9498

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

| | | |
|---|---|---|
| **Case Reference** | : | **LON/00AH/LSC/2013/0335** |
| **Property** | : | **109 College Green, Upper Norwood, London SE19 3PR** |
| **Applicant** | : | **Mr Bisi Afolayan** |
| **Representative** | : | **Mr B Afolayan In person** |
| **Respondent** | : | **London Borough of Croydon** |
| **Representative** | : | **Ms Annette Cafferkey Counsel** |
| **Type of Application** | : | **Section 27A Landlord and Tenant Act 1985 – determination of service charges payable** |
| **Tribunal Members** | : | **Judge John Hewitt**<br>**Mr Ian Thompson BSc FRICS**<br>**Mr Owen Miller BSc** |
| **Date and venue of Hearing** | : | **30 September and 1 October 2013**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **11 November 2013** |

---

**DECISION**

---

## Decisions of the Tribunal

1. The Tribunal determines that:

   1.1 The service charges payable by the Applicant to the Respondent are those set out in the table in paragraph 28 below subject to following sums being credited to the Applicants cash account (to the extent that they have not already been credited:

| | |
|---|---|
| Caretaking | £37.40 – see paragraph 44 below |
| Energy | £10.22 – see paragraph 47 below |
| Energy | £153.75 – see paragraph 49 below |
| Horticulture | £8.89 – see paragraph 56 below |

   1.2 The Applicant's application for an order pursuant to section 20C Landlord and Tenant Act 1985 is refused;

   1.3 The Applicant's application for a costs order is refused; and

   1.4 The Respondent's application for a costs order is refused.

2. The reasons for our decisions are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

## Procedural background and the hearing

3. On 14 May 2013 the Leasehold Valuation Tribunal received an application from the Applicant (Mr Afolayan) [1]. The application was made pursuant to section 27A Landlord and Tenant Act 1985 (the Act). Mr Afolayan sought a determination of the service charges payable by him from 2004 to date and then through to 2020. He also sought damages for stress, harassment and victimisation by his landlord and costs.

4. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.

5. Directions were given on 16 July 2013 [22]. Judge Goulden made clear to Mr Afolayan that his application was not sufficiently particularised and that some of the issues raised by him were outside the jurisdiction of the Tribunal. The directions included provision for a Scott Schedule to help try and identify the issues in dispute and the parties' respective positions in relation to them.

6. The Respondent, London Borough of Croydon (the Council), prepared the trial bundles for the hearing, they ran to over 1,300 pages. Further documents were handed in during the course of the two day hearing. Most of the documents in the bundle had been made available to Mr

Afolayan sometime back as a result of a Freedom of Information request.

7. The application came on for hearing before us on 30 September and 1 October 2013.

8. Mr Afolayan appeared in person and presented his case himself. For the most part he was accompanied by representatives from BPP University Pro Bono Unit who assisted him with note taking.

9. Ms Cafferkey of counsel appeared on behalf of the Council.

10. Ms Cafferkey made preliminary applications.

11. The first was that the whole of Mr Afolayan's case should be struck out broadly on the basis that he had simply made a series of assertions and had not particularised his case or shown a prima facie case. Ms Cafferkey also complained that Mr Afolayan had not complied with the directions or heeded the guidance given to him by Judge Goulden. In particular Mr Afolayan's comments on the Scott Schedule were non-specific, no examples were given and he provided no evidence to support his bald assertions.

12. The second application was that if the first failed, part of Mr Afolayan's statement of case should be struck out. In particular paragraphs 1-4 [51] which relate to a doomed claim for repayment of rent/licence fees paid to the Council by Mr Afoalyan before he exercised the Right to Buy and became a long lessee and that paragraphs 11-16 [79] dealt with an application for specific disclosure.

13. The third application related to how far back Mr Afolyan could go to re-open service charge issues. Ms Cafferkey relied upon a number of matters including an agreement to pay historic arrears and laches. Ms Cafferkey also submitted that the Council no longer had available documents and files relating to years prior to 2006.

