FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2015/0667, 0664, 0663, and 0656**
Property	:	**3 Manor Road, 25 Sandford Court, 18 Walsham Close, and 26 Walsham Close, London N16**
Applicant	:	**London Borough of Hackney (Landlord)**
Representative	:	**Ms I. Ferber of Counsel**
Respondent	:	**G & H Limited (1) Scopeville Limited (2) (Leaseholders)**
Representative	:	**Mr A. Glick (Director)**
Type of Application	:	**Section 27A and 20C Landlord & Tenant Act1985, - Service Charges (Court Referral)**
Tribunal Members	:	**Judge Lancelot Robson** **Mr H. Geddes JP RIBA MRTPI**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **6th and 7th July 2015**
Date of Decision	:	**6th August 2015**

DECISION

Decision Summary

(1) In the referred County Court cases, the Tribunal determined that the following sums in respect of service charges are currently payable by the relevant Respondent under the terms of the relevant leases (the Leases), noted below, (which were taken from the Applicant's amended written skeleton argument produced on the second morning of the hearing);

Lease date	Property	Respondent	Sum due
23.12.1989	3 Manor Road N16	G & H Limited	£6,515.24
8.8.2005	25 Sandford Court N16	Scopeville Limited	£6,039.95
30.1.1989	18 Walsham Close N16	Scopeville Limited	£1,514.27
Undated 1993	26 Walsham Close N16	Scopeville Limited	£2,520

(2) The Respondents' counterclaim for set off in this case was declined by the Tribunal in favour of the County Court.

(3) After the Applicant conceded that there was no relevant clause in any of the Leases, the application by the Respondents under Section 20c of the Landlord and Tenant Act 1985 was granted in respect of all the above properties, so that the Applicant's costs of these applications chargeable to the service charge, and payable by the Respondents, are limited to NIL.

(4) The Tribunal also made the other decisions noted below.

(3) These cases are now referred back to the County Court to deal with ground rent, court costs and any other outstanding matters.

Preliminary

1. By various orders in the County Court at Clerkenwell & Shoreditch in Claim Nos. A4QZ688D, A4QZ869D, A4QZ852D, and A7QZ371E the District Judge referred the Applicant's claim for service charges to this Tribunal. The Applicant seeks an order as to the reasonableness of service charges totalling £24,540.84 under Section 27A of the Landlord & Tenant Act 1985 relating to all the service charge years commencing on 1st January 2002 and ending on 31st December 2013, and estimated service charges for the year commencing 1st January 2014, pursuant to the lease dated 21st November 1972 (the Lease).

2. Directions were given by the Tribunal on 27th January 2015 after a Case Management Conference attended by the parties. The Directions noted that the detailed schedule allegedly attached to the Applicants' particulars of claim in the County Court cases were not attached, and were still missing at the conference.

3. At the hearing, the Applicant was represented by Ms I. Ferber, who had only recently been instructed, assisted by Ms S. Ziaie-Fard and with Mr M. Paul, her principal witness, (both from London Borough of Hackney), and an observer. Ms Sarpeh. Mr Glick, a Director, represented the Respondents, assisted by Mr B. Rozner, another Director.

4. The Directions did not require an inspection, but the parties had included a number of photographs in the bundle.

Hearing

5. At the start of the hearing, Ms Ferber produced written submissions to assist the Tribunal (amended on the second morning of the hearing to take account of evidence given on the first day). The Applicant also produced coloured copies of plans attached to the Leases, and Land Registry plans in the bundle at the Tribunal's request during the hearing. Mr Glick also produced several documents during the course of the hearing which were admitted in evidence. There was some argument between the parties during the hearing as to whether the Applicant had included all relevant documents in the bundle. There seemed to be two main reasons for this problem. The Applicant had not included documents for the service charge years commencing on 1st April 2004, 2005 and 2006, as these years had been settled after previous proceedings, although Mr Glick wished to refer to some documents from that period at the hearing. Also Mr Glick (a layman) had erroneously assumed it was not necessary to disclose certain other documents relevant to his case from his file, which he considered should have been in the Applicant's file and therefore discoverable by the Applicant. He also complained that he had not had the opportunity to agree the bundle, and that it had only been delivered on 15th June 2015, so that he had not had sufficient time to check it. The Tribunal dealt with these issues by adopting a flexible approach to the introduction of documents, and only excluded some documents which appeared to raise new issues.

