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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2015/0156** **LON/00AY/LSC/2015/0338**
Property	:	**61 Thurlestone Road, West Norwood, London SE27 0PE**
Applicant	:	**Ms A Adewoyin (0156)** **Mr Da Costa (0338)**
Representative	:	**Mr P Noble of counsel**
Respondent	:	**Mr D Da Costa (0156)** **Ms A Adewoyin (0338)**
Representative	:	**Mr C Sinclair of counsel**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr H Geddes RIBA MRTPI** **Mr J E Francis**
Date and venue of Hearing	:	**21 September 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26 October 2015**

DECISION

Background

1. Number 61 Thurlestone Road is a semi-detached Victorian house which was converted into three flats in 2007. Ms T Adewoyin ("the leaseholder") holds a long lease on each of flats 1 and 3. Throughout the relevant period, the flats were either tenanted or empty. Mr Da Costa was the lessee of flat 2 from 2010, and acquired the freehold in July 2012. We refer to him as "the landlord" hereafter. The landlord acquired the freehold from July 2012 from TTA Properties Ltd.

2. The leaseholder's leases require the landlord to provide services and the leaseholder to contribute towards their costs by way of a variable service charge. The leases are in the same terms. They make provision for the payment of a service charge (fourth schedule, part II, paragraph (3)). In the fifth schedule, the landlord covenants to maintain and repair the structure and common parts, insure the property and pay rates etc. Provision is made in the seventh schedule for the payment of the service charge, which is defined by means of "service expenditure", consisting of expenditure in compliance with the fifth schedule and on administration, VAT and the costs of necessary borrowing. Each of the flats is liable for a third of the service expenditure.

The applications and procedural history

3. The leaseholder submitted an application to the Tribunal seeking a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by her for each service charge year from that starting on 25 March 2010 to that starting on 25 March 2017. This application, dated 20 March 2015, is that the reference number of which ends with 0156.

4. An application (that with the reference ending 0338) was received from the landlord on 26 July 2015. He sought a determination under section 27A of the 1985 Act as to the amount of service charges which, if incurred, would be payable, in respect of certain specific works.

5. A case management conference was arranged in respect of application 0156 on 23 April 2015, before Judge Nicol. It became apparent that there had been a number of proceedings in the County Court, brought by both the landlord and TTA Properties Ltd. It was agreed that proceedings relating to 2014/15 had been stayed following the setting aside of a default judgment in order to allow the issue to be determined by the Tribunal. There remained a dispute, however, as to the result of the proceedings in relation to 2010 to 2014.

6. A matter which has been determined by a court is not within the jurisdiction of the Tribunal (section 27A(4)(c) of the 1987 Act). Judge

Nicol accordingly adjourned the case management conference until 9 June 2015 and gave directions to allow the Tribunal to determine this jurisdictional point.

7. The matter came before Judge Andrew at a hearing on 9 June. In a decision issued on 15 June 2015, Judge Andrew, in effect considering the matter as a preliminary issue, found that "the Tribunal has jurisdiction to determine the reasonableness of the service charge costs actually incurred by the Respondent [the landlord] during the years commencing 25 March 2012, 2013 and 2014 and the applicant's [the leaseholder's] liability to pay service charges in respect of those costs."

8. This finding was based on the understanding that the transfer of the freehold in July 2012 was accomplished on a "clean break" basis, and that the landlord had not incurred any costs before acquiring the freehold. In respect of later years, there was no dispute that the Tribunal had jurisdiction in respect of flat 1 for the year commencing in March 2013, and in respect of both flats for the year commencing in March 2014 (on the basis of the stay mentioned above). Judge Andrew found that the existing county court judgments relating to both flats for the year from March 2012, and flat 3 for that commencing in March 2013 were all in respect of on-account payments demanded at the beginning of the year; and that such judgments did not oust the Tribunal's jurisdiction to consider either the reasonableness of actual costs incurred during the year or the final service charge payable.

9. Judge Andrew went on to give directions preparatory to this hearing. In those directions, he adverted to the fact that the landlord had indicated in the hearing that he would be making his own application to the Tribunal. Judge Andrew accordingly directed that, if received before 19 June 2015, that application would be consolidated with the one already under consideration. As we have said, the landlord's application was in fact dated 26 July, and was received by the Tribunal on 28 July.

10. Accordingly, the Tribunal issued further directions on 4 August 2015 (Judge Guest), to the effect that the two applications would still be consolidated (we note that the landlord indicated his opposition to this course in his application) and adjusting the time limits for the various steps provided for in Judge Andrew's directions for disclosure and the exchange of case statements.