14. Mr Afolayan opposed the applications. He submitted that even if the Tribunal did not have jurisdiction to deal with all of the matters raised by him we should adopt a holistic approach and deal with them. As to the sums paid by him, he claimed they were made under duress and he maintained that over the years he has been grossly overcharged.

15. Mr Afoyalan repeated an application for substantial further disclosure and sought a postponement so that five days could be allocated to the hearing. The disclosure application had been made on paper on previous occasions and each time it had been refused by a procedural Judge. Mr Afolayan's applications were opposed by Ms Cafferkey.

16. We adjourned to consider the rival applications.

17. Whilst we had some sympathy with the total strike out application and whilst we recognised that Mr Afolayan had not pleaded his case well we concluded it would be disproportionate to strike out the whole of his application because he was a litigant in person, he had identified the gist of his issues, the substantial disclosure given to date was readily available and before the Tribunal and the Council had at the hearing the relevant officers who would be able to give oral evidence if required. In the light of the overriding objective we considered it would be unfair and unjust and disproportionate to strike out the whole of the application.

18. We granted the application to strike out paragraphs 1-4 and 11-16 of Mr Afolayan's statement of case. Holistic or not if we do not have jurisdiction to deal with certain aspects of a claim we simply cannot do so.

19. We also granted the application to limit the service charge years we would allow Mr Afolayan to re-open. Those years were:

    2009/10
    2010/11
    2011/12 and
    2012/13

    We concluded that we did not have jurisdiction to re-open any prior years. We came to this view because in correspondence concerning the payment of arrears in a letter dated 19 February 2010 to the Council Mr Afolayan said, amongst other things:

    *"As discussed on 29 January 2010 please find enclosed my written confirmation that I am willing to pay the arrears at £40 per month and ..."*

    *"As you may be aware I am presently out of employment. As soon as my employment and financial situation changed I would make further effort to clear the entire arrears."*

    We hold that that letter has reference to the accrued arrears in respect of the year 2008/9 and all prior years.

    Considering the context of this letter and the various offers and arrangements for payment by instalments we prefer the submissions made by Ms Cafferkey to the effect that Mr Afolayan had agreed and admitted the amount of the service charges payable by him such that by reason of section 27A(4)(a) of the Act Mr Afolayan may not make an application in respect of the year 2008/9 or any prior years.

20. We rejected Mr Afolayan's application for specific disclosure because it was unmeritorious and disproportionate. It was clear to us that it was something of a fishing exercise to see what he might find to support his case and also that it sought to delve far too deep into the manner in

which the service charges had been calculated. In particular we note from *Schilling & anor v Canary Riverside Development PTD Limited* [LRX/26/2005] which was cited to us that the burden lies on the tenant and it is not for the landlord to produce documents and vouchers for every item in the service charge accounts.

21. We also rejected Mr Afolayan's application to postpone the hearing and re-schedule a five day hearing because it was unmeritorious, disproportionate and contrary to the overriding objective.

22. Having dealt with those preliminary procedural issues the hearing got underway.

23. Oral evidence was given by Mr Afolayan and by Ms Carole Ibbott, Mr Adam Curtis and Mr Ray Mohammed, all of who are officers of the Council. All of the witnesses were cross-examined. At times a fairly strict timetable was in place to ensure that there would be sufficient time for all material evidence to be put before us and for final submissions and applications to be made within the 2 days allocated for the hearing.

**The property and the lease**

24. College Green is an estate which comprises two high rise blocks of flats. Mr Afolayan's flat, 109, is on the 7th floor of the block 55-133 College Green, which comprises 40 one bedroom flats. Access to that floor is via stairways and lifts.

    Of the 40 flats in the block only two are let on long leases; the remainder are either let to secure tenants or used to provide temporary accommodation.

