

11514



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

Case reference : LON/00AP/LSC/2015/0451

Property : Flat 18, Marbleford Court, 123
Hornsey Lane, London, N6 5NJ

Applicant : 123 Hornsey Lane (Management)
Limited

Representative : Ms Nina Roberts (Solicitor)

Respondent : Mr Angus Chapple

Representative : In person

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

Tribunal members : Judge Robert Latham
Mr Leslie Packer

**Date of Hearing and
Venue** : 3 March 2016 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 10 May 2016, revising decision
dated 12 April 2016

REVISED DECISION

Decisions of the Tribunal

- (1) The Applicant has issued a money claim in the County Court in the sum of £7,798.70. This includes statutory interest which is outside of the jurisdiction of this Tribunal. The claim within our jurisdiction amounts to £6,228.68 (see paragraph 1 of the determination).
- (2) The claim includes a 10% levy on the arrears, namely £1,795.18. This is not permitted by the lease, as the Applicant accepted, and is

disallowed. The net amount of the claim is £4,433.20 (see paragraphs 15 and 17).

- (3) Further reductions must be made to the sum claimed having regard to the determinations as set out in paragraphs 20 to 58.
- (4) 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.
- (5) Since the Tribunal has no jurisdiction over the claim for interest pursuant to section 69 of the County Court Act 1984, county court costs and fees, this matter is now be referred back to the Barnet County Court.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Respondent. On 15 July 2015, the Applicant issued proceedings in the Northampton County Court. The claim for arrears is set out at p.191 of the Bundle and totals £7,798.70. The schedule includes a claim for interest (at 8%), legal costs + VAT and County Court fees. This Tribunal has no jurisdiction over these matters. The claim for arrears of service charges which fall within our jurisdiction amounts to £6,228.68.
2. On 2 August 2015, the Respondent filed a Defence disputing the service charges and challenging the manner in which the Applicant Management Company is operated. The case was subsequently transferred to the Barnet County Court. On 21 October 2015, Deputy District Judge Ellington transferred the case to this Tribunal for determination of the service charge dispute.
3. On 24 November 2015, the Tribunal gave Directions. The Procedural Judge noted that this Tribunal has no jurisdiction over company accounts or company law issues. She noted that the claim related to the period 24 September 2013 and 24 September 2015. Having regard to the terms of the lease, the Tribunal would therefore need to consider the service charge years 2013/4; 2014/5 and 2015/6 (the determination of which would be on an estimated basis). In due course, the Applicant will need to make a reconciliation between the actual against the estimated expenditure.
4. Pursuant to these Directions:
 - (i) On 17 December, the Applicant has disclosed a number of documents relating to the claim (at p.38-74 of the Bundle);

(ii) On 16 January 2016, the Respondent served a Statement of Case in the form of a Schedule highlighting the service charges that he disputes (at p.76-9). He also disclosed a number of documents, including a number of alternative quotations (at p.75-101). No witness statements were served.

(iii) On 15 February, the Applicant has filed its response to the matters disputed in the Respondent's schedule (at p.103-113). It has also provided a number of invoices (at p.114-148). The Respondent relies upon witness statements from Mr Derek Wood (at p.149-186) and Mr Stephen Jasper (at 187-8).

(iv) The Applicant has filed a Bundle of Documents which extends to 417 pages. The Respondent has provided a Bundle of Additional Documents (18 pages). Reference to this bundle is prefixed by the letter "R").

5. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

6. The Applicant was represented by Ms Nina Roberts, a Solicitor with SLC Solicitors. She adduced evidence from Mr Wood and Mr Jasper. Mr Angus Chapple, the Respondent, appeared in person and elaborated upon his Statement of Case.