The hearing

11. The leaseholder was represented by Mr P Noble, and the landlord by Mr C Sinclair, both of counsel. Ms Adewoyin and Mr Da Costa gave evidence.

The issues

12. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) The payability and/or reasonableness of service charges relating to the actual costs incurred during the service charge years from March 2012 to March 2015 in respect of both flats 1 and 3.

    (ii) The payability and/or reasonableness of service charges arising as a result of the expected costs of certain fire safety works. In the event, the only two issues were, prospectively, whether it was reasonable for the landlord to retain the services of a surveyor, and whether it would be reasonable to install a sump pump in the basement.

13. In addition, it had been suggested by Judge Guest that an application under section 20C of the 1985 Act by the leaseholder would be made, for which see paragraph 153 below.

Preliminary

14. The leaseholder has never paid any service charge to the landlord. Her mortgagee, however, has paid such of the on-account sums demanded as were the subject of the county court judgments referred to above.

15. The hearing proceeded through consideration of the Scott schedules, of which there were four; covering each of the years ending in March 2013, 2014 and 2015, and, separately, one headed "Fire safety and sump pump" also stated to relate to the year ending 2015 (this last being the schedule relevant to the landlord's application 0338). We attach copies of the schedules to this decision. The cost figure given in the schedules is that to the landlord. The actual costs demanded or to be demanded from the leaseholder is two thirds of those sums, representing her share of the service charge for the two flats she leases.

16. A significant number of items on the Scott schedules were agreed before us by the leaseholder, in some cases after some argument or clarification. These were:

    Year ending March 2013: Items 9, 10, 11, 15, 18, and 19.
    Year ending March 2014: Items 13 and 19.
    Year ending March 2015: Items 8, 11, 16, 19, 22, 24, 26, 29, 30, 32, and 33

17. In respect of the year ending 2015 "Fire safety and sump pump" schedule, the only matters contested before us were item 7 (the engagement of a surveyor) and 9 (provision of a sump pump).

18. It is convenient to record at the outset that in general we found the landlord to be a truthful witness, and careful to the point of fastidiousness. The direct evidence given by the leaseholder was limited, but we found her to be lacking in clarity and on occasions evasive.

Payment to Mr Da Costa for cleaning and management

19. A series of charges related to invoices from Mr Costa to himself as landlord, representing his work in cleaning the common parts and in undertaking management functions.

20. Mr Noble for the leaseholder argued that the lease provided in paragraph 1 of the seventh schedule that "service expenditure" was to consist of "the total of the *expenditure* ... incurred by the landlord" on a series of matters, including "(ii) administering and/or employing managing agents in respect of the building...(ii) doing any other act or thing reasonably and properly done in connection with the building" (emphasis added). As a result, it could not be used to cover things that the landlord personally did, without incurring actual expenditure.

21. Mr Sinclair argued that the fact that lease provided for "administering *and/or* employing managing agents" indicated that direct administration by the landlord was countenanced by the lease. He further argued that directly performing cleaning or administration could be covered by the very wide sweep up provision in paragraph 1(iii): "doing any other act or thing reasonably and properly done in connection with the Building". However, this head is still governed by the reference to "expenditure" quoted above. Pressed, Mr Sinclair said that "expenditure" covered both expending money and expending time.

22. In his evidence, Mr Da Costa said that it was cheaper for him to perform both functions directly.

23. The lease must be read in a common sense way that escapes absurdity and does not create irrational distinctions. As Mr Noble accepted, if Mr Da Costa had incorporated a company, and used that as a vehicle for invoicing himself, no objection could be taken (indeed, it is not uncommon for companies linked by personnel and accommodation with freeholders to undertake management functions). The same must be true if Mr Da Costa had done so in the form of a partnership, a form of business organisation which does not involve either incorporation or separate legal personality. If the landlord engaged an unincorporated sole trader to undertake the functions, there would of course not be any question that the expenditure would form part of the "service expenditure", and accordingly be chargeable in the service charge. To draw a distinction between the landlord paying Mr Da Costa as a partner and doing so as a sole trader, is redolent of absurdity and we reject it. In effect, Mr Da Costa is acting in distinct roles when operating, on the one hand, as cleaner and as property manager and, on

the other, as landlord. As our hypothetical separate company and partnership examples illustrate, the distinction between roles is not recognised solely where the role is represented by a separate legal personality.

24. We conclude that in acting as a cleaner and a property manager, Mr Da Costa was acting in roles distinct from that he adopted as landlord; and in paying Mr Da Costa qua cleaner and manager, Mr Da Costa qua landlord was expending money capable of recovery under the service charge.

