



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

**Case Reference** : LON/00/AJ/LSC/2013/0042

**Property** : Ground Floor Flat, 44 Beech Gardens,  
South Ealing, London W5 4AH

**Applicant** : Ms Naz Meray (“the Tenant”)

**Representative** : University of Law Legal Advice Centre

**Appearances for Applicant:**

- (1) Ms Ahyoung Koo, trainee solicitor
- (2) Ms Natasha Saleh, trainee solicitor
- (3) Ms Meray

**Respondent** : London Borough of Enfield (“the Landlord”).

**Representative** : London Borough of Enfield Legal Services

- (1) Mr Darryn Harris, solicitor.
- (2) Mr John Hyland, Project Manager.
- (3) Miss Kat Silva, Rechargeable Works Home Ownership Manager.
- (4) Mrs Janet Odea, Annual Service Charge Manager.
- (5) Mr Kieren McGuire, Rechargeable Works Manager.

**Appearances for Respondent:**

**Type of Application** : For the determination of the reasonableness of and the liability to pay a service charge

**Tribunal Members** : (1) Mr A Vance, LLB (Chair)  
(2) Mr N L Maloney, FRICS FIRPM  
(3) Mrs R Emblin, JP

**Date and venue of Hearing** : 10 Alfred Place, London WC1E 7LR

**Date of Decision** : 25.07.13

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**DECISION**

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### **Decision of the Tribunal**

1. The Respondent having abandoned sums it had sought from the Applicant in respect of the 2003/4 service charge year and the Applicant having withdrawn her challenge in respect of the 2011/12 service charge year we make the following determinations in respect of the amounts that it is reasonable for her to pay and for which she is liable to pay; (a) for the service charge years 2007/8, 2008/9, 2009/10 and 2010/11; and (b) for the estimated charges for 2012/13 and 2013/14:

Year and Charge	Sum alleged due	Amount reasonable for the Applicant to pay
2007/8 service charge	£169.09	£169.09
2008/9 service charge.	£379.09	£379.09
2009/10 service charge	£661.70	£661.70
2011/12 major works costs.	£10,124.98	£9624.98
2012/13 estimated charge.	£391.86	£391.86
2013/14 estimated charge.	£469.40	£469.40

2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **Introduction**

3. This is an application made under section 27A Landlord and Tenant Act 1985 ("the 1985 Act") for determination of the Tenant's liability to pay service charge to the Council in respect of Ground Floor Flat, 44 Beech Gardens, South Ealing, London W5 4AH ("the Property").
4. The Applicant is the leasehold owner of the Property, a two-bedroom ground floor maisonette within a block of four maisonettes built around the mid-1930's ("the Building"). The Building forms part of the Village Park Estate ("the Estate").
5. The Respondent, London Borough of Enfield ("the Council") is the Applicant's landlord and has the benefit of the freehold reversion of the Property.
6. Numbers appearing in square brackets below refer to the hearing bundle unless stated otherwise.
7. The relevant legal provisions are set out in the Appendix to this decision.

### **The Lease**

8. The relevant lease is dated 03.12.90 granted by the Respondent to the Applicant for a term of 130 years from 01.01.81.

9. The relevant provisions of the lease can be summarised as follows:
- 9.1. The Tenant covenants to pay by way of a service charge a proportion of the costs and expenses reasonably incurred or to be incurred by the Council in carrying out its obligations contained in Clause 9 of the lease and the Eighth Schedule to the lease.
  - 9.2. The Council's obligations as set out in the Eighth Schedule include keeping the Building in good and substantial repair and condition and whenever necessary to rebuild, reinstate, renew and replace all worn and damaged parts. Also included in that Schedule is an obligation to paint the Building as part of a repainting cycle, to clean out and repair or replace gutters as required and to repair, remove or replace defective and broken tiles and slates.
  - 9.3. The service charge year is the period 1<sup>st</sup> April to the 31<sup>st</sup> March in the following year.
  - 9.4. Prior to the first day of April in each year the Council is to notify the Tenant of the service charge payable for the forthcoming year and the Tenant is to pay the Service Charge by equal monthly instalments in advance.
  - 9.5. The method of apportionment of the Service Charge is based on the rateable value of Property compared to the other flats in the in the Estate. However, the Council's practice, which was not challenged by the Tenant, is to apportion block service costs equally between the flats in the Building with the Tenant paying 25% of the total costs. The management charge is calculated on a different basis and this is discussed further below.
10. For the avoidance of doubt, where below we determine that a sum is payable by the Applicant, we mean that we are satisfied that it is payable under the terms of her lease as summarised in the paragraph above.