25. In 2003 Mr Afolayan exercised the Right to Buy (RTB). His lease is dated 26 January 2004 [29]. The lease is in broadly standard form for such a RTB lease and granted a term of 125 years. The lease terms were not in dispute. The lease provides for the landlord to insure the development, to provide services and to carry put repairs and maintenance; and for the tenant to contribute and pay the insurance sum, the service charge and the improvements contribution [38].

26. Evidently the 40 flats within the block are fairly uniform in size and the various contributions payable by the tenant are 1/40th of the costs incurred. This rate of contribution was not in dispute.

27. The Council does not collect sums on account of service charges and then prepare year-end accounts and make balancing debits/credits as the case may be.

    Instead the Council collects the amount due in arrears. The service charge year is 1 April to 31 March. At the end of each year the actual amount due is calculated and a demand for payment is sent out, usually

in June of each year. By way of a sample the demand for year 2009/10 is dated 30 June 2010, a copy is at [516].

**The service charges claimed**

28. The service charges claimed for the years in issue before us were as follows:

| | **2009/10** | **2010/11** | **2011/12** | **2012/13** |
|---|---|---|---|---|
| Caretaking | £ 86.81 | £226.37 | £291.64 | £291.39 |
| Energy | £ 63.43 | £ 67.42 | £ 37.86 | £ 37.47 |
| Entry-phone | £ 9.50 | £ 21.29 | £ 9.51 | £ 4.53 |
| Horticultural | £ 24.53 | £ 32.13 | £ 27.52 | £ 25.89 |
| Lift maintenance | £ 84.43 | £ 66.23 | £ 72.85 | £ 70.31 |
| Management/admin | £204.54 | £245.82 | £246.64 | £260.84 |
| Repairs | £126.87 | £121.25 | £150.32 | £ 24.99 |
| | | | | |
| Total Charges | **£600.11** | **£780.51** | **£836.34** | **£715.42** |
| | | | | |
| Insurance | £109.83 | £111.59 | £160.86 | £165.10 |

28. The insurance was invoiced and charged for separately.

29. In the accumulated experience of the members of the Tribunal none of the expenditure set out in the above table is obviously exceptionally high or questionable, it being well within what might generally be expected in respect of a one bed-room flat in a local authority high rise block in suburban London.

30. The entry-phone costs were not challenged. Mr Afolayan wished to challenge everything else. In the circumstances and in accordance with authority it is for Mr Afolayan as tenant to show a prima facie case that the sums claimed were unreasonably incurred or are unreasonable in amount. In the majority of cases Mr Afolayan was simply unable to do so. He did not have evidence to support his case. Instead he sought to undermine and question the (sometimes quite detailed) information and documents provided by the Council.

31. We were conscious of the authorities cited to us by Ms Cafferkey, particularly *Yorkbrook Investments Limited v Batten* [1986] HLR 25, *Schilling v Canary Riverside,* and *Birmingham City Council v Keddie & anor* [2012] UKUT 323 (LC) to the effect of the burden on a lessee to make out a prima facie case when challenging service charges under section 27A of the Act. We invited Ms Cafferkey to call oral evidence from the relevant officers on each on the heads of expenditure challenged so that the Council's position on them was clear and to enable Mr Afolayan to ask questions about matters which were of particular concern to him. Ms Cafferkey accepted that invitation. We are grateful to her and to the Council for agreeing to this approach which was generous and, we hope, of assistance to Mr Afolayan who did not oppose this course.

32. It will be convenient to take each disputed head of expenditure in turn.

**Caretaking**

33. Mr Afolayan was, understandably, concerned about the substantial increase in caretaking costs from 2010/11 onwards.

34. Both Ms Ibbott, who is the Council's Leasehold and Transaction Services Manager, and Mr Adam Curtis, who is the Council's Tenancy and Neighbourhood Services Co-ordinator gave oral evidence on this issue.