25. As to the reasonableness of the fees in respect of the cleaning, the landlord's evidence was that he undertook cleaning when it was necessary, rather than on a regular basis. The leaseholder claimed that one of her tenants, Veronica, had told her that she cleaned the common parts. The landlord contested that. Although complimentary about that tenant generally, he said she did not undertake cleaning outside her flat. This aside, although the leaseholder said she contested the reasonableness of the charges for cleaning, she did not advance a specific basis for the challenge.

26. The landlord's evidence was that he kept a diary of the times he cleaned and his charges were based on that.

27. We prefer the direct evidence of the landlord as to who did the cleaning. We find the amounts claimed reasonable in all the circumstances.

28. In respect of his management fees, the leaseholder contested the reasonableness of the fees, but on a non-particularised basis. The fee was based on £300 per unit per year. We regard this as reasonable.

29. *Decision*: The landlord may collect reasonable fees representing his work as cleaner and as property manager. In each case, the fees claimed by the landlord were reasonable.

30. This finding applies to the various entries relating to both maintenance and cleaning in the three schedules covering March 2012 to March 2015.

The Buddleia

31. The leaseholder contested £84.00 spent on removing what the landlord described as "an old buddleia with thick, gnarled roots" from an otherwise empty flower bed near the dustbins (item 12, schedule for year ending March 2013). This was not, the leaseholder contended, within the common parts and therefore not recoverable.

32. The landlord indicated to us the location of the buddleia on the lease plan. It is adjacent to the narrow pathway to the dustbins from the front door of the house.

33. It appeared that there was some other dispute between the parties as to the status of the front, and particularly, the back garden (that is, whether they were within the common parts or not), which is not a matter for us.

34. The common parts are defined as "any parts of the building provided by the landlord for the common use of the occupiers of the building and their visitors" (the definition of "building" includes the whole plot, not just the house itself). The landlord's repairing covenant includes "the area designated for dustbins and the access thereto".

35. We conclude that the removal of the buddleia was recoverable either because the flowerbed itself constituted a "part of the building provided ... for the common use of the occupiers", or, if it did not, it was nonetheless covered as expenditure incurred in "doing any other act or thing reasonably and properly done in connection with the building" under the fifth schedule, paragraph 1(iii). It was necessary to allow the lessees or their tenants conveniently to access the dustbins.

36. *Decision*: the landlord may charge to the service charge the removal of the buddleia in the front garden.

Electrical works

37. The leaseholder contended that electrical works in the cellar (to which all the leaseholders had access) or other common parts appearing at (item 13, schedule for year ending March 2013) were either completely new services which, she maintained, was not covered by the lease, or were unnecessary. The works comprised matters such as the fitting of a time lapse switch in the cellar and the installation of circuit breakers.

38. We accept the landlord's evidence that the work was necessary and clearly within the ambit of the repairing covenant.

39. *Decision*: the landlord may charge to the service charge the contested electrical works to the cellar and common parts.

Removal of aerial

40. The leaseholder argued that the expenditure indicated by item 14, schedule for year ending March 2013, for the removal of an aerial from the front of the building, was not recoverable. It had been in place before the landlord acquired the freehold. She accepted through counsel that attachment of an aerial without consent would be a breach of a lessee's covenant.

41. We accept the landlord's evidence that he had never given permission for the attachment of an aerial, and that the previous holder of the freehold had informed him that no permission had been given by them.

42. *Decision*: the landlord may charge to the service charge the cost of removing the aerial on the front elevation.

Insurance

43. The leaseholder claimed that she was not liable for service charge in respect of the building insurance in the year ending March 2013 and that ending March 2015 (items 17 and 36 in the schedules for those years, respectively). This was so, she said, because the landlord had failed in his responsibility to secure appropriate insurance under the fifths schedule to the leases, paragraph (2)(c) in those years.

44. Her evidence was that she was required by her mortgagee to provide evidence of such insurance. She forwarded the documentation she had received from the landlord, but the mortgagee found that inadequate, and charged her (in both years) for insurance they arranged themselves as a result. In respect of the 2014/15 service charge year, she produced at the hearing and handed up a letter from or on behalf of the mortgagee (Acenden Limited) to support her claim. A letter from the same company setting out the charge to her was included in the bundle.