6. Ms Ferber presented her client's case by reference to a list of issues included in the (undated) witness statement of Mr Glick (which stood as the Respondents' statements of case. The Tribunal has considered the issues following the order in Mr Glick's statement, although at the hearing a slightly different order was used. The Tribunal has summarised the evidence and submissions of the parties relating to each property, with its decisions relating to that property following immediately thereafter. Certain issues affecting the whole application, such as costs, are set out at the end of the decision. Ms Ferber confirmed at the Tribunal's request that she had considered all four leases in this case and had noted that the leases for 25 Sandford and 26 Walsham Close allowed the landlord to make improvements at the lessee's expense. The other two leases did not. Also an error had been discovered in the description of the block in the lease for 26 Walsham Close. This appeared to be in the Landlord's favour, but the Applicant had charged the factually correct service charge proportion in any event. The Applicant was prepared to vary the Lease if the Respondent agreed.

7. In response to questions from the Tribunal, Ms Ferber stated that generally the service charge summaries initially received by lessees only gave details of the contributions being charged to the individual lessees from which it was not possible to work out the total amounts charged to the service charge for the block and the estate. A fuller summary would be sent in response to a request from a lessee, but the Tribunal noted

that even with that document, it would be very difficult for a lessee to break down the total amounts charged for any individual head of charge to the amount of his individual service charge for that item, without considerable assistance from the Applicant's staff. There were clearer ways of accounting than the one chosen by the Applicant.

No. 25 Sandford Court

7. Mr Glick raised the following issues:

* a) The Applicant had allocated part of the gardens (more specifically identified as a play area) as a public park, thereby diminishing his peaceful enjoyment, and derogating from the Applicant's grant.

* b) Access to the large gardens at the front of the building had recently been blocked off by the installation of fences and locked gates.

* c) The Applicant rented out garages on the estate. The tenants of those garages used the estate but did not contribute to its upkeep.

* d) Access and parking by vehicles had been enjoyed by residents since the estate was built, but had recently been blocked off by installation of a locked gate. Parking was still permitted providing a fee was paid. He considered this was a parking business.

* e) No. 25 had no access to the lift. The Lease plans showed a second lift but this had never been installed.

At the hearing he clarified that his complaint was that the cost of maintenance of these parts of the gardens, estate and lift should not fall on the service charge.

8. Mr Paul gave evidence following his witness statement dated 1st June 2015, to which Ms Ferber also made submissions, summarised as follows:

a) The terms of the Lease required the relevant Respondent to contribute to the maintenance and upkeep of the estate grounds. The play area was within those grounds. The play area was for the sole use of the estate. He referred to an extract from Hackney Today in the bundle (published by the Applicant) so describing this play area. It was not for the public to use. He also referred to an email from the Parks and Green Spaces Department in the bundle, confirming that the Sandford Court Estate did not form part of the adjacent public park (Allen's Gardens) and was not maintained by that Department. In answer to questions he clarified that the area had been improved by adding additional equipment which had been paid for by a government grant. He did not agree that the context of the relevant section of Hackney Today implied that the area was for public use. Ms Ferber submitted that the play area was part of the grounds of the estate and had never been designated as a public park. The Respondent's complaint was apparently that the play area was used by the public, but it had not provided evidence or proposals about the extent to which the public use of the area might affect charges payable by

the leaseholders. The alternative would be to lock away the amenity area and give out keys, which would be very difficult to supervise in practice. In fact the charges had not increased significantly since the improvements, made in 2009.

b) Brick walls on the estate were replaced with metal fencing following discussions with the Tenant Residents' Association. "Honeycomb walls" were also replaced with metal fencing for safety reasons following an injury to a child. These works were done in February 2015 and were not part of the Applicant's claim. In answer to questions Mr Paul identified the area concerning Mr Glick as a large area of grass on both sides of the road leading to the front of the main building. The Tribunal noted from photographs produced by the parties that the area had been fenced off after 2008, although it was possible to gain access over a low wall in places. Ms Ferber submitted that the area had been fenced off without access to improve the security of the ground floor flats, in consultation with the Tenants and Residents Association. This was a reasonable management decision to take, but it did not release the Applicant from keeping the area clean and tidy. In any event the grassed area was a visual amenity.