#### **Pre-Trial Review and subsequent events**

11. A pre-trial review took place on 22.03.12 at which both parties attended. The Tribunal identified the service charge years in issue to be 2003/4, 2007/8, 2008/2009, 2009/10, 2011/12 and 2012/13.
12. Directions were issued by the Tribunal on the same day.

#### **Inspection**

13. Neither party requested that the Tribunal inspect the Property and we did not consider this to be necessary.

#### **The Hearing, Decision and Reasons**

14. Prior to the hearing, the Council notified the Tenant that it had made an economic decision to write off the sums it had sought in respect of the 2003/4 service charge

year. In addition, the Tenant withdrew her challenge in respect of the 2011/12 service charge year. She also requested that the Tribunal determine her liability in respect of the 2013/14 estimated charge now sought by the Council. That request was not opposed by the Council.

15. That left the remaining issues to be determined by the Tribunal, namely, the Tenant's liability in respect of the following:
  - 15.1. 2007/8 service charge.
  - 15.2. 2008/9 service charge.
  - 15.3. 2009/10 service charge.
  - 15.4. 2011/12 major works costs.
  - 15.5. 2012/13 estimated charge.
  - 15.6. 2013/14 estimated charge.
16. We heard witness evidence from Mr Hyland, Miss Silva and Mrs Odea on behalf of the council and also from the Applicant.
17. Immediately prior to the hearing the representatives for the Applicant handed in further documents, namely a skeleton argument. The start of the hearing was delayed while the tribunal considered these new documents.

#### 2007/8 service charges

18. The block costs for this year amount to £146.18 for routine repairs and £38.01 for a management fee. The Tenant's contribution towards these sums is apportioned at the rate of 25% amounting to £46.05.
19. Additional costs demanded consisted of charges for insurance of £123.04 and a fixed management fee of £50.
20. The total sum demanded from the Tenant was therefore £219.09. However, Mr Harris informed us that following a previous Leasehold Valuation Tribunal decision concerning a different property, the Council had decided not to charge the fixed management fee of £50 and this sum had been credited to the Tenant's account.
21. For this service charge year the only sum disputed by the Tenant was her apportioned share of £140.14 [76] relating to repair of a leaking gutter at the rear of the Building. She contended that despite her requests she had not been provided with copies of invoices for this work. As she was unable to verify that the sums claimed were correct she considered the amount sought to be unreasonable.
22. She also argued that the Council should have tried to claim on the insurance policy for the Building rather than seeking to recoup the costs incurred from the tenants of the Building. She suspected that the damage to the guttering was caused by the tree in her neighbour's garden hitting the roof and guttering in high winds.

#### Decision and Reasons

23. We consider the sum in dispute to be payable by the Tenant under the provisions of her lease as described above and that the amount demanded is reasonable.
24. As the Council appears to have explained to the Tenant (*Witness Statement of Ms O'Dea* - [140]) there are no individual invoices for such works. Required repairs are carried out under the terms of a long term qualifying agreement between the council and its external contractors, Kier Building Maintenance Limited ("Kier"), which provides for specific sums to be payable to Kier for individual items of work in accordance with a schedule of rates. This agreement was entered into following consultation with tenants [216-220] and a schedule of the rates payable was included in the hearing bundle [221 -256].
25. A copy of the relevant works order for this item was included in the hearing bundle [78] and we are satisfied from this and Ms O'Dea's evidence that the work was carried out and that the costs sought are reasonable.
26. We are not persuaded that the Council could have claimed for this work under the terms of the insurance policy for the Building. No evidence was provided by the Applicant as to the event that she considered gave rise to this damage save for her assertion that when it was windy the tree hit the roof of the Building. There is no evidence that she drew this to the attention of the Council at the time of the incident. Even if this was an insured risk we are not satisfied that this specific damage was caused by the tree in question and that the damage flowed from an insured event.