45. The Tribunal found the mortgagee's letter difficult to understand. It appears to be a computer-generated letter with certain elements inserted. The bullet point apparently inserted to explain the inadequacy of the documentation states "the insurance schedule received states the address of property insured and amount is on attached schedule, however there is no further attached schedule to confirm these details". In addition, in the paragraph demanding "an acceptable schedule", one of three bullet points appears to have been ticked by hand. That requests that "the new policy should be arranged with an insurance company regulated by the Financial Conduct Authority."

46. This letter was dated 11 September 2014, and the letter from the mortgagee in connection with payment for insurance arranged by it is dated 14 October 2014. It appears that it was the leaseholder's evidence that similar problems had occurred in the 2012/13 service charge year, although no documentary evidence for this was forthcoming.

47. The landlord's evidence was that he had obtained proper insurance in each year. He did so through a broker. He produced in the bundle a renewal schedule from Allianz effective from 24 March 2012, a receipt from the broker in July 2012 and a receipt from the broker for 8 July 2014.

48. We accept the landlord's evidence that the proper insurance was, in fact, obtained. It appears that the leaseholder did not send the mortgagee documentation that was satisfactory to it in the second year in issue, and we are prepared to accept that the same occurred in the first year.

49. We do not know if it was the landlord who failed to send the correct documentation to the leaseholder, or whether she failed to forward what was necessary to the mortgagee. But even if the landlord did not send the schedule required, the leaseholder could have so informed the landlord and asked for the oversight to be remedied. We accept the landlord's evidence that she did not, in either year, do so, and that had she done so, he would have ensured that the necessary paper work was provided.

50. In these circumstances, we conclude that the landlord did insure the building in accordance with the insurance covenant, and that if the leaseholder did also pay for insurance, that could not reasonably be attributed to the landlord.

51. *Decision*: the landlord may charge to the service charge the cost of insurance for the years ending in March 2013 and March 2015.

Entryphone

52. The landlord replaced the entryphone in late 2013 (item 11 in the schedule for the year ending March 2014). The cost was £768.24 in total, but, no consultation process as required by section 20 of the 1985 Act having been undertaken, the landlord limited his demand to £750.

53. The leaseholder did not dispute the reasonableness of the cost had it been necessary to replace the entryphone, but her contention was that replacement was not necessary. The entryphone worked perfectly well.

54. The landlord's evidence was that at least two of the flats had had problems with the audio reception on the instrument in the past. In March 2013, he had had to call out an engineer to repair the system. The engineer had told him that it would be advisable to install a new system, as the current one was old and its retention would lead to higher expenditure on call-out charges.

55. We accept the evidence of the landlord. The replacement of the entryphone was reasonable routine maintenance.

56. In 2014, the warranty on the new system ran out, and the landlord entered into a service agreement at the annual cost of £63.52. The leaseholder contested this (as item 10 on the schedule relating to the year ending March 2015), on the basis that it was a consequential cost

of what she said was the unreasonable decision to procure the new system. This objection accordingly also falls, given our finding.

57. *Decision*: the landlord may charge to the service charge the cost of a new entryphone system; and it was reasonable, once the warranty period on the new system elapsed, to enter into the annual maintenance agreement.

The new aerial

58. A communal satellite aerial was installed, and invoiced in June 2013 (item 12 in the schedule for the year ending March 2014). The leaseholder's contention was again not that the cost itself was unreasonable, but that a communal aerial should not have been installed.

59. The landlord's evidence was that a communal system was desirable, because otherwise the tenants provided their own, then left them when they moved, which was unsightly and inefficient.

60. We accept the landlord's argument that procurement of a communal facility was a reasonable decision to take. Indeed, it can be seen that it would benefit the leaseholder's tenants.

61. Subsequently, the aerial was damaged by a storm and had to be re-fixed. The leaseholder's objection to this charge (item 20 in the schedule for the year ending March 2015) was parasitic on her objection to the decision to provide the aerial, and accordingly also fails.

62. *Decision*: the landlord may charge to the service charge the cost of a communal aerial, and the subsequent cost of re-fixing it after it was damaged.

Miscellaneous maintenance

63. Item 14 in the schedule for the year ending March 2014 related to three invoices totalling £972 from a contractor used by the landlord. Item 19 related to a single invoice relating to four distinct jobs. At the hearing, the landlord corrected the costs shown in the schedule to £882. In both cases, the leaseholder's objection was that she should have been informed in advance. At one point, in relation to item 14, and again in relation to item 19, she suggested that, in the absence of such notification, she could not say if the costs incurred were reasonable or not. At another point, in relation to item 14, she said she thought it was "just too much".