The Background

7. Mableford Court is a six storey block of 18 flats, there being three flats on each floor. The Respondent has been the tenant of Flat 18 since 14 August 1999. His flat is on the fifth (top) floor and has two bedrooms. There are 19 garages to the rear of the block. The Respondent's lease includes Garage 18. There is an area to the front of the block which is available for casual parking. The Respondent does not reside at his flat. He lets it out at a rent of some £1,400 per month.
8. The lease under which the Respondent occupies his flat is dated 4 March 1974 and is for a term of 99 years from 24 June 1973. On 31 August 1999, the term was extended to 999 years. There are three parties to the lease: (i) the Lessor, Marbleford Securities Limited ("the Lessor"), (ii) 123 Hornsey Management Limited, the Applicant ("the Management Company") and (iii) the Lessee, the interest now held by the Respondent tenant.
9. We were told that each of the 18 tenants is both a shareholder and is entitled to be a director of the Applicant Company. It would seem that not all tenants have exercised their right to be directors. We have been

provided with the minutes of the AGMs held on 30 October 2013 (at p.179); 28 October 2014 (p.182) and 26 October 2015 (p.184). Any expenditure incurred by the Applicant Company which is not recovered through the service charge must be borne by the Company and, in the last resort, its shareholders.

10. Mr Derek Wood has been the leading light behind the Applicant Company. He is described in the AGM minutes as Secretary and Treasurer. He has also been a director (see accounts for 2013/4 at p.421). It seems that he resigned on 7 October 2013 (see p.84). He is no longer a lessee and is therefore not eligible to be a director. However, at all material times he has managed the property on behalf of the Applicant Company. It seems that this has been with the approval of a majority of the lessees. The Respondent complains that there has been a lack of transparency.

The Lease

11. The lease, dated 4 March 1974 is at p.2-24 of the Bundle. The Tribunal highlights the following provisions:

(i) The Company is required to repair, maintain and insure the property and its common parts. The obligations are set out in Schedule 8.

(ii) The Respondent's share of the service charge is 6.1% (Schedule 7, clause 3).

(iii) The Company is entitled to employ a managing agent (Schedule 7, clause 1). In practice, it has decided not to do so.

(iv) The Company is required to keep service charge accounts, which are to be audited and certified by an accountant (Schedule 8, clauses 13 to 15). The year ended is stated to be 24 June. In practice, accounts have been kept for the year end 31 March.

(v) The Lessee is obliged to pay a quarterly advance service charge which is to be certified by the accountant (Schedule 7, clause 4).

(vi) The Company is entitled to maintain a reserve fund which is to be utilised to equalise out the service charge liability from year to year (Schedule 8, clause 12).

(vii) Each year there is to be a reconciliation between the actual expenditure and the sums paid through the advance service charge. If there is a shortfall, the Lessee is to pay the sum due with 21 days after notification of "the proportionate amount" (Schedule 7, clause 5).

12. It is apparent that the Applicant has not operated the service charge account in accordance with the scheme specified in the lease. However, the Tribunal is satisfied that this merely specifies the machinery for collecting and accounting for the service charge. It is not a pre-condition to payment by the Respondent. The basic scheme is that the Respondent should pay his fair contribution of the service charge expenditure which falls within the scope of the lease. This Tribunal must ensure that any expenditure incurred is reasonable. The failure of the Applicant to operate the service charge account in accordance with the terms of the lease, may be relevant to the reasonableness of the sums demanded.

