10516

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2014/0151**
Property	:	**30 Roche House, Beccles Street, London E14 8HE**
Applicant	:	**London Borough of Tower Hamlets**
Representatives	:	**Mrs A Kokoruwe and Mrs I Akhigbe, in-house solicitors**
Respondent	:	**Mr M Rahman**
Representative	:	**In person**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**Mr B Negus (Caretaking Team Leader), Ms R Harper (Service Charge Advice Officer), Ms F Ogbonnah (Leasehold Consultation Officer), Mr G Brown (Leasehold Manager) and Mr P McCardle (of 76 Roche House)**
Tribunal Members	:	**Judge P Korn (chairman)** **Mr T Johnson FRICS** **Mrs L Hart**
Date and venue of Hearing	:	**1st and 2nd December 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**5th January 2015**

DECISION

Decisions of the Tribunal

(1) The first seven items listed in the Particulars of Debt attached to the County Court claim are not payable due to the Limitation Act applying to those items. In aggregate those items amount to £8,125.39.

(2) The claim in respect of service charges for the years 2009/10 and 2010/11 is disallowed in part to reflect the fact that the claim includes the estimated charges rather than the lower actual charges for those years. The difference between the estimated and actual charges for those two years in aggregate amounts to £211.62.

(3) The remainder of the amount claimed is payable in full. The claim was originally for £16,578.03, and by virtue of the points set out in (1) and (2) above the amount payable is reduced by £8,337.01. The total payable is therefore £8,241.02.

(4) The Tribunal notes that no cost applications have been made.

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

Introduction

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

2. The County Court claim was for service charge arrears of £16,578.03 plus County Court interest and costs.

3. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") is dated 25th July 1994 and was made between the Applicant (1) and HA Miah and MS Rahman (2). The Respondent is the current leaseholder.

4. The Applicant employs an ALMO, Tower Hamlets Homes ("**THH**"), to manage its leasehold properties.

5. During the course of the hearing a number of different points were raised, but only those points considered most relevant and/or to have some potential merit will be mentioned.

Preliminary issues at hearing

Late evidence

6. At the start of the hearing the Respondent sought permission to bring in evidence in the form of some documents which he had brought with him to the hearing. His explanation for not having disclosed this documentation earlier was that he had been ill prior to the hearing, and in support of this he produced a copy of a letter from a doctor dated 25th November 2014 stating that the Respondent had been diagnosed with mixed anxiety and depressive disorder.

7. The Tribunal's directions required the Respondent to send a statement to the Applicant setting out the items in dispute and the reasons for each item of dispute by 14th July 2014 and for the Applicant to respond by 4th August 2014. By 30th July 2014 the Respondent had still not complied with the direction applicable to him, whereupon the Applicant served on him a statement of case without having had the benefit of seeing the Respondent's detailed case.

8. We note that the Respondent's defence to the Applicant's County Court Particulars of Claim is dated 19th August 2013. That defence contains a number of assertions in respect of which it is stated that evidence was to follow. However, the Respondent has not prior to the date of the hearing provided any such evidence and has manifestly not complied with the Tribunal's directions.

9. We note the medical evidence provided by the Respondent (including oral evidence and copies of other letters), but in our view this does not demonstrate that he was so incapacitated over the whole of the relevant period as to be unable to come even close to complying with directions, nor that he was unable at any time since 19th August 2013 to prepare the evidence that he had already stated in his formal County Court defence was to follow.

10. For us to allow a substantial amount of evidence to be submitted on the day of the hearing would be very unfair on the Applicant, as it would not give the Applicant an opportunity to consider that evidence, to consult internally on it and to take advice if necessary. To adjourn the hearing for a sufficient period to enable the Applicant properly to consider the new evidence would in our view also be unfair on the Applicant, as it would lead to additional expense and delay and significant inconvenience to the Applicant. It would also constitute a burden on the Tribunal's own resources. In addition it would allow the Respondent to escape the consequences of a major and unjustified failure to comply with directions.

11. Taking all of the above matters into account and in the light of the overriding objective in paragraph 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Rules**") and paragraph 18(6)(b) of the Rules, we hereby exclude this evidence on the basis that it was not provided within the time allowed by a direction and that it would be unfair to admit it in evidence.