64. The invoices related to a number of distinct jobs. It was not contended by the leaseholder that a section 20 consultation should have been

conducted on either occasion. Invoices were provided by the landlord. There is no substance to the leaseholder's objection, and we accept the landlord's evidence that, in each case, the work was necessary.

65. *Decision*: the landlord may charge to the service charge the cost of the maintenance invoices which appear as items 14 and 19 in the schedule for the year ending March 2014.

Hot water cylinders: initial inspections

66. Hot water to the three flats is provided by three immersion heater cylinders, one serving each flat, located in the cellar. Further major works are necessary to the cellar, as a result of the service of an improvement notice by the local authority, or a requirement made before such service, as set out below (see paragraph 136).

67. However, shortly before the initial notice was served in December 2013, the landlord commissioned two inspections, both from the same plumbing company, one of which cost £120.00 (item 15), and the other £60 (item 18). The first related to a general check, the second was for a report on "safety features". The invoices for both were in the bundle. The report itself covered by item 18 was handed up at the hearing. It outlines the safety features, and states that, if all were to fail, an explosion could result.

68. The leaseholder objected to the reports solely on the basis that the cylinders themselves belonged to the leaseholders, not the landlord. The landlord, in his entry in the schedule, described the treatment of the cylinders in the lease as "anomalous". Neither the cellar nor the cylinders are mentioned in the leases.

69. We do not regard the ownership of the cylinders themselves as relevant. The leaseholder does not contest that the cellar is the responsibility of the landlord. He is clearly entitled – indeed, he may be obliged – to ensure that any installations therein, whoever owns them, are safe.

70. *Decision*: the landlord may charge to the service charge the cost of the two reports of December 2013 in connection with the hot water cylinders in the cellar.

Electrical inspection

71. In December 2013, the landlord arranged an electrical inspection of the property, at a cost of £253.68. The leaseholder claimed it was not necessary, an assertion unsupported by additional evidence or argument.

72. The landlord considered he was required to undertake an electrical inspection every five years. We did not hear detailed submissions as to

whether there is such a specific obligation (as there is in the case of Houses in Multiple Occupation), but in any event the Tribunal is satisfied that, at the very least, it is prudent for a landlord to carry out periodic inspections of the electrical system. It was clearly reasonable for him to do so.

73. *Decision*: the landlord may charge to the service charge the cost of the electrical inspection.

Repairs to roof of flat 2

74. The leaseholder does not contest that work was done, and that the work was necessary, to investigate and repair a leak to the roof of flat 2, that occupied by the landlord (item 17 of the schedule for the year ending March 2014). She says, however, that the landlord told her tenant in flat 3 to take the cost of the repair out of the rent payable to the leaseholder.

75. The landlord's evidence was that he did not ask the tenant to do so – he had done that, but on another occasion, and in relation to a matter not before the Tribunal.

76. The leaseholder did not have any supporting evidence for her assertion, such as evidence from the tenant, or the receipt that, she (the leaseholder) said that the tenant had told her the landlord had given her. The leaseholder's evidence, in respect both of this issue and more generally, was vague and non-specific. On other occasions her recollection was clearly at fault. The landlord, on the other hand, we found clear and precise. We prefer his evidence on this issue.

77. *Decision*: the landlord may charge to the service charge the cost of repairs to remedy the leak into flat 2.

Plumbing bill in relation to flat 3

78. The leaseholder objected to the inclusion of an invoice for £126.00 for emergency plumbing work to remedy a leak from a bathroom in flat 3 (item 21, schedule for the year ending March 2014). She contended that the expenditure had been found irrecoverable by Lambeth County Court in a small-claims judgment given on 12 July 2013. We were taken to a full solicitor's note of the judgment (the relevant passage is on page 389 of the bundle, the paragraph starting "The issue with the plumbing...").

79. The landlord explained that the matter adjudged in the county court was different. In the note, the contested sum is given as £142.80, and the judge refers to work done on a sink. The invoice in the item before us related to a lavatory cistern.

80. The two matters are clearly unrelated and we find for the landlord.

81. *Decision*: the landlord may charge to the service charge the cost of the works to remedy the leak from flat 3.

Health and fire safety inspection

82. It was, the leaseholder contended, unnecessary for the landlord to commission a health and safety inspection of the property in November 2013, at a cost of £325.

83. The landlord considers himself bound by health and safety legislation to commission the inspection. His evidence was that no such inspection had been undertaken since the house was converted into flats in 2007.

84. It is likely that the landlord is correct to consider himself bound by the provisions of the Regulatory Reform (Fire Safety) Order 2005, which imposes duties in respect of the common parts of the building, although we did not hear detailed submissions on the matter. However, whether the landlord was legally bound to conduct an inspection or not, it was in our view clearly a reasonable and prudent step for a landlord to take.

