room sprinklers and chutes, dry risers, vents, valves and extinguishers and legionella/ chlorination testing.

- 60 The Tribunal has been provided with the contracts, invoices and breakdowns for the separate elements of the services provided under this head and an explanation as to the calculation of the service charge.
- 61 Some services have costs for work carried out at specifically at this block whereas other services are globally costed and then divided by the number of high rise blocks throughout the housing stock. In some services, although the schedules in the contract documentation provide costs for this specific block, the Council has chosen to globalize the costs and divide by the number of high rise blocks across its estate. This approach is not covered under the provisions of the Lease and costs so calculated are not payable. However, where possible from the evidence provided, the Tribunal has considered the costs identified against this specific block and divided by the number of flats in the block. Where there is no evidence of costs for the specific block, and global costs have been charged, those costs are not payable.
- 62 The cost of the lightning protection provision was a fixed fee for this particular block and the service charge resulted from those costs being divided by the number of flats in the block resulting in amounts of £0.65, £0.66, £0.69 and £0.96 for service charge years 2010-11, 2011-12, 2012-13 and 2013-14 respectively.
- 63 The Tribunal was provided with tender documentation, and some invoices, for the maintenance of smoke vents at Wesley Court specifically for the period June 2010 to May 2013 at £400 per annum and from June 2013 to May 2015 at £300 per annum resulting in costs per flat of £4.30 for service charge years 2010-11, 2011-12 and 2012-13 and £3.22 for service charge year 2013-14 respectively.
- 64 Global costs for the maintenance of services including bin room sprinklers, dampers, fire-fighting equipment and dry risers were divided by the number of high rise blocks and, with the exception of 2013-4, (see below), the Tribunal has not been provided with the costs identified specifically for Wesley Court. Therefore service charges for these elements for 2010-11, 2011-12 and 2012-3 do not fall within the terms of the Lease and are not payable.
- 65 The Tribunal has been provided with the contract for the maintenance of services including bin room sprinklers, dampers and fire-fighting equipment from July 2013 to July 2015. This contract set out the exact costs of those services for Wesley Court (£288), which when divided by the number of flats in the block amounts to £3.10 per flat. Despite the figures for the block, the Council globalized the costs and divided by the number of blocks throughout its area

thus making the costs not payable under the Lease. However, as the evidence for the costs to the specific block are available, the Tribunal determines that for 2013-4, the appropriate figure is £3.10.

- 66 The Tribunal was provided with the invoice for 2012-3 for the legionella testing for the block which is carried out biannually at a cost per flat of £1.85.
- 67 **On the basis of the evidence provided, the Tribunal determines that the sums of £6.80, £4.96 £6.84 and £7.28 in relation to service charge years 2011-11, 2011-12, 2012-13 and 2013-14 respectively are reasonably incurred and reasonable in amount.**

Buildings Insurance

- 68 The charge is calculated from the actual costs of providing buildings insurance and varies depending on the contract procured with an external insurance company.
- 69 The Tribunal has been provided with details of the insurance premiums for each of the service charge years for the rebuilding of the block and the application to the premium of a multiplier of .001 plus IPT tax to apportion the cost to the 69 Wesley Court. **The Tribunal determines that the charges for each service charge year were reasonably incurred and reasonable in amount.**

Management fee

- 70 The fee is calculated as the higher, of either 10% of the leaseholder's annual service charge bill (excluding the management fee and ground rent) or a minimum fee approved each year by the Council.
- 71 The costs sought to be recovered by the management fee include the costs of the 2 members of staff who deal with the management of 1035 leaseholders and internal overheads, accommodation, ICT, supplies and administration costs associated with leasehold management. The overheads apply to all leaseholders and are not dependent on whether they have cause to contact the Home Ownership Unit. The minimum fee does not cover the costs incurred by the Council. The minimum fee is increased by £5 per year until it reaches the level of costs as it was felt that a gradual increase was fairer to the leaseholders. In 2010-11, the minimum fee was £80 rising to £95 in 2013-14.
- 72 The Tribunal considers that the method of calculation of the management fee is reasonable. However, as the Tribunal has amended some of the elements of the service charge on which the fee is based, the fee has been amended to reflect the percentage of the

amended figures namely £115.27, £118.95 and £129.88 in relation to service charge years 2011-12, 2012-13 and 2013-4 respectively. The charge for 2010-11 remains at £80, (the Council's approved minimum figure), as that is higher than 10% of £736.70.

- 73 **The Tribunal determines that the charges, as amended above, for each service charge year were reasonably incurred and reasonable in amount.**

Ground rent

- 74 The amount of the ground rent is determined by Clause 1 of the Lease and, as it is not a "service charge", falls outside the jurisdiction of the Tribunal.

Decision

- 75 For the reasons set out above, the Tribunal determines that the following sums are payable for the respective service charge years as set out below:-

	2010-11	2011-12	2012-13	2013-14
Caretaking/janitorial	£258.44	£258.44	£258.44	£269.22
Communal area cleaning	£161.83	£207.36	£213.59	£217.85
Entry comm system	£5.00	£81.60	£84.00	£85.68
Communal electricity	£84.53	£84.54	£101.24	£102.97
Communal TV reception equipment	£17.76	£19.00	£19.20	£19.58
Lift service provision	£10.00	£10.00	£10.00	£10.00
Security equipment/CCTV	£102.50	£302.40	£311.52	£317.75
Repairs	£0	£69.02	£71.16	£143.21
Lift maintenance	£33.57	£29.93	£26.64	£21.54
Grass cutting/grounds maintenance	£1.42	£1.42	£1.42	£1.45
Buildings insurance	£54.85	£84.07	£85.49	£102.31
Management	£80	£115.27	£118.95	£129.88
Ground rent	n/a	n/a	n/a	n/a
Electro-mechanical equipment	£6.80	£4.96	£6.84	£7.28
	£816.70	£1268.01	£1308.49	£1428.72

Costs

- 76 On 21st February 2014, the Council requested that all its costs incurred or to be incurred in connection with proceedings before the Tribunal be regarded to be taken into account in determining the amount of any service charge payable by the Applicant. The Respondent has not made any representations on this request as he was barred prior to the application being made.
- 77 Section 20C of the Landlord and Tenant Act 1985, which allows for orders in such terms to be made, is restricted to applications made by the tenant only and the Tribunal has no jurisdiction to make an order in such terms upon the Council's request.
- 78 In the same correspondence, the Council sought an order for payment of its costs.
- 79 Under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, the Tribunal has discretion to make an order as to costs only where it considers a person has acted unreasonably in bringing, defending or conducting proceedings. Whilst noting that the Respondent was barred on 19th February 2014, the Tribunal considers that the majority of the costs incurred in this matter relate to the requirement for the Council to provide additional detailed information to the Tribunal to clarify its evidence, particularly in relation to the basis of each element of the service charge. For this reason, the Tribunal does not make an order as to costs.

Appeal

- 80 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

Judge T N Jackson
First Tier Tribunal

Date **02 APR 2015**