Limitation issue

12. At the case management conference a preliminary issue was identified with regard to the application or otherwise of the Limitation Act 1980 ("**the Limitation Act**"), namely whether under the Limitation Act those service charges forming part of the claim which were more than 6 years old were irrecoverable.

13. It was common ground between the parties that the service charges which were more than 6 years old were the first seven items on the sheet headed "Particulars of Debt" attached to the County Court claim, the invoice dates ranging between 7th November 2005 and 1st April 2007. The amount claimed in respect of these invoices (being the amount stated to be outstanding) totals £8,125.39 in aggregate.

14. In written and oral submissions the Applicant relied on sub-section 29(5) of the Limitation Act to argue that the Limitation Act did not apply to these charges. The Applicant did not quote the text of sub-section 29(5) in written submissions and nor did it provide the Tribunal with a copy of the text at the hearing. Sub-section 29(5) reads as follows:-

"Subject to subsection (6) below, where any right of action has accrued to recover –

(a) any debt or other liquidated pecuniary claim; or

(b) any claim to the personal estate of a deceased person or to any share or interest in any such estate;

and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it the right shall be treated as having accrued on and not before the date of the acknowledgement of the payment."

Sub-section 29(6), to which sub-section 29(5) cross-refers, reads as follows:-

"A payment of part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt."

15. The Applicant's argument, presumably relying on part (a) rather than part (b) of sub-section 29(5), was that there was a fresh accrual of the cause of action as the Respondent acknowledged the debt in his letter of 24th January 2012 to Mr Billy Watkinson of Home Ownership Services.

16. The Respondent's response was that the letter of 24th January 2012 referred to above was referring to payment in respect of the 2011/12 service charge year and did not constitute an acknowledgment of any debt in respect of earlier years. In his view, as the first seven items on the Particulars of Debt were more than 6 years old they were caught by the Limitation Act.

17. We have considered the Limitation Act and the contents of the Respondent's letter of 24th January 2012. Section 5 of the Limitation Act states that an action founded on simple contract shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, but the Lease is not a simple contract as it was executed as a formal deed. Sub-section 8(1) states that an action upon a specialty shall not be brought after the expiration of 12 years from the date on which the cause of action accrued, and the word 'specialty' has been understood by case law to include documents executed as a formal deed, which would include the Lease. However, sub-section 8(2) states that sub-section 8(1) does not affect any action for which a shorter period of limitation is prescribed by any other provision of the Limitation Act.

18. Section 19 states that *"no action shall be brought ... to recover arrears of rent ... after the expiration of six years from the date on which the arrears became due"*. Under the Lease the service charge has been expressly reserved as rent and therefore in our view section 19 applies to the service charge. Therefore, subject to any other considerations, the limitation period for an action to recover the service charge is 6 years.

19. We turn now to sub-section 29(5), which is the sub-section on which the Applicant relies. The relevant part states that *"where any right of action has accrued to recover ... any debt or other liquidated pecuniary claim ... and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it the right shall be treated as having accrued on and not before the date of the acknowledgement of the payment."* This is subject to sub-section 29(6), the relevant part of which states that *"A payment of part of the rent ... due at any time shall not extend the period for claiming the remainder then due."*

20. The Applicant argues that the Respondent acknowledged the Applicant's claim in his letter of 24th January 2012. The relevant parts of that letter read as follows:- *"Please note there is a dispute over the service charge... The letters from your colleague ... do not provide*

complete answers to my queries ... despite the dispute I continue to pay each month ... I wish to complain about your colleagues whom despite the on going dispute have contacted my mortgage provider and have caused much distressed and problems". We do not accept that this constitutes an acknowledgment of the claim; on the contrary it seems to us to constitute a clear statement that the claim is disputed. At the hearing Mrs Akhigbe argued that simply mentioning the Applicant's claim in a letter constituted an acknowledgment of it, but in our view this cannot be correct. If that were to be the case then the period for making a claim would be extended merely by a person denying in writing that the sum in question was payable.