85. *Decision*: the landlord may charge to the service charge the cost of the health and fire safety inspection.

Accountancy

86. The schedules contain three items relating to accountancy fees, each relating to fees paid to the same firm of chartered accountants. The first is item 18 in the schedule relating to the year ending March 2013 (£420); the second relates to the following year and is for the same sum (item 24). In the schedule for the year ending March 2015, item 13 charges the sum of £744.

87. The leaseholder expressly accepted the charge of £420 for accountancy in the schedule for the year ending March 2013, but contested the same sum for the same services the following year.

88. The larger sum for accountancy fees in the final year appears to be explained by the fact that the fees for that year included the preparation of the interim statement.

89. The leaseholder's contestation of the fees was wholly un-particularised. In the light of that, the leaseholder has failed to persuade us that these professional fees were unreasonably incurred.

90. *Decision*: the landlord may charge to the service charge the cost of accountancy fees for each of the three years.

Legal fees

91. Item 25 in the schedule for the year ending March 2014 and item 14 in that ending March 2015 relate to legal fees incurred by the landlord in the course of his various county court actions against the leaseholder.

92. The leaseholder contested these costs. It was not argued that legal costs were irrecoverable under the lease. It was agreed before us that £425 had, in fact, already been paid as part of the costs order made during one of the claims (in relation to item 25 in the year ending March 2014 schedule).

93. Once this element of double-counting had been identified and accepted by the landlord, the leaseholder again invited us to conclude that the fees were excessive but without any particularised objection.

94. The invoices from the solicitors concerned were made available in the bundle. In the absence of any specific argument, we are not persuaded that the fees were unreasonable.

95. *Decision*: the landlord may charge to the service charge the cost of legal fees.

Bank charges

96. Item 26 in the schedule for the year ending March 2014 and item 14 in the following year related to bank charges on the separate bank account maintained by the leaseholder for the administration of the building.

97. The leaseholder agreed that it was not unreasonable for the landlord to have a separate account, but did not think he should be able to charge the bank charges to the service charge. The landlord said that charges were general on small business accounts, and he had shopped around for the best deal.

98. The leaseholder did not explain how it could be reasonable to make provision for a separate bank account, but not to charge the cost of it. Her position is palpably unsustainable.

99. *Decision*: the landlord may charge to the service charge the cost of banking charges.

Postage and stationery

100. Item 12 of the schedule for the year ending March 2015 related to postage and stationery costs incurred by the leaseholder in administering the building.

101. The leaseholder accepted that some sum for these expenses would have been reasonable, but that £193.59 was excessive. She declined to say what sum would have been reasonable.

102. The landlord agreed the figure was quite high, but said that that represented the amount of work required at a time when he was instructing solicitors.

103. The landlord provided copied invoices covering the expenses in the bundle. The leaseholder did not say that any particular item of expenditure should not have been incurred.

104. *Decision*: the landlord may charge to the service charge the cost of postage and stationery.

Emergency maintenance in flat 1

105. Item 17 in the schedule for the year ending March 2015 related to emergency maintenance work done within flat 1 at the landlord's expense, in respect of the electrical installation and the ventilation fan in the bathroom. In respect of both, the landlord's solicitors had written to the leaseholder on 3 April 2014.

106. The leaseholder did not contest that the relevant repairs were her responsibility under the lease, nor that the lease allowed for the repairs to be undertaken by the landlord if the leaseholder did not adhere to the relevant covenants. She merely stated that the work was not necessary. Again, she did not particularise her objection.

107. The invoice indicates that a fault was found in the flat and that the fan was disconnected. There is no possible basis for contesting the reasonableness of the landlord's actions.

108. *Decision*: the landlord may charge to the service charge the cost of emergency maintenance in flat 1.

Maintenance: re-ordering of the pipework in the cellar

109. The landlord charged £720.00 to the service charge for plumbing works in the cellar under flat 1, specifically the installation of an insolating valve and the rationalisation of excessive pipe work, before the supply was split between the flats (item 18 of the schedule for the year ending March 2015).

110. The leaseholder again alleged that she should have been informed of the work, and in the absence of such notice, she could not say that the expenditure was reasonable.

111. The landlord's explanation was that the excessive pipework inhibited proper access to the area for workmen, and he feared their complexity added to the risk of accidental flooding.

112. We are satisfied that the landlord's reason for commissioning the work was a reasonable one, and that the cost was not unreasonable.