2008/9 service charges

27. The block costs for this year amount to £798.13 for routine repairs and £207.51 for a management fee. The Tenant's contribution towards these sums is apportioned at the rate of 25% amounting to £251.41.
28. Additional costs demanded for this service charge year comprised charges for insurance of £127.68.
29. The total sum demanded from the Tenant was therefore £379.09.
30. For this service charge year the only sum disputed by the Tenant was her apportioned share of £798.13 relating to repairs to slates on the roof of the Building [83]. In evidence she stated that she had spoken to one of the contractors carrying out work to the roof who informed her that he was only carrying out work to the chimney. She therefore doubted that the slates were repaired. She also argued that the scaffolding costs incurred (£393.27) [84] were unreasonable given that the scaffolding costs for the work carried out in the previous year only amounted to £96.98 [78].
31. She also argued that the itemised breakdown for the repairs [83] was inadequate as the information emanated from the Council itself.

Decision and Reasons

32. We consider the sum in dispute to be payable by the Tenant under the provisions of her lease as described above and that the amount demanded is reasonable.

33. We found the Tenant's uncorroborated evidence that the work charged for was not carried out to be vague and unpersuasive. There is no evidence before us to indicate that this issue was raised with the Council at the time the work was carried out or at the time the relevant service charge demand was issued. The evidence, in the form of the works order and itemised breakdown and Ms O'Dea's evidence, is sufficient to satisfy us that the work was in fact carried out and that the costs are reasonable.
34. As to the scaffolding costs, we accept the Council's submission that the costs for the two years vary because one related to tower scaffolding to deal with guttering repairs and the other related to independent scaffolding to deal with roof repairs. The fact that different schedule codes apply to each item supports that conclusion.

#### 2009/10 service charges

35. The block costs for this year amount to £1,648.45 for routine repairs and £428.60 for a management fee. The Tenant's contribution towards these sums is apportioned at the rate of 25% amounting to £519.26.
36. Additional costs demanded for this service charge year comprised charges for insurance of £142.44.
37. The total sum demanded from the Tenant was therefore £661.70. However, the Council subsequently notified the Tenant that the sum of £1,000 included within the routine repair costs of £1,648.45 was charged incorrectly and this sum was credited to her service charge account.
38. For this service charge year the only sum disputed by the Tenant was her apportioned share of £648.45 relating to the renewal and re-fixing of roof slates and guttering [89].
39. Her challenge was the same as for the 2007/8 service charge year namely that (a) she had not been provided with invoices and therefore the charges were unreasonable and (b) the Council should have claimed on the insurance policy for the Building as the damage was caused by the aforementioned tree hitting the roof.
40. In addition, she queried how these works were carried out without scaffolding given that the sum demanded in respect of scaffolding was credited to her service charge account.

#### Decision and Reasons

41. We consider the sum in dispute to be payable by the Tenant under the provisions of her lease (as described above) and that the amount demanded is reasonable for the same reasons as for the 2007/8 service charge year.
42. There is no requirement for individual invoices. The works order [90] together with the itemised breakdown of repairs that accompanied the service charge demand [89] and Ms O'Dea's evidence is sufficient to satisfy us that the work was carried out in accordance with the rates set out in the schedule. Having regard to those documents we consider the costs sought to be reasonable.

43. Again, and for the same reasons as for the 2007/8 service charge year, we conclude that there is inadequate evidence to establish that the Council could have claimed for this work under the terms of the insurance policy for the Building.
44. As for the scaffolding issue, we accept Ms O'Dea's oral evidence, supported by documents in the hearing bundle that scaffolding was, in fact used, but not charged for due to an administrative error. The works order for these works (job number CO073641) [90] states that it is a "follow on from CO066107". The works order for job number CO066107 refers to the need for scaffolding and we accept her evidence that the scaffolding remained in place whilst the second set of follow on works was completed.

#### 2011/12 Major Works

45. The total sum alleged due from the Tenant is her apportioned share of £40,499.94 amounting to £10,124.98.
46. The Tenant's principal challenge was that although the Council engaged in consultation prior to carrying out these works [97] this was a "tick-box exercise" and did not properly take into account her views. As such, the Council should not be entitled to recover more than the statutory maximum of £250.00.
47. She also made specific challenges to the costs associated with the replacement of windows and the roof to the Building.