35. The caretaking service is provided in-house by a direct labour team (DLO). Internal cleaning and caretaking is provided by a Mr John Alderton who has been with the Council for 10 years. Mr Alderton had a total of 19 blocks to look after. There are two levels of service, Level 1 which tends to be a daily clean of each tower block and Level 2 which tends to be a weekly service. Details are set out at [1217/8]. The Level 1 service carried out at the subject block comprises a daily sweep of the entrance halls, staircases to the first floor and the lift cars and a weekly check on the rubbish chutes and lights and any defects or blown light bulbs is reported. The caretaker is also expected to report any other matters needing attention, such as external litter picking as and when necessary.

36. The time allocated to the block is one hour per day Monday through Friday with a shorter visit on Saturdays. Management and inspectors carry out ad hoc checks from time to time.

37. External areas are contracted out to Veolia. They undertake litter picking, sweeping of paths, removal of fly tipping or bulky furniture which has been dumped.

38. The costs claimed comprise three elements, internal, external and window cleaning.

39. Mr Curtis explained that prior to 2009/10 the Council had a rather casual approach to the amount of time allocated to the subject block and that was charged accordingly. The view was taken that a more structured approach was required in order to ensure that the DLO costs were more accurately re-charged to each block. A time and motion study was carried out. The tasks undertaken and the number of minutes incurred on each of them were measured. The results are at [1217/8]. As a result of this study the Council concluded that the subject block had been undercharged for a number of years. It was asserted that the amounts claimed post 2009/10 are a more accurate reflection of the cost of the service to the subject block. A detailed explanation of the outcome of the review was given to the Council's long lessees – see [1214].

40. Further detail is set out in Ms Ibbott's witness statement at [151].

41. The cost of the providing the service across the borough is ascertained by the Council at an hourly sum and the relevant number of hours is allocated to each block in order to establish the block charge. The block charge is then allocated to each flat within the block. In the case of the subject block the allocation is 1/40th.

42. Mr Afolayan wished to have more detail of the exact number of minutes Mr Alderton spent on each visit to the subject block and he also drew attention to the fact the hourly sum charged bore no resemblance to the hourly wage paid to the caretaker. During the course of the hearing a document was handed in to us which sets out the cost of the DLO service for the year 2006/7, broken down into a number of cost headings. Overall it shows that the service cost £2,646,811 and delivered 95,580 caretaking hours. The hourly rate for that year was thus calculated to be (and re-charged at) £27.61. We have numbered those pages [1232/3]. It is to be noted that, understandably the cost included not only wages paid to the caretaker but salary costs of office staff, costs of employment including National Insurance, and the supply of equipment and cleaning materials and other items of expenditure.

43. In general terms we were more than satisfied with the explanations and evidence given to us by Ms Ibbott and Mr Curtis and we do not hesitate to accept their evidence. In his list of issues Mr Afolayan asserted that he has been grossly overcharged for the caretaking service and he put the Council to proof that the hours claimed were actually expended and the rate of pay was proportionate. Part of his application for specific disclosure was the production of the wage slips given to the caretaker so that he could verify the rate of pay. On the authorities this approach is quite wrong. Mr Afolayan is required to show a prima facie case. He has failed to do so. Further the specific disclosure sought was quite disproportionate and inappropriate.

44. In the circumstances we find that the sums claimed for the years in question were reasonably incurred, are reasonable in amount and are payable by Mr Afolayan. For avoidance of doubt we note that Mr Afolayan made a complaint to the Council about the caretaking charge for 2011/12. The outcome of that complaint is at [1220]. The Council accepted that in that year the external service provided by Veolia was not to the standard it should have been. The cost of that part of the service was charged at £74.80 and the Council agreed to reduce that by 50% to £37.40. A credit for that sum was to be applied to the cash account as between Mr Afolayan and the Council. We have seen, at [1169x] that a credit of £37.40 was applied to Mr Afolayn's account on 13 September 2012. Consequently no further adjustment is called for.

**Energy**

45. In essence this is the cost of electricity to power the internal common parts lighting, the lifts, fire and smoke detectors and safety systems and the external lighting.