c) The rental of garages on the estate was not restricted to residents. The cost of works to the garages was not charged to leaseholders. These costs were covered from the rents. Four garages were currently rented. The garages did not benefit from block or estate maintenance or cleaning services. Mr Paul said that he had reviewed the charges on the Respondent's account and was satisfied that no charge relating to the garages had been charged to the Respondent. The Respondent was liable under the terms of the Lease for costs relating to the estate grounds. Ms Ferber submitted that the garage users did not cause any additional expense to the estate.

d) The car parking facilities on the estate were restricted to residents for a charge of £37.45 per annum under a permit scheme. Visitors could use the facility for a charge of £3.20 for a 10 day pass. The key operated barrier at the Bethune Road entrance was not a recent addition. The parking scheme was not over-subscribed and was operated within the guidelines issued by the Applicant for all its estates. There was another barrier in St Andrew's Mews restricted to use by emergency vehicles. In answer to questions, Ms Ferber submitted that the permit scheme was for the benefit of residents, the charge was only to cover the cost of the scheme, and had been in operation for a long time.

e) Mr Paul had visited the block at Sandford Road and considered that there was access to the lift for No.25. In answer to questions he stated that the property was on the first floor. It was possible to take the lift on the adjacent side of the building to the second floor and then walk down the stairs to the first floor. Ms Ferber submitted that the Applicant was obliged to repair all parts of the block. The use of the lift made by any particular flat in the block did not affect the Respondent's liability to contribute to the cost. She confirmed that the terms of (all) the Leases

did not specify a particular percentage of the costs, but only a reasonable cost. In fact the Applicant's policy across the borough was that if ground floor flats had direct access to the street, and no access to the common parts, the Applicant did not charge them for maintaining the lifts. No 25 was on the first floor and had a key fob for accessing the common parts.

9. Mr Glick's original Defence in the County Court was brief and lacked detail. He had denied generally the Respondents' liability to pay the charges demanded, and put the Applicant to "strict proof" of its charges. He also had made a request for further and better particulars of the claim on 27th October 2014, which in fact demanded to see all the Applicant's accounts, invoices and internal correspondence. His witness statement clarified the issues which concerned him, although he noted that he had not seen all the information he had demanded at that stage. He stated at the hearing that he was not generally querying the costs of the work done, but his liability to pay. Also he was not in a position to suggest alternative figures because he was not privy to the works and services carried out.

10. Replying to Mr Paul's points Mr Glick submitted;

8a) he was not querying the costs, but whether he should pay for the extra cost of maintaining it, or the extra cost of work to the rest of the estate caused by the public passing through it. He wanted the Tribunal to decide on an appropriate amount.

8b) the fencing was the subject of a major works contract for which the Respondent was expected to pay. If the area was closed off, the Respondent should not have to pay for it. He did not believe that the fencing gave the ground floor residents greater security as it was possible to reach their flats from another direction. He could not walk in that area. Also at 3 Manor Road, the Applicant had blocked off access in similar circumstances, and handed out keys.

8c) the garage users should contribute towards the maintenance and cleaning of the roadways.

8d) he considered that he had had to pay for the signs for the permit system. It was in fact unnecessary to control the parking in Sandford Court. The lessees should not have to pay for maintaining and cleaning the roadways, the people who parked there should do so. He was unable to give details of the notice board he complained he had been wrongly charged for.

8e) he considered that the route suggested by Mr Paul was convoluted, and he doubted if his key fob would allow him access to the part of the building containing the lift. He understood that some units on the ground floor did not have to pay for the lifts. He did not accept Ms Ferber's explanation of the Applicant's policy on charging for the lifts.

11. The Tribunal considered the evidence and submissions. Unusually, the Lease did not state a specific percentage contribution for the block and