#### *Windows*

48. In letters dated 17.06.09[112] and 19.06.09 [114] she raised several queries in respect of the proposed work. In her view, Ms Silva's reply, in a letter dated 10.07.09 [116], was inadequate. In particular, in her letter of 17.06.09 the tenant had emphasised that the design of the intended replacement windows should facilitate her being able to open them without the need to use a step-ladder. Ms Silva's letter of 10.07.09 does not contain a response to that specific query and in the event two out of the seven windows installed (the bathroom and W.C. windows) were too high. She cannot open these windows without standing on a step-ladder which she is not prepared to do for safety reasons as she has a bad knee.
49. Although the Council offered to install additional equipment to assist in opening these two windows (a handle/pulley arrangement), at its own expense, it was unwilling to meet any maintenance or repair costs. She therefore declined the offer.
50. Mr Hyland informed us that the offer to install the mechanism remained open to the tenant to accept but confirmed that the Council would not meet any maintenance or repair costs if it broke down. In response to the assertion that the consultation process was inadequate, Ms Silva pointed out that the Tenant also attended meetings with the contractors as well as leaseholder meetings before the works were carried out at which she would have had the opportunity to discuss the design of the windows.
51. The Tenant also submitted that the windows did not require replacement as only minor repairs were required. In addition, the quality of the replacement works was



unsatisfactory in that PVC window units were installed within the existing frame with resulting colour difference between the old frame and new PVC unit.

52. She also argued that the cost of the replacement window works was excessive. She had obtained her own quotes, one for £1,434.94 including VAT [171] for replacing the whole windows and the other for £950.15 plus VAT for replacing just the PVC units [173]. These, she contended, were substantially less than the costs incurred by the Council amounting to £7,907.67 for the block (the Tenant's apportioned cost being £1,976.92).

#### *Roof*

53. The Tenant argued that it was unreasonable for the Council to charge the full costs of replacing the roof as it had failed to maintain it in the past. It was her case that no works had been carried out to the roof from the date she moved into the Property in 1990 to 2007.
54. In addition, she considered the costs incurred to be excessive. She had obtained quotes to replace the roof in the sum of £13,991.00 plus VAT and £12,220.00 plus VAT inclusive of scaffolding costs. This contrasted with the costs incurred by the Council that totalled £23,382.00 (her apportioned cost being £5,845.51).

#### Decision and Reasons

55. We do not accept that the statutory consultation was defective for the reasons advanced by the Tenant. The Council's obligation is to *have regard* to observations made.
56. Whilst we agree that Ms Silva, in her letter of 10.07.09, does not comment on the specific point raised in respect of height of the windows, she does refer to the Tenant attending a meeting the previous day when the design of the windows was discussed.
57. In our view, Ms Silva's four-page letter in response to the tenant's letters indicates that regard *was* had to Tenant's observations. The reply responds to the numerous points raised by the Tenant in considerable detail. Ms Silva also included a breakdown of the works to be carried out to the Building with that letter. Whilst the letter did not specifically deal with the height issue we do not accept that this omission evidences a failure to have regard to the tenant's observations such as to render the whole consultation exercise defective. The documents included in the bundle leave us in no doubt that this was a meaningful consultation and certainly not a 'tick-box' exercise as alleged.

#### *Windows*

58. Included in the bundle before us is a report into the condition of the windows in the Property dated 25.11.10 (which mistakenly refers to 44a Beech Gardens) [395]. That report, carried out by George Allen on behalf of the Council, refers to the windows being in excess of 25 years old and that they suffered from a number of defects including short or missing seals and gaskets; distortion in some opening casements; gaps between the frame and sub-frames; lack of fixings to the aluminium frame; mechanical damage due to attempted illegal access and failure of

powder coating. They were also single-glazed and therefore more prone to condensation.

**59.** The report sets out three options open to the Council namely:

55.1 To carry out minor repairs at an estimated cost of £300-400 plus VAT but to not recoat the frames. However, this would leave the performance levels of the windows the same and the external finish would continue to deteriorate; or

55.2 To re-powder coat the windows at an estimated cost of £1,600 plus VAT; or

55.3 To take out and replace the windows in their entirety with a suitable alternative (such as uPVC units) at an approximate cost of £2,300 plus preliminaries, overheads and profit, fees and VAT.

**60.** It is our view that it was not unreasonable for the Council, faced with those three options, to decide to replace the windows. Whilst doing so is a more expensive option in the short term, in the long term it is likely to be more cost-effective due to reduced maintenance costs in future years. In addition, replacing single glazing with double glazed units is likely to lead to reduced heating bills for the tenant due to increased thermal efficiency.