The Service Charge Items in Dispute

13. The schedule of arrears which is annexed to the Claim Form is at p.191. This relates to eight service charge demands for the period 24 September 2013 to 9 June 2015. The sum claimed that is within our jurisdiction is £6, 228.68.
14. The eight service charge demands are at p.47-64. In his Defence, the Respondent suggested that these demands have not included the requisite Summary of Rights and Obligations. All these demands include the information required by Section 21B of the Act. However, it seems that the Applicant may have had to reissue one of the demands on 23 January 2015 because it did not include the requisite information (see R.17). A further notice was served on 28 January 2015 to comply with the requirements of Sections 47 and 48 of the Landlord and Tenant Act 1987 (see p.230). Failure to comply with the statutory obligations merely defers the obligation to pay. When the necessary information is provided, the sums become payable.
15. The relevant quarterly demands are four in the sum of £503.77 (demanded on 24 September 2013 – p.63; 24 December 2013 – p.61; 24 March 2014 – p.59 and 24 June 2014 – p.57) and £604.53 (demanded on 24 September 2014 – p.55; 24 December 2014 – p.53; 24 March 2015 – p.51 and 24 June 2015 – p.49). The sums demanded total £4,433.20.
16. The Bundle includes an additional demand for a quarterly service of £604.53 dated 24 September 2015 at p.47. However, this is not included in the schedule annexed to the Claim Form. No explanation was provided to the Tribunal as to why there should be fifth quarterly demand in the sum of £604.53.
17. The invoices also include a 10% levy in respect of the arrears. Ms Roberts conceded that there is nothing in the lease which entitles the landlord to levy this sum. Thus seven charges which total £1,795.18 are not payable.

18. It is apparent from the documents at p.65-73 that the eight service charge demands include contributions to both the service charge and a sinking fund. Thus the demand for £503.77 is £348.77 for the service charge and £155.00 for the sinking fund; whilst the demand for £604.53 is £418.53 and £186.00 respectively. It is impossible to reconcile these sums with the service charge accounts for 2012/3; 2013/4 or 2014/5. The total service charge expenditure for each of these years is £33,562; £42,613; and £34,163. The Respondent is liable for 6.1% of this expenditure. His quarterly liability for each of these years is therefore £511.82; £650.00 and £520.98.
19. The parties have prepared a Schedule based on the service charge accounts for 2013/4 (at p.426) and 2014/5 (at p.435). We have determined the reductions that need to be made. We are also asked to consider the budget for 2015/6 based on the figures at p.46. This is only an estimate of future expenditure.

1. 2013/4

1.1 Accounts: £1,740 (Disallowed)

20. The Directions required the Applicant to disclose the audited service charge accounts for the years 2013/4 and 2014/5. On 17 December 2015, the Applicant disclosed the accounts which are at p.40-44 of the Bundle. These accounts do not include and Loss or Profit Accounts. At the beginning of the hearing we granted a short adjournment to enable a fuller set of accounts to be provided. These have been added to the Bundle at p.418-426.
21. The accounts for 2013/4 include a sum of £1,740 for accountancy. However, the invoice, dated 28 October 2013, is only for £1,470 (see p.114). The invoice includes attendance at the Applicant Company's AGM. Despite this, Mr Wood suggested that the additional £300 related to the attendance at the AGM. It seems more likely to be a typographical error.
22. The Respondent has provided alternative quotes from Myers Clark and Wright and Co, chartered accounts, who would prepare annual accounts for £750 and £350 respectively. However, these relate to the filing of accounts at Companies House. Myers Clark would charge additional fees for correctly listing directors and shareholders and for money laundering checks. The Respondent suggests that a charge of £688 would be reasonable.
23. The Applicant faces an insuperable problem. These accounts are not service charge accounts required by Schedule 8, clauses 13 and 14 of the lease. They have not been prepared in accordance with the terms of the lease. They are rather statutory accounts required to be filed by the

Applicant Company pursuant to the requirements of the Companies Act 2006. The statutory requirements of the Applicant Company are the responsibility of the directors and shareholders. These are not a service charge matter. The accounts could serve both purposes. However, the Applicant has adduced no evidence as to what the cost of simply preparing the service charge accounts would have been.

24. We are satisfied that the primary purpose of these accounts is for the Applicant Company to comply with its statutory duties. We therefore disallow this item.