21. As regards the possibility that part payment itself can extend the period for claiming the remainder, sub-section 29(6) states that this is not the case in respect of rent and therefore in our view, by extension, in respect of sums reserved as rent. In any event, the letter was written in 2012 and the limitation issue relates to sums claimed in respect of the period 2005 to 2007. On the basis of the evidence provided, our view, on the balance of probabilities, is that the payments referred to in the Respondent's letter referred to payments due in respect of a time period close to the date of the letter and not as far back as 2005 to 2007.

22. In conclusion, we consider that section 19 of the Limitation Act applies and that section 29(5) does not assist the Applicant on the facts of this case. Therefore no action can be brought to recover service charge arrears after the expiry of 6 years from the date on which the arrears became due. Therefore the Applicant cannot make a claim in respect of the first seven items on the sheet headed "Particulars of Debt" attached to the County Court claim, the amount of which totals £8,125.39 in aggregate.

Applicant's case on main service charge issues

23. In written submissions the Applicant states that the Respondent has failed to send to the Applicant a statement setting out his position as required by the directions, which has meant that the Applicant has had to present its case without knowing the details of the Respondent's concerns. The Applicant's written statement sets out the relevant service charge provisions on which it relies, discloses a statement of the service charge account, states that its method of apportioning service charge is fair and proportionate, and submits that the service charges are entirely reasonable and proportionate to the services being provided.

24. The hearing bundle also contains a series of witness statements (to be referred to below), service charge certificates and breakdowns and copy correspondence regarding major works.

Witness evidence

Mr Negus' evidence and cross-examination

25. Mr Negus is the Caretaking Team Leader for THH and his witness statement describes the caretaking/cleaning services provided. In response to the Respondent's complaints he states that the cleaning rota for the block covers daily cleaning of the lifts and bin rooms and external areas and weekly cleaning of the landings and staircases, as well as daily spot cleans. The cost of caretaking is recharged to leaseholders based on hours spent.

26. In his statement and at the hearing Mr Negus accepted that there is antisocial behaviour within the block and that this had caused problems. Improvements had been tried but vandalism had negated much of the benefit. He said that people urinate on the stairs and in the lift and that there had been verbal and physical abuse. CCTV and dog patrols were used, warnings had been given to known culprits and one ASBO had been issued, but there was a limit to what THH could do to combat antisocial behaviour.

27. In cross-examination the Respondent put it to Mr Negus that due to the number of buildings that he supervised he must be very stretched, but Mr Negus disagreed.

Ms Harper's evidence and cross-examination

28. Ms Harper is a Service Charge Advice Officer for THH and her witness statement contains a brief explanation of the various categories of service charge as well as an explanation of the method of apportionment, namely gross rateable value ("**GRV**"). The witness statement also contains an explanation of how THH communicates with leaseholders.

29. In cross-examination the Respondent asked Ms Harper how she knew what the GRV was based on. She was unable to explain but said that information was available online. In relation to the hours charged for cleaning, she said that about 30% of the time was spent travelling between blocks and 70% of the time was spent cleaning but that no timesheets were available. The hours charged for cleaning were calculated as a result of a time-motion study. Regarding whether it was fair to charge to leaseholders the whole cost of maintaining the walkways within the estate when they could also be used by the general public, Ms Harper thought that it was.

30. The Respondent noted that administration/management costs were divided equally amongst all leaseholders within the housing stock managed by THH and questioned whether this was fair. Ms Harper felt

that it was; she did not think that THH could penalise people for living in a block which was more labour-intensive to manage.

Cross-examination of Mr Brown

31. Mr Brown, the Leasehold Manager, had not provided a witness statement and therefore was not permitted by the Tribunal to give witness evidence. However, Mrs Kokoruwe and Mrs Akhigbe stated that they were nevertheless happy for him to be cross-examined by the Respondent.

32. In cross-examination the Respondent asked Mr Brown to clarify certain points in relation to management and administration charges, including terminology. Mr Brown said that "Administration Charges" had become "Leasehold Management" as from 2011/12 and that "Management Charges" had become "Housing Management" from 2009/10. Regarding the use of GRV to apportion service charge, in response to the Respondent's contention that bigger flats should not pay more than smaller flats if their use of services was the same, he said that the First-tier Tribunal had previously ruled this to be a fair method of apportionment.