**61.** Subject to the caveat below, we consider the costs incurred by the Council to be reasonable and payable by the Tenant. The apportioned sum sought from the Tenant is £1,976.92. That compares favourably to the estimate provided by Mr Allen even though the frames were not replaced. We accept that leaving the existing frames in place is, cosmetically, less attractive than complete replacement. However, this no doubt resulted in costs savings and over time the difference in colour is likely to become less noticeable. We do not accept that this cosmetic difference amounts to poor workmanship as far as the standard of the works is concerned.

**62.** We note the estimates obtained by the Tenant but consider that we do not have sufficient information to be satisfied that these are comparing 'like' for 'like'. We have not had sight of any letter of instruction to these companies, nor do we know anything about the quality of the materials to be used or the experience of that company quoting for this work. On the other hand, the Council's contractor was engaged under a long-term qualifying agreement following a consultation exercise with tenants and an Official Journal of the European Community procurement exercise. For these reasons we consider the Tenant's quotes to be of very limited evidential value.

**63.** We are satisfied that the sum demanded from the Tenant is a reasonable sum for the work carried out but with the caveat that we do not consider it reasonable for the Tenant to pay the full amount due to the problems surrounding the bathroom and W.C. windows. The need for these windows to be at an accessible height was an issue that the Tenant brought to the Council's attention prior to commencement of these works. In our view it was unreasonable for the Council to replace the two windows in the knowledge that the Tenant would have difficulty in reaching them without the use of a step-ladder. We therefore consider that the sum sought for this

item, £1,976.92, should be reduced by £500 to reflect the amount that it is reasonable for the Tenant to pay.

*Roof*

64. There is no evidence before us to support the Tenant's assertion that the roof had not been properly maintained. Unsurprisingly, she did not inspect the roof void prior to these works and nor did she inspect the roof.
65. My Hyland's oral evidence was that when he inspected the roof prior to the works being carried out he saw daylight coming through the roof in several places. He saw holes in several tiles the size of penny coins and noted that the roof felt had completely perished, leaving bare slate exposed. He also confirmed that there was evidence of previous patchwork repairs to the roof and evidence of past water penetration.
66. Attached to his witness statement is document described as a Roof Assessment Criteria [463] that relates to the whole of the Village Park Estate. Mr Hyland's evidence was that this document was discussed with tenants at leaseholders meetings. He was certain that the Tenant had been provided with this criteria as he recalled her being present at a meeting when it was discussed. He was also aware that the Tenant was a member of the Ealing Council Leaseholders Association and that she was on the steering group of the Ealing Village Park Leaseholders Action Group, who, as a body, had queried the need for roof replacements across the Estate.
67. We prefer Mr Hyland's evidence regarding the condition of the roof. It is unfortunate that the survey report that he informed us was carried out by George Allen Construction Consultancy after publication of the Roof Assessment Criteria was not before us as it would have referred to the specific condition of this roof. Nor do we have the benefit of any long-term cost/benefit analysis relating to the cost of replacing the roof compared to the cost of repairing it and continuing to maintain it.
68. Nevertheless, this roof was in the region of 80 years old. Even if it had, say, 10 years left before replacement became essential, it would still have been reasonable, in our view, for the Council to replace it rather than to repair and maintain it given the likely long-term cost savings that would result from the need to carry on doing patch-work repairs to a very old roof.
69. We consider the costs incurred by the Council to be reasonable and payable by the Tenant. As with the quotes she obtained in respect of the windows, and for the same reasons, we do not consider the quotes she provided in respect of the roof repairs to carry much evidential weight.

*2012/13 estimated charge*

70. These charges, in the sum of £391.86, were challenged on the basis that they were excessive given that the roof and windows had just been replaced. Of that sum, the Tenant's liability in respect of repairs and maintenance was £190.10.
71. In addition, it was asserted that in calculating the sum to be charged for repairs and maintenance the council took into account an incorrect figure for the 2009/10

financial year. They had treated the cost of actual repairs for that year as being £1,926 whereas that sum included the £1,000 sum for scaffolding cost that was subsequently removed.

Decision and Reasons

72. We determine that the sum of £391.86 is payable by the Tenant and that the sum is reasonable.
73. It is to the council's credit that it has a set method for calculating the amount of the interim charge. We are informed that it is based on the average of the actual repair cost over the previous four years plus an allowance for inflation.
74. Whilst it appears that the cost of the scaffolding was included in error this does not, in our view, justify a reduction in the amount that it is reasonable for the Tenant to pay. The actual cost of repairs for 20011/12 was £294.70. The sum being demanded by way of an interim charge for 2012/13 for repairs and maintenance is £190.10, over £100 less. The sum is clearly reasonable and is, in any event an interim figure. If the actual sum expended is less the tenant will receive a credit at the end of the service charge year.