1.2 Rent, Rates and Water: £2,221 (Reduced to £256.60)

25. Mr Wood told us that the Applicant needed to rent Garage 9 from the tenant Mr Destefis at £173.33 a month (£2,079.96). The remaining sum of £256.60 relates to water charges. No rates are paid. We were told that it is used to store 10 sacks of salt, a lawn mower, and a pressure washer, all for the purposes of managing the property; also for storage of Company records.
26. Mr Chapple told us that the current gardeners bring their own equipment. Mr Wood conceded that they did, but that the lawnmower might be needed in the future. Mr Chapple argued that there was a big cupboard elsewhere that could be used for storage. He eventually agreed that the water charges were reasonably incurred.
27. We are satisfied that the cost of renting the garage is disproportionate and unreasonable for the limited purposes described. Alternative storage space could be found for the salt and the pressure washer. To spend over £2,000 a year to store a lawn mower that is not currently used cannot be justified. Storage of Company records is not an allowable service charge item. We allow the sum for water charges of £256.60.

1.3 Light, Heat and Power: £1,272 (Allowed)

28. The Applicant claims this for light, heat and power. Mr Wood explained that there was a monthly direct debit to EON of £103. There has recently been a reduction. Mr Chapple contended that the charges were too high. We disagree. On the limited evidence before us, we allow this claim.

1.4 Management Charge: £6,500 (Reduced to £4,500)

29. This sum is paid to Mr Wood for managing the Property. He states that this covers his secretarial services. This is equivalent to £361 per flat. Mr Chapple contends that this is too high. He suggests that £4,950 pa

would be reasonable. He has obtained a number of quotes in the sum of £140/£170 per flat (p.98) and £4,500pa (p.99) from managing agents.

30. The Tribunal is satisfied that a professional managing agent would charge £300 to £350 per flat to manage this property. We note that there has been no criticism of the quality of the upkeep of the property or the state of repair, and the Tribunal heard this confirmed in oral evidence from Mr Stephen Jasper, another leaseholder. This is an attractive block. We note that Mr Chapple is able to charge a good rent for his flat. However, we note that Mr Wood is not qualified. He must also bear responsibility for the fact that the service charge account has not been maintained in accordance with the terms of the lease. We therefore allow £250 per flat, an annual fee of £4,500.

1.5 Gardening: £7,200 (Reduced to £6,600)

31. The Applicant is obliged to cultivate and maintain the gardens (Schedule 8, clause 10). The current Gardening and Cleaning Agreement, dated 20 April 2014, is at p.125. The payment was £600 per month. Mr Wood told us there was one month in which no payment was made. This should therefore be reduced to £6,600.
32. Mr Chapple argued that this figure was too high and sought to reduce it to £1,360. He relied on quotes of £1,200-£1,800 pa (p.99) and £60 per visit (p.101).
33. There is limited information before the Tribunal. The gardens are well maintained. The charge is equivalent to £370 per flat each year. We do not consider this to be unreasonable.

1.6 Surveillance Equipment: £1,894 (Reduced to £1,722)

34. The lease permits improvements (Schedule 7, clause 1). The installation of CCTV is for the security of the Property and to oversee the parking at the front and to prevent the dumping of rubbish. This was discussed at the AGM on 30 October 2013 (see p.180). The invoice is at p.118. Mr Wood has added a 10% management charge for supervising the work.
35. Mr Chapple argued that it should be disallowed. He stated that there is a Parking Company who levied a charge a charge for unauthorised parking. He suggested that Mr Wood pocketed these charges. Mr Wood denied this and we accept his evidence. Mr Chapple also suggested that the cameras were in the wrong place.
36. We are satisfied that the Applicant was entitled to introduce CCTV and that the charge of £1,722 is reasonable. However, we disallow the additional management fee of 10%. This should come within Mr Wood's annual management charge.