the estate from the Respondent, but required a contribution set by the landlord, acting reasonably. Dealing with the play area, the Tribunal noted that questions of Quiet Enjoyment and Derogation from Grant are beyond its jurisdiction, but it noted that the Fifth Schedule to the Lease (Paras. 1 and 7) allows the Applicant to make rules from time to time relating to the use of the common parts and estate. The Respondent appears to have no unrestricted right to use any particular part of the estate, apart from those specific easements granted in the Lease, which makes use of the amenities subject to regulation by the landlord. Moving on, there was no evidence that the area had been formally designated as a public park. Nevertheless the area was noted as an "estate play area" in the publication "Hackney Today", which was for general public consumption. It seemed that both parties had missed the main point. It was clear from the photographs that anyone could enter and use the area, and might, as Mr Glick submitted enter it via the estate. By any reasonable definition, the park was open to the public, even if it was not designated as such, or looked after by the Parks Department. However there was no evidence of the extent of public use of the "park". Indeed the photographs apparently showed no one using the "park" at all. The Respondent's submission was impossible to quantify as it stood. Mr Glick could offer no evidence on that point. On the one hand some extra undefined (but small) extra cost might be caused by use of the area by non-residents, but on the other hand the most likely people to benefit from the play area improvements were the residents of Sandford Court. There was no cogent evidence of any alteration of the costs one way or the other. The capital costs of the improvements had been paid from public funds, and thus it was not unreasonable for the maintenance to be paid for by the people most likely to benefit. The improvements enhanced the attraction of the area, even for investor leaseholders. The Tribunal decided that the Applicant had acted reasonably both in securing the funding for the play area, and in deciding that the leaseholders of Sandford Court should pay for the maintenance of this facility.

12. Relating to the fencing off of the grassed area in front of the main building, the Tribunal noted that the Applicant's stated reasons were that it wished to improve security for the ground floor residents, and that it had been encouraged by the Tenants and Residents association.[It was not clear to the Tribunal whether the costs under review included the costs of this work, nevertheless the Tribunal has considered the matter on the basis that some costs have been charged to the Respondent. In addition to his submission he should not have to pay for maintaining areas to which the lessees of No 25 had no access, he stated in final remarks that he feared the Applicant intended to redevelop the area. The Applicant had no reasonable opportunity to reply to this last point, but the Tribunal decided that the matter was beyond its jurisdiction in any event. The Tribunal considered that the Lease terms were the correct starting point. By clause 3 the Respondent agreed to pay the estate costs as defined. The area was part of the estate. The Respondent had no specific rights over any part of the estate (in contrast to the block). The Tribunal also accepted Ms Berger's submission that the area enhanced

the visual amenity of the block. Thus the Tribunal decided that it was not unreasonable for the Applicant to require the Respondent to contribute towards the maintenance costs.

13. Relating to the garages, again the Respondent's objection lacked supporting evidence of the additional costs caused by use of the garages. Although the Applicant admitted that non-residents could rent garages, the facility was most likely to be attractive to residents. Again the Tribunal decided there was no satisfactory way to quantify what additional cost (if any) was caused by the garage users. There was no evidence of extra wear and tear. The Lease (see above) gave power to charge. It was not unreasonable for the Respondent to pay its contribution to the cost of maintaining the estate roads without deduction.

14. Relating to point 8d, Mr Glick complained about the cost of signs, but it was a rather vague submission with little useful evidence. It was not clear to the Tribunal that the Respondent had been charged for the signs relating to the car parking control. The Applicant's evidence was that the scheme was self-financing. The Tribunal considered that most residents in London would consider that a permit scheme which restricted parking to residents and their visitors an advantage. Again, the Lease gave no specific rights to the Respondent over the areas concerned, but did allow the Applicant to regulate access. It was not unreasonable to restrict parking to residents, and the cost of the scheme to permit holders was very modest. Also, those who parked paid for the scheme, rather than the general body of leaseholders.

15. Relating to point 8e), the Tribunal had some sympathy for the Respondent. The suggested route via the lift was indeed convoluted, and of minimal benefit to the flat. Nevertheless, the terms of the Lease required the Respondent to pay for the lift. The concession made by the Respondent to ground floor lessees with no access to the internal common parts was not unfair to the Respondent as its flat was on the first floor, and the Respondent appeared entitled to access to the internal common parts and lift through the key fob scheme. The Tribunal decided that the lift charge to the Respondent was reasonable.

18 and 26 Walsham Gardens

16. The Respondent's case issues were:

* a) The Applicant rented out shops and garages on the estate, but these properties did not contribute to its upkeep. The main damage to the roadways and footpaths came from these users as they had lorries coming in on almost a daily basis.
* b) The Applicant had incorrectly apportioned the amount being charged per flat. Although the Applicant claimed it had now rectified this matter, it had not credited the service charge correctly.