2013/14 estimated charge

75. The sum demanded from the Tenant comprised £139.93 in respect of repairs and maintenance, an insurance premium of £155.53 and a fixed management fee of £173.94. These total £469.40
76. Apart from repeating her challenge to the previous year's interim charge (as to the method of calculation of the repairs and maintenance item) the Tenant's other challenge related to the management fee.
77. Previously she had been charged a variable management fee calculated at the rate of 26% of the block costs. She had no objection to this method of apportionment. However, from 01.04.13 the Council substituted this method with a flat fee. In the case of the Tenant, she was now being asked to pay £173.94 whereas in 2012/13 she was only asked to pay £49.43. This, the Tenant argued, was an unreasonable increase.

Decision and Reasons

78. We consider the sums demanded to be payable in full by the Tenant and that the amounts are reasonable. We reject the Tenant's arguments in respect of the method of calculation of the repairs and maintenance item for the same reasons as for the previous service charge year.
79. As to the management fee, we recognise that this amounts to a significant increase. However, Ms O'Dea's evidence was that the flat fee was introduced because in previous years the Council had not been making full recovery of its actual management costs. Attached to her witness statement is a costs breakdown for the years 2009/10, 2010/11 and 2011/12 [423] that sets out the shortfall for each year. For 2011/12 the shortfall was £245,223.47.

80. Ms O'Dea informed us that as well as this ongoing shortfall, some leaseholders considered the variable management fee based on a 26% charge to be unfair as it meant that those with higher service charge bills were effectively paying more towards management services than tenants with lower service charge bills who enjoyed the same level of service.
81. The Council consulted leaseholders on four alternative methods for calculating the fee [424-439] culminating in the decision to use the flat fee method [440]. Also attached to her statement are details of the benchmarking exercise carried out with other local authorities regarding the amounts charged and methods of charging [442-446]
82. Ms O'Dea states that the flat fee is calculated using the actual cost of the service charge management service function for the previous financial year [202] and informed us that if a Tenant's actual service charge contribution is £50 or less, a reduced flat fee of £50 is charged. She also sets out the management services provided at paragraph 27 of her witness statement. These relate to discharge of the service charge management function.
83. We consider the method of apportionment and the sum demanded to be reasonable. It is clearly appropriate for the Council to want to recover its actual management expenditure given the very large shortfalls in previous years. The method adopted, following what appears to be lengthy consultation with tenants is one that we consider was open to the council to select.
84. The lease for this Property entitles the landlord to recover, by way of service charge, costs and expenses incurred or to be incurred in respect of management of the Estate "for the purpose of keeping it in a condition similar to its present state and condition" (clause 6 (A) (2) and paragraph 5 of the Eighth Schedule).
85. In an email dated 09.05.11 to the tenant [447] Ms O'Dea describes it as a fee for the council "managing the service charge management function e.g. calculating and issuing service charge estimates and final accounts, managing all service charge accounts, dealing with service charge payers, arrears queries or repayment options and elements such as staff salaries, printing, postage and stationery".
86. She goes on to say that the flat fee charged "is not connected, in any way, to the day-to-day services to your property, block or estate". We view that assertion as meaning that it is not *directly* connected to those day-to-day services. However, it is clearly *indirectly* connected to those services through the need of the council to recover service charge for the provision of such services. In order to do so it has to perform the management functions set out by Ms O'Dea in her email.
87. The flat fee mechanism is, we understand, borough wide meaning that all leaseholders in the borough pay the same fee of £173.94 (unless their actual service charge contribution is £50 or less when the reduced flat fee of £50 applies). The council is, in effect, apportioning the total management charges incurred across the borough amongst all the long leaseholders and charging each the appropriate flat fee.