46. The gist of Mr Afolayan's complaint was that the supporting bills from the supplier were incomplete, referred to different meters with different account numbers and post codes and that internally the lighting was on 24/7 which was a waste and unnecessary.

47. The Council has accepted that has something gone amiss with the energy costs.

A number of invoices have been issued by British Gas.

Three accounts are summarised at [938]:

S1801334 102 College Green SE19 3PP - the correct account

S1801333 Community Centre 98 College Green Se19 3PN

S1801332 Staircase Lighting Block 23 College Green Se19 3PW

Ms Ibbott explained, and we accept, that prior to 2009/10 British Gas billed under one account number for the 'College Green Estate'. Following a change in practice British Gas began to submit three accounts as above which the Council consolidated and grouped together as one.

Following a formal complaint raised by Mr Afolayan a detailed review of the energy costs was undertaken by the Council. It concluded that account number s1801332 had been incorrectly included in the block cost. It agreed it should be removed and that a credit of £10.22 should be applied to Mr Afolayan's account. That sum was arrived as being 1/40th of £408.63. That credit was duly made to Mr Afolayan's account on 28 November 2012 [1196x].

48. During the course of the hearing the Council looked again at the remaining two accounts. It concluded that account number S1801333 referring to the Community centre was also included in the block cost in error.
The Council re-worked the figures and proposed as follows:

| | Original Charge (as per para 28 above) | Revised Charge |
|---|---|---|
| 2009/10 | £63.43 | £12.84 |
| 2010/11 | £67.42 | £11.20 |
| 2011/12 | £37.86 | £ 5.93 |
| 2012/13 | £37.47 | £12.24 |
| **Totals** | **£206.18** | **£42.21** |

49. The difference amounts to £163.97. A credit of £10.22 has already been entered on the account and so the net credit now to be entered amounts to £153.75. The Council said that Mr Afolayan's account would be duly credited with this sum.

50. Mr Afolayan did not feel able to agree the amount of the above credit because he had not been able to check and verify the figures and he continued to maintain that the usage costs should be reduced by 30% to reflect his case that the internal lights are left on 24/7.

51. We rejected Mr Afolayan's submission that the usage costs should be reduced further. We preferred the evidence of Mr Curtis that the lights are left on for safety reasons because the natural light available is very poor. Further the usage costs relate not only to the lighting but also to the lifts and the alarms systems. Given the modest sums now involved we were not persuaded that the capital cost of a new lighting system or new controllers was justified.

52. We also rejected Mr Afolayan's objection to the revised figures because they are now so modest that a challenge to them is disproportionate, verging on an abuse of process and contrary to the overriding objective.

53. Accordingly we find that the energy costs payable by Mr Afolayan are those set out in the 'Revised Charge' column in paragraph 48 above.

54. Before leaving energy costs we wish to make an observation. We were disappointed to note that the vast majority of the invoices submitted by British Gas record that the usage has been estimated. This appears to be the case over most of the invoices in the trial bundle. This is not good estate management practice and may result in significant over or under billing. We urge the Council and British Gas to come to a sensible arrangement for periodic meter readings to be taken.

**Horticultural**

55. In effect this is grounds maintenance. The external grounds are modest which is reflected in the charge. The work is undertaken by external contractors. There is a fixed annual charge for the service plus a separate charge for any additional work required.

56. In 2009/10 Mr Afolayan discovered that some work invoiced by the contractor related to 35 College Green, a private house. Evidently the householder was unwell and the front garden hedge became very overgrown and began to obstruct the footpath. The Council requested the contractor to cut back the hedge. The cost was included on an invoice relating to the subject block and was inadvertently applied to the block cost. The consequent overcharge to Mr Afolayan was £8.89. The Council has said that it will credit Mr Afolayan's account with this sum. If that credit has not yet been entered on the account it should be entered now.