1.7 Repairs and Maintenance: £11,391 (Reduced to £8,368)

37. These works fall within Schedule 8, clause 4. The costs include garden turf (£2,310), block redecoration (£2,800 – p.115), dustbin shed (£2,200 – p.115); entry phones (£541.06 – see p.117) and lift maintenance (£516). This totals £8,368 to which Mr Wood has added a management charge of 10%. He noted that there had been some exceptional items; in 2012/3 the expenditure had only been £2,588.
38. Mr Chapple argued that the annual maintenance for the entry phones should only be some £140-£170 (see p.98). He suggested that the replacement of the turf had been covered by insurance. Mr Wood denied this and we accept his evidence. We are satisfied that the sums claimed have been properly and reasonably incurred. However, we again disallow the additional management fee of 10%.

1.8 Insurance: £9,275 (Allowed)

39. Schedule 8, clause 2 of the lease requires the Applicant to insure the property. The Applicant accepts that the insurance premium is high but attributes this to the poor claims history (see p.119). On 14 August 2013, Aviva quoted £15,629. Turner Rawlinson was able to negotiate this down to £10,600. In 2015/6, the Applicant negotiated a more reasonable quote. Mr Wood explained that Turner Rawlinson has been the insurance brokers for Marbleford Court for at least 16 years. The benefits of using a broker, is to secure a proper indemnity. It is not necessarily in the interest of tenants to take the cheapest policy. The sum claimed also includes lift insurance of £38.75 per month.
40. Mr Chapple suggested that only £3,149.93 should be allowed. This is based on his quote at p.91. Rama Ford of Turner Rawlinson has commented on this quote (see p.121). We are satisfied that the bad claims record was not brought to their attention. It is important for a landlord to ensure that a property is properly and fully insured. We are satisfied that the sum claimed is reasonable.

2. 2014/5

2.1 Accounts: £1,470 (Disallowed)

41. We disallow this item for the reasons given in paragraph 24 above.

2.2 Rent, Rates and Water: £2,413 (Reduced to £333)

42. £2,080 relates to the cost of renting the garage and £333 to water charges. We disallow the rent for the reasons given in paragraph 27 above. We allow the water charge.

2.3 Light, Heat and Power: £563 (Allowed)

43. Mr Wood explained that this is a direct debit to EON. It is less than that incurred in 1013/4. Mr Chapple argued that it was still too high. We allow it.

2.4 Repairs and Maintenance: £3,223 (**Reduced to £2,930**)

44. The sum claimed includes the annual entry phone maintenance charge of £559.56 (see p.123); lift maintenance of £48 per month and repairs to the lifts of £1,230 (see p.126). To this there is an additional management fee of 10%. Mr Chapple contends that the charges are too high. We note that they are substantially lower than in 2013/4. We allow them in full, again save for the 10% management fee.

2.5 Management Charge: £6,500 (Reduced to £4,500)

45. We reduce the management fee to £4,500 for the reasons given in paragraph 30 above.

2.6 Gardening: £7,290 (Allowed)

46. We allow this item for the reasons given in paragraph 33 above.

2.7 Insurance: £11,691 (Allowed)

47. On 14 August 2015, Turner Rawlinson obtained a reduction in the quotation from Axa of £4,427.32 which included a premium of £308.09 for the lift (see p.119 and p.146). We allow this item for the reasons given in paragraph 40 above.

3. Advance Service Charge for 2015/6

48. The advance service charge is based on the budget at p.46. It does not seem to have been certified by the accountant as provided for by Schedule 7, clause 4. However, when the final accounts for the year have been prepared, there must be a reconciliation between the estimated and the actual expenditure.

3.1 Gardening and Cleaning: £7,200 (Allowed)

49. We see no reason to disallow this as an item to be included in a budget for an advance service charge.

3.2 Lift Maintenance: £624 (Allowed)

50. We see no reason to disallow this as an item to be included in a budget for an advance service charge.

3.3 Insurance: £4,242.80 (Allowed)

51. We see no reason to disallow this as an item to be included in a budget for an advance service charge. It is a substantial reduction in the premium paid for the two previous years reflecting the fact that the poor claims history is no longer impacting on the premium.