17. The Applicant submitted that the expenditure on the garage and commercial units was not charged to lessees. The garage and commercial users did not cause any additional expense. The area was part of the

estate grounds and therefore the Respondent was liable to contribute under the Lease. The commercial units on Oldhill street adjoined the estate, and while they had rights to enter only for the purpose of loading and unloading vehicles, they had no reserved parking spaces on the estate. Clause 3 of the Leases required the Respondent to pay the maintenance charges for the estate. Ms Ferber acknowledged at the start of the hearing that there was an error in the description of the block in the Lease for No 26. (see above). However the Respondent had worked out its calculations on the correct basis, notwithstanding the error. The Applicant was not prejudiced.

18. The Respondent submitted that he did not know if the account for no.26 had been credited, or about the incorrect calculations. At the hearing Mr Glick considered that if the previous lessee had been overcharged the Respondent should get the credit for it.

19. The Tribunal spent some time considering the maps and photographs produced by the parties at the hearing. Mr Glick produced a map (not in the bundle) which suggested that some of the estate roads near the shops had been resurfaced recently. It seemed from the evidence that this work was to be included in a charge for a major works contract which was not claimed in this application. The Tribunal accepted that the Lease entitled the Applicant to charge the lessee for upkeep of the estate roads. The Tribunal decided that the Respondent had produced no cogent evidence to support its submissions that the commercial units were a major cause of wear and tear on the estate roads, or point to any accounting evidence on the point. It was not for the Tribunal to carry out a forensic examination of the accounting evidence. The Respondent needed to identify the evidence supporting its assertions, and apparently had not done so. The Applicant had produced evidence that the error relating to the calculations for No 26 had been identified and apparently rectified. The Respondent's submission relating to errors in charges made to the previous leaseholder was extremely vague. Again there was no evidence to support it, and the point was made too late for the Applicant to have a reasonable opportunity to answer it. The Tribunal concluded that all the charges claimed from the Respondent in the application relating to both properties were reasonable and payable to the Applicant.

3 Manor Road

20. The Respondent raised the following:

a) The Applicant had previously issued proceedings in November 2006, for sums due in 2004/5 and 2005/6, which had been withdrawn after an agreement was reached. Shortly after the Applicant demanded sums which had been subject to the agreement, and which had been paid. It had taken until 2011 to get the matter sorted out. Mr Glick submitted that as a result the account had got out of control.

b) Access to gardens at the side of the building had been blocked off by the installation of fences and locked gates.

c) The Applicant had charged for works relating to a piece of locked off land. The Applicant had agreed to remove these charges at the meeting on 24.2.2015.

d) The flat had been damaged by the flat above. The Respondent had not fully reimbursed him for cost of the damage

21. Relating to paragraph 20a), the Applicant submitted that the sum of £1,099.52 had been credited to the Respondent's account on 23.5.07, being the settlement payment by the Respondent for the service charge years 2004/5. A further £405.75 was credited to that account on 31.12.07. The Applicant therefore no longer pursued those amounts. There had been a significant disagreement between the parties over the meaning and effect of the settlement relating to 2004/5 and 2005/6, and particularly 2006/7. This had been resolved in the Respondent's favour in 2011. Relating to 20c) this matter had been resolved in the Respondent's favour recently.

22. Relating to 20b), the Applicant submitted that the area (which is a small plot behind 1, 3, and 5 Manor Road easily accessible to the public) had been fenced off to stop fly tipping and access by non-residents. All residents had been given a key to the padlock of one of the two gates in 2008. A third party was thought to be cutting the lock and replacing it with another padlock. Whenever this was discovered (in 2008, and again earlier this year, after Mr Glick had raised it in the Defence) the unauthorised padlock had been replaced and keys given to the residents. No one had reported this problem since 2008.

23. Relating to 20c) the Applicant submitted that the land concerned belonged to London Power Networks. The Applicant had cleared some vegetation from this area. The cost (£124.42) had been charged to the estate accounts in error. The charged item had been removed from the Respondent's account on 26th January 2012. The Applicant was endeavouring to ensure works in that area were not charged to leaseholders.

23. Relating to 20(d), the Applicant submitted that an allegation of entitlement to damages was being made, but was beyond the Tribunal's jurisdiction.

24. Relating to 20a) and 20c) the Respondent submitted that the Applicant had not given the necessary credits in good time, and had failed to engage constructively with the Respondent, thus the matters had taken years to sort out.