57. The gist of Mr Afolayan's case was that if the error could be made be in one year it could be made in every year and thus he should be entitled to a credit for every year. We reject that submission as being wholly unrealistic and unsupportable.

**Lift Maintenance**

58. The gist of Mr Afolayan's case was that lifts were not maintained. In its statement of case in answer the Council has explained its position, namely that there is a maintenance contract in place and that the lifts are maintained. Further if and when specific repairs are required the work is undertaken and the cost applied to the block cost.

59. By way of response Mr Afolayan has simply asserted that he is not satisfied with the Council's statement, he maintains he has been grossly overcharged and he puts to Council to proof to substantiate its assertions with documents.

60. The approach taken by Mr Afolayan is unacceptable. He is required to put forward a prima facie case that the modest sums claimed by the Council were unreasonably incurred or were unreasonable in amount. He has failed to do so. In consequence we conclude there is no basis on which we can properly find that the sums claimed were unreasonably incurred, unreasonable in amount and not payable by Mr Afolayan.

**Management/Administration**

61. Ms Ibbott gave to us a detailed account of the manner in which the Council calculates the annual management charges. Much of it was as set out in Ms Ibbott's witness statement [150].

62. Like many local authorities the costs of running the long leasehold estate are calculated as far as can be managed and then a broad view is taken of the costs of other departments which the Leasehold Team may call on from time to time. For obvious economic reasons no detailed log can be kept to try and analyse costs in great detail. For each year in question there is a schedule of the costs incurred and detail to show how the charge has been arrived at.

63. Where the annual cost claimed is within a reasonable bracket and within the bracket which a local managing agent might charge as a unit fee for managing a similar block in the private sector, the Tribunal does not consider it proportionate to require a local authority to drill deeply into the various factors adopted to arrive at its annual charge.

64. Mr Afolayan submitted that that charge in each year under review was far too high and he considers that he should only pay 10% of the sums claimed. Mr Afolayan was unable to explain how he had arrived at his figure. He also complained that he was in the dark about what each person does hence his request for specific disclosure of the details of the jobs done by the various individuals from 2006 to date and what proportion of their time was spent on long leasehold estate matters.

65. In his final submissions Mr Afolayan said that he does not accuse the Council's staff of bad faith but he did say that were negligent and lacked performance. In particular he asserted that the Repairs Team was not doing what it was supposed to do and he claimed that overall the officers were nonchalant about the amount of costs incurred. Having made those assertions Mr Afolayan failed to provide any evidence to support them.

66. We were satisfied with and preferred the evidence of Ms Ibbott and other officers on this issue. Drawing on the accumulated experience and expertise of the members of the Tribunal we find that the basis on which the costs were assessed was inevitably broad brush but that is not unusual and the resultant figures are well within the range to be expected of a local authority managing a high rise block such as the subject block.

**Repairs**

67. In effect Mr Afolayan sought to put the Council to proof on all of the costs claimed for repairs. Again we found that overall the sums claimed were relatively modest for a block of the age and type of the subject block.

The following summary is a helpful overview:

| Year | Page No. | Number of repairs | Block Cost | Unit Cost |
|---|---|---|---|---|
| 2009/10 | [577] | 32 | £5,074.61 | £126.87 |
| 2010/11 | [786] | 34 | £4,850.00 | £121.25 |
| 2012/11 | [1006] | 31 | £6,012.71 | £150.32 |
| 2013/11 | | N/a | N/a | £ 24.99 |

68. The Council has provided a good deal of disclosure on the repairs carried out on the subject block. Oral evidence was given by Mr Ray Mohammed who is the Council's Technical Repairs Manager, a post he has held for just over three years. He told us that the Council undertakes about 40,000 individual repairs each year. The work is divided between two external contractors, Mears and Mitie, with whom detailed schedules of rates have been competitively tendered and arrived at.