33. Regarding repairs the cost of which could be covered by insurance, Mr Brown explained the insurance excess position. Regarding certain works to dry risers which cost £6,239.52, the Respondent asked Mr Brown to say whether those works had been necessitated by vandalism. Mr Brown said that he assumed that this was a general repair and not triggered by vandalism, as he would expect the summary to specify that vandalism had been the trigger if that had been the case. The Respondent objected that none of the items on the list had been described as vandalism-related and yet Mr Negus had said that there had been a lot of vandalism.

Ms Ogbonnah's evidence and cross-examination

34. Ms Ogbonnah is a Leasehold Consultation Officer for THH and her witness statement contains a brief explanation of the section 20 consultation process that took place in respect of the relevant major works. At the hearing she said that the consultation requirements were followed completely and that there was no record of complaints by the Respondent.

35. In cross-examination the Respondent asked why leaseholders had not been given the chance to name their own contractor. Ms Ogbonnah said that this was because Schedule 2 of the Service Charge (Consultation etc) (England) Regulations 2003 applied. The Applicant had given notice to leaseholders on 19th October 2009 of its proposal to enter into a qualifying long term agreement ("**QLTA**"). Having gone

through the required consultation process in relation to that QLTA and entered into the QLTA it was entitled to go through a more limited consultation exercise in respect of specific works to be carried out pursuant to the QLTA.

36. The Respondent said that he did not recall receiving the notice dated 19th October 2009 referred to above. Ms Ogbonnah, with the Respondent's agreement, checked the Applicant's records prior to the start of the second day of the hearing and produced a written list of recipients of that notice which included the Respondent in that his notice was not described on the list as undelivered.

37. The Respondent queried the gap between the consultation and the start of the works, but Ms Ogbonnah said that this did not matter (in terms of the validity of the consultation) as long as the specification and cost had not changed. In response to another question from the Respondent Ms Ogbonnah said that when the works were completed the Applicant's clerk of works looked at the works done and at the estimated and actual costs, and a check was also carried out by the Applicant's quantity surveyor. In fact, in this case the actual cost came out cheaper than the estimated cost and the Respondent was credited with the difference.

Respondent's response on main service charge issues

38. In relation to estate cleaning and horticulture, the Respondent objected that the map site included a public park and he did not feel that he should have to pay towards its upkeep.

39. In relation to block cleaning, the Respondent felt that the charges were too high. In his view there had been a management failing in preventing vandalism, leading to unreasonably high cleaning charges. He did not provide any comparable evidence but said that he should only be paying 15 to 20% of the block cleaning costs based on the number of days per month on which he considered the block to be acceptably clean.

40. As regards caretakers' wages, he believed that caretakers were each being paid about £68,000 a year. Asked how he arrived at this figure he said that it was an assumption based on the presumption that most of the cleaning costs were salary costs.

41. In relation to block and estate repairs, again the Respondent felt that the charges were too high due to the Applicant failing to prevent vandalism, and therefore again he should only be paying 15 to 20% of the charges.

42. Regarding the management fees, the Respondent considered GRV to be an unfair method of apportionment. He also said that the management fees should be reduced because of the Applicant's failure to deal adequately with vandalism.

43. On being invited by the Tribunal to do so, the Respondent also referred the Tribunal to what he considered to be the key letters of complaint from him to the Applicant. Reference was also made to a petition dated May/June 2010 signed by about 60 tenants and leaseholders complaining about certain specific issues.

Applicant's further comments

44. Mrs Kokoruwe referred the Tribunal to certain letters from the Applicant to the Respondent responding to complaints made by him and explaining various issues.

45. Regarding the cleaning, Mrs Kokoruwe said that cleaning charges were actually going down year on year. Also, the cleaner now only deals with two blocks and is therefore less stretched than previously.

46. Regarding the caretakers' salaries, Mrs Kokoruwe and Mr Brown referred the Tribunal to the relevant section of a service charge Calculations & Backing Information document in the hearing bundle which sets out the aggregate amount paid to caretakers in respect of the whole property portfolio. On the basis that there were 150 full-time and 2 part-time caretakers they calculated that caretakers were paid an average of £27,500 per year.