3.4 Lift Insurance: £258 (Allowed)

52. We see no reason to disallow this as an item to be included in a budget for an advance service charge. In so far as this is included in the main insurance policy, a reconciliation must be made in due course.

3.5 Director's Insurance: £300 (Disallowed)

53. We disallow this. This should be borne by the Applicant Company. It is not an item of service charge expenditure.

3.6 Garage Rental: £2,079.96 (Disallowed)

54. We disallow this item for the reasons given in paragraph 27 above. It would be appropriate to include an estimate for water charges.

3.7 Management Fee: £6,499.92 (Reduced to £4,500)

55. We reduce this to £4,500 for the reasons given in paragraph 30 above.

3.8 Accountant: £1,470 (Disallowed)

56. We disallow this item for the reasons given in paragraph 24 above. However, this is only an estimate for an advance service charge. When the service charge accounts are completed for the year, it would be open to the landlord to include the reasonable cost of preparing the service charge accounts, as opposed to the statutory accounts. Such accounts must be prepared in accordance with the provisions in the lease.

3.9 Entry Phone: £568.81 (Allowed)

57. We see no reason to disallow this as an item to be included in a budget for an advance service charge. Indeed, it is now supported by an invoice dated 15 September 2015 (p.127).

3.10 Miscellaneous: £3,000 (Allowed)

58. We see no reason to disallow this as an item to be included in a budget for an advance service charge for unanticipated items of expenditure.

Application under s.20C and refund of fees

59. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the hearing pursuant to Regulation 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund the tribunal fees paid by the Applicant.
60. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. The Applicant has not been operating the service charge account in accordance with the terms of the leases. The Respondent has succeeded on a number of issues.

The Next Steps

61. The parties must now agree the sum due under the eight service charge invoices which are included in the County Court claim, namely the demands made on 24 September 2013; 24 December 2013; 24 March 2014; 24 June 2014; 24 September 2014; 24 December 2014; 24 March 2015; and 24 June 2015 having regard to our findings. The Tribunal has no jurisdiction over statutory interest, ground rent or county court costs. These matters will be returned to the Barnet County Court.
62. This is the form of the decision that will be transferred back to the County Court. If either party wish to make any submissions as to how we have framed our decision, they must make written representations to Tribunal by no later than Friday 6 May, copying them to the other party.

Judge Robert Latham
12 April 2016
Revised 10 May 2016

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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 clause (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 clause (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.

- (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.



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

Case reference : LON/00AP/LSC/2015/0451

Property : Flat 18, Marbleford Court, 123
Hornsey Lane, London, N6 5NJ

Applicant : 123 Hornsey Lane (Management)
Limited

Representative : Ms Nina Roberts (Solicitor)

Respondent : Mr Angus Chapple

Representative : In person

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

Tribunal members : Judge Robert Latham
Mr Leslie Packer

**Date of Venue of
Determination** : 12 April 2016 at
10 Alfred Place, London WC1E 7LR

Date of decision : 10 May 2016

CORRECTION CERTIFICATE

Pursuant to Regulation 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the decision dated 12 April 2016 is corrected as set out in ***bold italics type*** in the revised decision. Any time for appealing or seeking a review of my decision runs from the today's date.

Reason for Issuing Correction Certificate

1. The Tribunal issued its decision in this matter on 12 April 2016.

2. On 13 April, the Respondent wrote to the Tribunal pointing out that we had made a typographical error to the heading “2.2 Rent, Rates and Water: £2,413 (Allowed)”. We confirm that this was a typographical error. It should read “2.2 Rent, Rates and Water: £2,413 (Reduced to £333)”.
3. In paragraph 62 of our decision, we invited both parties to make any submissions as to how we have framed our decision. Such written representations were to be made no later than Friday 6 May. No such representations have been made and our decision in the corrected form will now be transferred back to the County Court.

Judge Robert Latham
10 May 2016