69. The need for a repair can be activated in a number of different ways. The Council has a call centre. Calls may be made by tenants or lessees, by caretakers, inspectors or other staff and sometimes members of the public. The level of information provided in the first call can range from the vague to the quite specific. Thus it is not possible to assess the cost of a job from the initial information provided. The person taking the call will enter such information as is available and allocate the job as may be appropriate. There ia a range of cost codes covering a wide range of different tasks. At the outset a cost code known as the 'Original

Price' has to be entered on the system but it may bear little resemblance to the final cost of the job once the work has been completed and invoiced. The final cost of the job is entered on the system as 'Final Invoiced Job Price'. The difference between the two entries may arise, where for example the report to the call centre is a defective or damaged floor tile. The Original Price entered will be that for one floor tile as listed on the schedule of rates. On arrival on site the contractor might find that four tiles were damaged or required to be replaced and thus the job will be invoiced for four tiles. This apparent mismatch has caused Mr Afolayan to conclude that on many jobs the contractor has over charged the Council. Mr Mohammed assured us this was not the case. We accept the evidence of Mr Mohammed but we can see how the way the information is recorded can easily give a wrong impression.

70. Mr Mohammed told us that the Council has partnering contracts and there has to be an element of trust with the contractors. He said that any repair costing more than £500 needs express approval from one of his staff. On smaller jobs the contractor goes out effects the repair and then includes the cost on a consolidated invoice submitted on a monthly basis. Mr Mohammed said that the policy of the Council is do spot checks on 10% of repairs to ensure the repair is effective and reasonable in cost. Mr Mohammed explained that it was more cost effective to work in this way rather than send someone out to assess the cost of the job, place the job with a contractor and then go back and check it before approving the invoice. He noted that some mechanical and electrical faults cannot be fully assessed on a visual inspection anyway and that sometimes opening up works are required.

71. Mr Afolayan considered that the Council's system was far too trusting. He asserted that all jibs costing more than £150 should in inspected and that spot checks of 10% was far too low. Mr Afolayan also complained that some jobs were placed with contractors which could be more carried out ay a lower cost by a caretaker. By way of an example he drew attention to contractor being called out to clear up a blood spill in a communal area at a block cost of £200 [1006]. Mr Mohammed explained that this was an out of hours call out when the caretaking staff were not on duty and the clear up was required urgently for hygiene reasons. Mr Afolayan also complained that contractors were called out to clear blocked rubbish chutes. Mr Mohammed explained that where possible caretakers did clear chutes if the blockage was small and access was readily available. However sometimes blockages were caused by quite large items being placed in chutes and sometimes the blockage was between floors and thus difficult to access by one person on his own.

72. Mr Afolayan accused the Council of profiteering by adding 5% to the invoices submitted by the contractors but he did not produce any evidence to support his assertion.

Mr Afolayan suggested that the unit cost of £24.99 in 2012/13 should be used as a guide for prior years and his account adjusted accordingly.

73. Again Mr Afolayan failed to make out a prima facie case that the repairs charges were unreasonably incurred or unreasonable in amount. We accept and prefer the evidence provided by the Council. In consequence we conclude there is no basis on which we can properly find that the sums claimed were unreasonably incurred, unreasonable in amount and not payable by Mr Afolayan.

**Insurance**

74. The business has been place with Zurich Municipal under a blanket policy. As at 1 April 2012 the total sum insured for all properties was £210,600,000 [1170].

75. Mr Afolayan simply asserts that he was overcharged or that the payment by him was not due. He did not explain why or produce any evidence to support the claim of overcharging. For these reasons alone we reject his assertions. There is no basis on which we can properly find that the sums claimed were unreasonably incurred, unreasonable in amount and not payable by Mr Afolayan.

76. In any event and in so far as may be relevant the experience of the members of the Tribunal is that the costs incurred are well within the range to be expected for a one bed-room flat in suburban London.

**Costs**

77. At the conclusion of final submissions Mr Afolayan made two applications relating to costs and the Council made one application.