88. We consider the flat fee to be recoverable under the terms of the lease for this Property. The tenant appears to want the council to try to calculate the specific management costs incurred in managing this particular Estate. In her email of 02.05.13 to Ms O'Dea she states that *"I do not want to pay other leaseholders in the borough expenses. I will only pay management fee if there is work done in my block only to exterior works. I do not want to pay management fee if there is NO work done to my block..."*
89. However, this does not take into account the centralised nature of the council's management function. The costs identified by Ms O'Dea , such as managing service charge accounts, staff salaries, printing, postage and stationery costs are incurred on a cross-borough basis and are not incurred in managing this Estate alone.
90. The tenant clearly preferred the previous method whereby she paid a fee calculated as 26% of the block costs for the year as the fee charged was considerably smaller. However, the net result of this method was that the council was not recovering its actual expenditure in providing management services resulting in very large shortfalls.
91. It seems to us that in moving to a flat fee system the council sought to address that problem and also to introduce a charge that was more equitable between all the long leaseholders in the borough. We consider that it is a method that it was entitled to adopt and that the flat fee charge is recoverable under the provisions of the tenant's lease as it is a cost incurred in management of the Estate.

### **Section 20C Application**

92. The Applicant sought an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Respondent incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Applicant.
93. At the hearing Mr Harris confirmed that no costs would be passed through the service charge. Given that concession, and for the avoidance of doubt, we consider it just and equitable to make an order under s.20C so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

### **Reimbursement of Fees**

94. The Applicant sought reimbursement of the fees paid by her in bringing this application. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant. We do not consider it appropriate to do so, given that the council has successfully resisted almost all of this application

**Name:** Amran Vance, LLB

**Date:** 12.08.13

**Annex**  
**Appendix of relevant legislation**

**Landlord and Tenant Act 1985**

**Section 18 - Meaning of "service charge" and "relevant costs"**

- (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 – Limitation of service charges: reasonableness**

- (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 – Liability to pay service charges: jurisdiction**

- (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.

[.....]

### **Service Charges (Consultation Requirements) (England) Regulations 2003.**

#### **SCHEDULE 4**

#### **CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES**



**Part 1**

**Consultation Requirements for Qualifying Works for Which Public Notice is Required**

***Notice of intention***

**1**

- (1) The landlord shall give notice in writing of his intention to carry out qualifying works--
  - (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
  
- (2) The notice shall--
  - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
  - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
  - (c) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for carrying out the works is that public notice of the works is to be given;
  - (d) invite the making, in writing, of observations in relation to the proposed works; and
  - (e) specify--
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.

***Inspection of description of proposed works***

**2**

- (1) Where a notice under paragraph 1 specifies a place and hours for inspection--
  - (a) the place and hours so specified must be reasonable; and
  - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

***Duty to have regard to observations in relation to proposed works***

**3**

Where, within the relevant period, observations are made in relation to the proposed works by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

***Preparation of landlord's contract statement***

**4**

- (1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a statement in respect of the proposed contract under which the proposed works are to be carried out.
- (2) The statement shall set out--
- (a) the name and address of the person with whom the landlord proposes to contract; and
  - (b) particulars of any connection between them (apart from the proposed contract).
- (3) For the purpose of sub-paragraph (2)(b) it shall be assumed that there is a connection between a person and the landlord--
- (a) where the landlord is a company, if the person, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

- (4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the amount of the relevant contribution to be incurred by the tenant attributable to the works to which the proposed contract relates, that estimated amount shall be specified in the statement.
- (5) Where--
  - (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and
  - (b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed contract relates, the total amount of his expenditure under the proposed contract,

that estimated amount shall be specified in the statement.

- (6) Where--
  - (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and
  - (b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the works to which the proposed contract relates,

that cost or rate shall be specified in the statement.

- (7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the reasons why he cannot comply and the date by which he expects to be able to provide an estimated amount, cost or rate shall be specified in the statement.
- (8) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the statement shall summarise the observations and set out his response to them.

### ***Notification of proposed contract***

**5**

- (1) The landlord shall give notice in writing of his intention to enter into the proposed contract--
  - (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall--

- (a) comprise, or be accompanied by, the statement prepared in accordance with paragraph 4 ("the paragraph 4 statement") or specify the place and hours at which that statement may be inspected;
  - (b) invite the making, in writing, of observations in relation to any matter mentioned in the paragraph 4 statement;
  - (c) specify--
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.
- (3) Where the paragraph 4 statement is made available for inspection, paragraph 2 shall apply in relation to that statement as it applies in relation to a description of proposed works made available for inspection under that paragraph.

#### ***Landlord's response to observations***

**6**

Where, within the relevant period, the landlord receives observations in response to the invitation in the notice under paragraph 5, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

#### ***Supplementary information***

**7**

Where a statement prepared under paragraph 4 sets out the landlord's reasons for being unable to comply with sub-paragraph (6) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)--

- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.