47. In relation to vandalism, the Applicant has an antisocial behaviour policy in place and an antisocial behaviour officer and regularly refers matters to the police. As regards pursuing insurance claims or pursuing individuals in respect of acts of vandalism, this was difficult in the absence of eyewitness evidence as to who the culprits were. However, if the Applicant believed damage to result from vandalism it did not in practice charge leaseholders more than £50 each (the equivalent of the insurance excess) even if the cost was not in fact recoverable from the insurers.

48. Regarding management, Mr Brown said that he had been to the block and had seen the challenges. Items are regularly dumped outside and in the common parts, and the block often becomes dirty due to the activities of individuals. The Applicant uses a yellow and red card system for culprits and has fined people. As regards obtaining ASBOs, this was not such a simple matter as there was often insufficient evidence as to who the culprits were, but reported cases of antisocial behaviour were always investigated. The Applicant had done its best to

manage the problem, but ultimately it was not responsible for the actions of others.

49. Regarding the petition from residents in 2010, Mr Brown said that it was perhaps hard for the residents to see the work being done by THH to improve their living environment.

50. As regards communication generally, Ms Harper said that there were quarterly Leasehold Focus Group meetings (previously monthly), which were advertised within each block and in newsletters, as well as Leasehold Service Development Group meetings. She was not aware of the Respondent having attended any of these meetings. Mr Brown said that THH periodically seeks feedback from leaseholders and takes that feedback on board.

51. Mrs Kokoruwe took the Tribunal through the provisions of the Lease relevant to the service charge. She also submitted that the Respondent had offered very little by way of information or evidence as to the points in dispute.

Reconciling service charge certificates with the County Court claim

52. At the hearing the Tribunal asked Mrs Kokoruwe to reconcile the service charge certificates with the County Court claim. However, it transpired that in relation to the years 2009/10 and 2010/11 the amounts being claimed were higher than the amounts identified as payable by the Applicant's own service charge certificates. In 2009/10 the amount claimed was £1,264.41 but the actual cost was £1,210.23. In 2010/11 the amount claimed was £1,113.97 but the actual cost was £956.53.

Tribunal's analysis and determinations

53. The Tribunal has determined as a preliminary issue (see paragraph 22 above) that certain items are not payable as a result of the application of the Limitation Act.

54. In addition, as noted in paragraph 52 above, there is a discrepancy between the amounts claimed by the Applicant in respect of the years 2009/10 and 2010/11 and the amounts identified as payable by its own service charge certificates. What appears to have happened is that in each of these years the actual service charge has been lower than the estimated service charge and that the figures in the County Court claim for those years are erroneously based on the estimated figures. Therefore, the maximum amount of general service charge payable for 2009/10 is £1,210.23 and the maximum amount of general service charge payable for 2010/11 is £956.53.

55. We note the Applicant's general submissions as to the payability and reasonableness of the service charges. Subject to the points referred to in paragraphs 53 and 54 above and the specific issues raised by the Respondent, the Tribunal is satisfied on the basis of the evidence provided that the Applicant served the appropriate demands, that the service charges claimed are recoverable under the terms of the Lease, that the relevant costs were reasonably incurred and that the relevant services/works were of a reasonable standard.

56. As regards the specific points raised by the Respondent, in our view the arguments and evidence produced by the Respondent have been weak. As stated above, although the Respondent's medical issues are noted, he has had a very long time within which to assemble a proper case detailing his concerns and to gather relevant supporting evidence. During the course of the hearing he proved himself to be a capable advocate with a good eye for detail, but he has not supplied any comparable evidence nor provided any other compelling evidence to show that service charges have not been reasonably incurred or to show that services or works have not been of a reasonable standard.

57. By contrast, the Applicant – despite having been provided with only very brief details of the basis for the Respondent's concerns prior to the day of the hearing – has assembled a strong case in the circumstances, including a series of witness statements covering a range of issues, copy service charge certificates and invoices and relevant copy correspondence. The copy correspondence shows the lengths to which the Applicant has gone to address previous concerns expressed by the Respondent and also provides a considerable amount of information relevant to the calculation of service charges and the manner in which the services have been provided.