113. *Decision*: the landlord may charge to the service charge the cost of re-ordering the pipework in the cellar.

Removal of rubble in the front garden

114. Item 21 in the schedule for the year ending March 2015 charged £180 for the removal of rubble left in the front garden as a result of building works undertaken in flat 1.

115. The leaseholder did not contest that the removal of the rubble was her responsibility, but her case was that it would have been removed, had the landlord given her (and her builders) reasonable time to do so.

116. We were taken to a notice served by the landlord requiring the removal of the rubble. The notice was dated 10 September 2010, and required the removal of the rubble by 6.00 pm on the 12 September. The notice correctly points out that the leaseholder has no right to deposit builder's rubble in the front garden. The notice states that it is in identical terms to one addressed to her solicitors.

117. The landlord's evidence was that this was not his first letter to the leaseholder in connection with the rubble. Further, the notice itself commenced "We write further to our e-mails to your solicitor", thus confirming that this was the culmination of a series of communications, not the first communication.

118. The leaseholder's submission was that she would have received the letter on the morning of the 11 September or even the morning of the 12 September, and that that gave her insufficient notice to remove the rubble by the deadline specified therein.

119. The leaseholder did not have the right under the lease to allow the rubble to be deposited in the front garden. However, if the landlord were to give her a deadline for its removal, it was incumbent on him to ensure that the deadline was reasonable. We accept that there were clearly earlier communications in relation to the rubble. However, we do not have them before us and we do not know whether they imposed the same deadline or not. The landlord was not in a position to state categorically that they did.

120. In these circumstances, we are forced to the conclusion that the landlord was not reasonable in removing the rubble at the time that he did so and charging the cost to the service charge.

121. *Decision*: the landlord may *not* charge to the service charge the cost of removal of builder's rubble from the front garden.

Electrical work following inspection

122. Item 23 on the schedule for the year ending March 2015 represents electrical work done as a result of the electrical inspection considered above. Again, the leaseholder's objection is that she should have been informed of the work.

123. We accepted the reasonableness of the inspection. It follows that work necessary as a result of the inspection was reasonable, unless there is some particularised objection to the cost incurred. There is none.

124. *Decision*: the landlord may charge to the service charge the cost of the electrical work consequent on the electrical inspection.

Guttering and drainage works

125. Item 25 on the schedule for the year ending March 2015 charges £1,992 to the service charge in respect of work to replace gutters and install new rainwater goods, and included provision for scaffolding.

126. The leaseholder did not object to the amount of money per se, but claimed that she had not been properly consulted, as required by section 20 of the 1985 Act. This submission came down to her assertion that she had not seen either the stage one or stage two consultation notices supplied in the bundle, dated 30 July 2013 and 24 August 2014 respectively.

127. Both on their face state that they were sent to what the leaseholder accepted was her correspondence address. The second was also (it stated) sent to her email account and her home address.

128. The evidence of the landlord was that he personally posted both letters, either on the day they were dated or perhaps the morning after. He observed that a great deal of other correspondence to the same address had clearly been received.

129. We have no hesitation in accepting the evidence of the landlord that the notices were sent. There is no other objection to this item.

130. *Decision*: the landlord may charge to the service charge the cost of guttering and drainage works.

Re-pointing and fence repair

131. The leaseholder said that she had no point to take about item 31 on the schedule for the year ending March 2015 provided the work had, in fact, been done. The landlord's evidence was that the work was, indeed, done. An invoice is provided in the bundle. We accordingly find for the landlord.

132. *Decision*: the landlord may charge to the service charge the cost of re-pointing and fence repair.

The landlord's application: surveyor's costs and sump pump

133. We turn to the fourth Scott schedule, that headed "Fire Safety and Sump Pump 2015", which represents the landlord's joined application (that ending 0338).

134. The application is for advance approval under section 27A(3) of the 1985 Act of two lines of expenditure. That subsection provides that an application to the Tribunal can be made

> "... 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..."

135. It was not contested that the relevant expenditure was legally capable of falling under the service charge obligation in the leases. A service charge is only payable if the costs upon which it is based are reasonably incurred (section 19 of the 1985 Act), so the issue before us is the prospective reasonableness of the future costs specified.

136. The background is that on 30 December 2013, the local authority, Lambeth Borough Council, served an improvement notice under section 11 of the Housing Act 2004, relating to fire safety arrangements. There followed a series of communications between the officer concerned at the local authority and the landlord. As a result, on 9 October 2014, what the landlord describes as an amended improvement notice was served (although the document provided appears to be a letter requiring action before the service of a notice).