25. Relating to 20b) the Respondent gave evidence that there were sheds in that area, which occupants of 1, 3, and 5 used. Mr Glick had obtained a key from the previous owner, but then the lock was changed. He had had to press for it. He had been locked out for two years. He should not have to pay for that period.

26. Relating to 20d), the Respondent stated that the Applicant had already made a part payment to him after the matter had been discussed.

27. The Tribunal considered the evidence and submissions.

a) Relating to Item 20a) the Tribunal decided that the issue had been rectified, although it had taken considerable time. However as the matter had been dealt with, no further action had apparently been requested by the Respondent, or was necessary.

b) Relating to Item 20b), the Tribunal decided that while it might accept that the Respondent had been locked out for two years, the prevention of fly tipping so close to his property was a significant benefit. Also, it appeared that no one had reported the matter to the Applicant, until after proceedings commenced. Mr Glick's evidence at the hearing was that he thought the Applicant's staff still tended it, but this was rather vague, and the Tribunal considered that it might be that they were gaining access through the other gate. The Tribunal did not consider this latter point was conclusive one way or the other. On balance, the Tribunal decided that the full charge was reasonable and payable.

c) Relating to Item 20c), the Tribunal followed its decision in 20a) and again decided that despite the delays, the charge was still reasonable and payable.

d) Relating to Item 20d) the Tribunal stated at the hearing that while it had jurisdiction to decide matters of set-off, it would not do so unless the claim related directly to the service charge. In this case, it appeared that liability had been accepted by the Applicant, and that the amount payable may, or may not, have been agreed. In any event the matter related to a breach of contract or a tortious claim, but not Section 27A. The Tribunal decided it had no jurisdiction to decide the matter, which would be best decided by the County Court.

Costs

28. The Applicant stated that all the Leases contained a provision (paragraph 15 or 16 of Seventh Schedule) for recovery of legal costs incurred in respect of a notice under Section 146 of the Law of Property act 1925. The Tribunal pointed out that Section 146 was not an issue relating to service charge costs, and Ms Ferber agreed that there was nothing else in the Leases which allowed for recovery of the Landlord's costs through the service charge. She maintained there had been a reference to forfeiture in the letter before action and that a Section 146 notice had to be founded on a finding of liability on the lessee. The Respondent noted that no mention had been made of a Section 146 claim in the County Court proceedings. The Tribunal decided that costs under Section 146 were not before the Tribunal, although it might form the basis of a separate application.

29. The Respondent wished to make a Section 20C application. He considered that the Applicant had failed to engage relating to many issues for far too long, as long as two years. The Applicant had not been ready to discuss issues at the meeting after the Directions. The matter could have been settled then. Mr Glick considered that Mr Paul had attacked him personally in evidence by suggesting he had refused to provide information about his case at that meeting. He noted that the

Tribunal had expressed concerns at the beginning of the hearing about the form of the accounts usually sent out to leaseholders.

30. Ms Ferber submitted that it was difficult for an Applicant where 3 separate sets of accounts had been requested over periods of 9 or 6 years, to anticipate what the leaseholder would say. The Respondent had not engaged with the documents since the request for further and better particulars in the Court. The Respondent did not take the opportunity to make a statement in Reply, although the Directions allowed one. The Respondent had seen the Applicant's statement of case but did not raise any further queries.

31. The Tribunal considered that the Respondent had on occasions been tardy in providing documents for discovery, and had been quite vague in some of its statements and evidence. However the Applicant had been very slow in engaging with the queries raised by the Respondent, even after proceedings commenced. Its accounting documentation for lessees appeared to make it impossible for the lessees to work out the final service costs without referring to other documents, only available on request. The Tribunal considered that the Applicants should have made engaged more effectively prior to commencing proceedings. It decided to make an order limiting the landlord's costs of the applications to NIL under Section 20c.

Next Steps

32. All amounts (if any) which have not been credited to the Respondents' accounts, and all amounts found payable to the Applicant, shall be credited or paid within 21 days of the date of this decision.

33. This case shall now be referred back to the County Court to deal with outstanding matters.

Chairman: Judge Lancelot Robson

Dated: 6th August 2015

Appendix 1

Landlord & Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

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

Section 19

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

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

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Landlord and Tenant Act 1985 Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

(2).....

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances.