58. Turning to specifics, on the basis of the evidence provided we are satisfied on the balance of probabilities that the section 20 notice dated 19th October 2009 was served on the Respondent and that no breach of the section 20 consultation requirements has been identified. We are also satisfied on the balance of probabilities that the caretaker is not being paid more than is reasonable. On the question of whether the cost of maintaining the park referred to by the Respondent should be included in the service charge, we are satisfied that the definition of "the Common Parts" in the Lease includes the small park area concerned and that the landlord is entitled under the Lease to charge to the leaseholder the relevant proportion of the cost of maintaining it.

59. Much of the Respondent's case relates to antisocial behaviour on the estate, the Respondent arguing that the Applicant has failed to tackle this. In our view the evidence does not support the Respondent's position. It is not realistic to expect the Applicant to eradicate antisocial behaviour, and the fact that there are continuing problems does not constitute proof that the Applicant and/or THH is failing to

provide a cleaning and maintenance service in a reasonable manner and at a reasonable cost. The evidence indicates to us that the Applicant is providing a reasonable service and is managing the antisocial behaviour in a reasonable manner, often in difficult circumstances beyond its reasonable control. We would just comment in passing that given the strength of feeling that the antisocial behaviour issue can elicit and the potential that it has adversely to affect residents' quality of life, it may be prudent for THH to prioritise the issue if it is indeed a cause of widespread concern and to communicate effectively with residents as to the steps that it is taking to tackle the problem.

60. Regarding the method of service of service charge apportionment, whilst this is not a wholly straightforward issue, the starting point is that the definition of Service Charge in the Lease is *"such reasonable proportion of Total Expenditure as is attributable to the Demised Premises ..."*. This does not mean that the landlord has to use the **most** reasonable method of apportionment, but simply that it must use **a** reasonable method. Neither party has brought any specific cases in support of its position, although in fact the issue has previously been considered by the First-tier Tribunal, for example in the case of *Eastend Homes Ltd v Ms M de los Bueis (LON/00BG/LSC/2010/0415)* and in the case of *London Borough of Tower Hamlets v Ms A Charles (LON/00BG/LSC/2014/0240)*. In both of those cases it was found to be a reasonable method. The GRV method combines a number of factors, the most significant one being the number of bedrooms in each flat. The Respondent has questioned whether factors such as the number of bedrooms and the size of each flat are relevant and suggests that apportioning the service charge equally between flats would be fairer. However, in our view there are arguments going both ways, as it could also be argued for example that a flat with more bedrooms contains more people capable of benefiting from the services. Therefore, and in the light of previous decisions, we consider the use of GRV to be a reasonable method of apportionment.

61. The Respondent has also raised certain other points, for example an alleged failure to lock a gate and problems with a car parking permit. However, on the basis of the evidence provided the points raised are either irrelevant to the issue of payability of the service charge or are not convincing enough to warrant a service charge reduction. As regards his letters of complaint to which he referred the Tribunal, in our view – taking into account the Applicant's responses – these do not contain points which justify a reduction of the service charge.

62. As a general point, it is appropriate to acknowledge that the Applicant's oral evidence was not perfect. In cross-examination by the Respondent and/or by the Tribunal certain witnesses struggled at times to provide clear answers to questions. However, the Applicant was greatly handicapped by the fact that the Respondent did not provide details of his concerns prior to the hearing in a manner that enabled the

Applicant to prepare properly, and therefore the Applicant was placed in the unenviable position of having to try to guess which issues to focus on and what evidence to produce. In the circumstances the Applicant did a good job overall in presenting its case. By contrast, the Respondent's approach somewhat resembled a 'fishing expedition', and many of the points raised by him seem already to have been addressed in correspondence.

63. In summary, the service charges are payable in full save for (a) those items in respect of which the Applicant is out of time by virtue of the Limitation Act and (b) the adjustments which are necessary as a result of the claim including estimated charges for 2009/10 and 2010/11 rather than the lower actual charges for those years.

Cost Applications

64. No cost applications were made.

Name: Judge P Korn **Date:** 5th January 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

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

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