**Section 20C of the Act**

78. Mr Afolayan sought an order pursuant to section 20C of the Act to the effect that none of the costs incurred by the Council in respect of these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by him.

79. Section 20C is in these terms:

> "***20C.— Limitation of service charges: costs of proceedings.***
>
> *(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 First-tier Tribunal, or the Upper 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) The application shall be made—*

*(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;*

*(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;*

*(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*

*(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;*

*(c) in the case of proceedings before the Upper Tribunal, to the tribunal;*

*(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.*

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

80. On a section 20C application we are not required to construe the lease to determine whether or not the lease does permit the landlord to put such costs through the service charge account. The question for us is that if the lease does permit such costs to pass through the service charge account is it just and equitable in the circumstances that the landlord should not be entitled to pass all or some of them through the service charge account.

81. We find that the Council has conducted these proceedings in a perfectly proper and professional manner. The evidence it presented, both oral and documentary, was pertinent, relevant and cogent. There was nothing in the conduct of the Council during the course of these proceedings that would suggest to us it would be just or equitable to deprive the Council from whatever contractual rights it may have under the lease in respect of the costs of these proceedings.

82. Accordingly and for the reasons set out above we have dismissed the application under section 20C of the Act.

**Paragraph 10 Schedule 12 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act)**

83. Both Mr Afolayan and the Council made applications for costs. Mr Afolayan sought to recover compensation for his time spent on the case

which he estimated at 1,500-2,000 hours which he wished to charge out at £35 per hour. He also sought £500 for out of pocket expenses. The gist of his case was that the Council had failed to give full disclosure of material documents and that it unreasonably declined to engage in mediation.

84. The Council sought an order for costs and the gist of its case was that Mr Afolayan had acted frivolously and vexatiously during the conduct of these proceedings in that he took unmeritorious points and doggedly pursued points such as repayment of rent paid by him as secure tenant prior to the grant of the lease which Judge Goulden had made plain to him the Tribunal did not have jurisdiction to deal with. We did not get so far as to quantify the Council's claim to costs but any award we might have made was limited to a maximum of £500.

85. Under the current rules the Tribunal has quite a wide costs jurisdiction – see Rule 13. However that Rule does not apply to the current proceedings. That is because the current proceedings were commenced prior to 1 July 2013. Under the transitional provisions in respect of applications made prior to 1 July 2013 our jurisdiction is respect of costs is that which was in force prior to 1 July 2013.

Consequently our jurisdiction is that set out in paragraph 10 of Schedule 12 to the 2002 Act which is in the following terms:

***"10 Costs***
*(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).*

*(2) The circumstances are where—*

*(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or*

*(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.*

*(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—*

*(a) £500, or*

*(b) such other amount as may be specified in procedure regulations.*

*(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold*

*valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph."*

86. Whilst parties are expected to conduct themselves and their cases in a proper and courteous manner there has to be some leeway. Quite often a party takes a bad or poorly thought through point but in our judgment should not generally be penalised for doing so. The conduct and characteristics set out in paragraph 10(2)(b) is towards the end of the scale. The bar is set high and it is not easily met.

87. We have rejected Mr Afolayan's application for costs because we do not find that the Council failed to give full disclosure. Whilst a refusal to engage in mediation may often result in costs consequences we do not find that in the context of the present case such refusal comes within the ambit of paragraph 10(2)(b). One of the members of the Tribunal is an accredited mediator. It is our view that mediation in this case was most unlikely to have been wholly or even partially successful. Mr Afolayan has persisted with bad points doggedly and at no time gave any indication the he might be willing to make concessions or modify his position.

88. We have rejected the Council's application for costs because whilst Mr Afolayan's conduct was at times slow and bad points were pursued he did succeed on the Energy issue. Taken over all we cannot properly conclude that Mr Afolayan's conduct fell within the ambit of paragraph 10(2)(b). As we have said earlier the bar is set high and it is not easily met.

Judge John Hewitt
11 November 2013