137. The work required is of some complexity. In addition to the installation of a fire alarm system, it involves works in the cellar (where the flats' cylinders are housed), including lining of the ceiling and the construction of partitions. With, apparently, the agreement of the local authority, the landlord has divided the work into two phases. The more complicated cellar works are in the second phase.

138. Although some other matters are covered in the relevant landlord's statement (that dated 26 July 2015), notably administration fees, at the

hearing the contested items that the landlord pursued where items 7 (surveyor's fees) and 9 (sump pump).

139. In respect of the surveyor's fees, the landlord's evidence was that specifying and supervising the work necessary was far beyond his competence as an amateur. He agreed that he worked in property management himself as an employee, but said that, in his work capacity, he would call on a qualified surveyor if work of a similar nature were required.

140. The leaseholder did not contest the necessity of carrying out the work required by the local authority. Counsel submitted, however, that a surveyor was unnecessary in the light of the detailed description of the work required set out in the local authority officer's letter of 9 October 2014.

141. We are satisfied that the work is of sufficient complexity to require the professional assistance of a surveyor. The schedule in the letter of 9 October 2014 is simply a list of defects and works required. Is if far from a specification of the sort that a surveyor would provide, and which would be necessary for the proper commissioning and supervision of the work. Our conclusion is that it is reasonable in principle for the landlord to engage a surveyor.

142. The sum claimed set out in the Scott Schedule is for a "minimum £2,300 + VAT". In his statement, the landlord explains that he has only been able to obtain a single quotation from a surveyor. That quotation was for the stated amount, plus £295 plus VAT for additional site visits; and £110 an hour for "additional duties".

143. We consider that this is a reasonable fee for the work proposed, in principle. We cannot, however, determine if additional site visits are reasonable, or if they are, how many would be reasonable, in advance of the work being undertaken; and similarly in respect of additional hourly-charged work. In these circumstances, we can only determine at this point that surveyor's fees of £2,300 plus VAT are reasonable, that the fee of £295 plus VAT in respect of additional site visits is reasonable as a per-visit fee; and that £110 is reasonable as an hourly fee for additional work. We cannot, however determine how many site visits, or additional hours, will be reasonably necessary.

144. The installation of a sump pump is not required by the local authority. In his evidence, the landlord argued that the installation was necessary, because the cylinders have overflow pipes which discharge into the cellar. In his statement, the landlord also related times when water had leaked directly into the cellar from flat 1 as a result of plumbing faults. Once the required partition was in place, there was a danger that discharged water would accumulate in a way that it did not in the current state of the cellar, and thereby present a danger to the services

in the cellar, including electrical wiring. Accumulated water could also damage the partition itself.

145. The leaseholder submitted that it was not sufficient for the landlord to argue that it would be better to have a sump pump than not. Counsel observed that the local authority did not require the pump, and that there had been no risk assessment made to justify its installation.

146. The landlord was not in position to submit a determinate figure for the cost of the sump pump. No figure is provided in the Scott schedule. In his statement, the landlord suggested that the cost would be in the order of £2,500.

147. We note that, once a surveyor had been instructed, he or she would be in a position to give a professional view as to whether the installation was necessary or not.

148. Our conclusion is that there are clearly sound arguments for the installation of a pump. In the absence of reasonably robust costings, however, we do not consider that it would be appropriate for us to make a formal determination as to the reasonableness or otherwise of future expenditure on a sump pump. The landlord may, however, take this as an indication that we consider such expenditure likely to be reasonable: a presumption which it would be difficult to rebut should the surveyor recommend such a step.

149. In both cases, a service charge based upon the costs will be payable subject to the completion of the consultation requirements required by section 20 of the 1985 Act and to being properly demanded.

150. *Decision*: we determine that the expenditure of £2,300 plus VAT to engage a surveyor in respect of the works described by the landlord as stage 2 of the works required by the local authority is reasonable. We further determine that it is reasonable for the surveyor to charge £295 plus VAT for additional site visits and £110 an hour for additional work. We make no determination as to the number of additional site visits or hourly paid work which would be reasonable.

151. We make no determination as to the reasonableness of expenditure on the installation of a sump pump.

Application under section 20C of the 1985 Act

152. The possibility of an application under section 20C that the costs incurred in these proceedings should not be chargeable to the service charge was prefigured in the hearing before Judge Guest. In the event, Mr Noble did not make an application. Had one been made, it would have been refused. We have found almost entirely for the landlord, whose conduct has been reasonable throughout.

Name: Tribunal Judge Richard Percival **Date:** 26 October 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or 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 that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

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

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

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).