FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/LSC/2019/0051**
Property	**:**	**195 Derry Court, 386 Streatham High Road, London SW16 6BF**
Applicants	**:**	**Mr Richard Shakar Ul Hoque** **Ms Marina Elsbeth Hughes**
Representative	**:**	**In person**
Respondents	**:**	**(1)Wandle Housing Association Limited** **(2)Streatham Management Company Limited** **(3)Spenhill Residential No 1 Limited** **Spenhill Residential No 2 Limited**
Representative	**:**	**Ms Osler instructed by Devonshires Solicitor for Wandle Housing** **Mr Madge-Wyld for Streatham Management instructed by KDL Law**
Also in attendance	**:**	**Mr Fieldsend for Spenhill 1 &2 instructed by Bryan Cave Leighton Paisner**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Daley** **Mr M Taylor FRICS**
Date and venue of Hearing	**:**	**5 September 2019 at 10.00 am 10 Alfred Place, London WC1E 7LR and reconvened on 2 October 2019 for a decision**
Date of Decision	**:**	**21 October 2019**

DECISION

Decisions of the tribunal

The tribunal makes the determinations set out below.

The application

1. On 27 January 2019 The Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985, in respect of the service charges for the years 2015/16, 2016/17 and 2017/18.

2. Directions for the determination of this matter were given at a case management conference on 7 February 2019. Further directions were given following written representations from the first Respondent Wandle Housing Association Limited ("Wandle's") solicitor who indicated that, given the structure of ownership and responsibility for services additional the Tribunal might wish to add additional parties. Directions were given on 7 March 2019 adding Streatham Management as the second respondent. On 9 April 2019 as a result of further representations Spenhill (1) and 2 were added as parties.

The background

3. The premises which are the subject of this application are a 2 bedroom flat in a purpose built block of 250 flats which were purchased new in 2014. The premises flat 195 is one of 35 shared ownership leasehold flats the landlord for the premises was the first respondent Wandle Housing Association ("Wandle"). The remaining flats are made up of social housing and privately owned (148).

4. The residential block is part of a mixed use development shared with Tesco, Transport for London, Streatham Leisure Centre. Tesco is the freeholder and the company's interest in the freehold is owned through a company called Spenhill Limited. In the Directions dated 7 March 2019, the Tribunal noted in paragraph (2) that -: The freeholder of this block is Tesco Stores Limited who granted a lease to Spenhill Residential No 1 Limited and Spenhill Residential No2 Limited. These two companies then entered into a lease with Streatham Management Company Limited and Wandle Housing Association Limited. Thereafter Wandle granted a lease to the applicants."

5. In The premises are subject to a lease agreement dated 16 July 2014 September 1994. The Applicant's percentage share at the time of purchase was 25%. The Respondent will provide services, the costs of which are payable by the leaseholder as a service charge.

6. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

7. The hearing was attended by the parties listed above; also in attendance was Mr Mataka on behalf of the second respondent, Mr Prager and Mr Adams on behalf of the third and fourth respondent and Miss Gentles, Mrs Thorogood and Miss Richards on behalf of Wandle.

8. The service charges for the years in issue was as follows:

   (i) 2015/16 -£922.85

   (ii) 2016/17 -£1222.59

   (iii) 2017/18- £1105.30

   (iv) 2018/19-£134.58

   There was also an application under Section 20C

9. Mr Shakar Ul Hoque represented both Applicants and each respondent was represented by Counsel as set out above. The Tribunal set out that it would consider the issues to be those set out in the Scott Schedule at tab 5 of the hearing bundle. The Tribunal would hear from the Applicant concerning his objection to the charges listed and then from the appropriate Respondent's counsel.

10. The Tribunal asked whether there were any preliminary issues that needed to be dealt with prior to the hearing.

11. Mr Shakar Ul Hoque, agreed with Ms Osler's assertion that no challenge was now being made in respect of the service charge year 2015/16 accordingly the Tribunal noted that the service charges in the sum of £922.85 was conceded as reasonable and payable.

12. Mr Fieldsend on behalf of the third and fourth respondent that the Applicant was dealing with a misapprehension concerning the contribution to be made by the London Borough of Lambeth. He stated that in issue 11 for 2016/17 the tenant had stated that no credit had been received from the London Borough of Lambeth (LBL) on account of the Car Park. Mr Fieldsend explained that there was no credit to be applied. He stated that there was a Tesco Store and a leisure centre on the stated and that the leisure centre was owned by LBL. Mr Fieldsend stated that the car park was used by both service users for Tesco and the leisure centre. LBL made a contribution to the costs incurred in connection with the Car Park and the walkways which were known as the 'public realm'; accordingly this was not a contribution towards the service charges.

13. Mr Shakar Ul Hoque accepted this explanation on behalf of the leaseholders and this dealt with issue 11 in the Scott Schedule.

Wandle Administration Charges

Item	*Wandle Administration Charges*
2016/17	£428.53
2017/18	£414.95

14. The Applicant referred the Tribunal to two service charge statements/invoices one was produced by Wandle for 2016/17 and included a charge for Admin and Management overheads; the other was a statement from Savills for service charges invoiced to Wandle. Mr Shakar Ul Hoque wanted to know why the shared ownership leaseholders paid an additional charge to Wandle for the same service whilst the private leaseholders did not pay this charge.

15. Ms Osler referred to the Shared Ownership under lease between the Applicants and the first respondent. Clause 7 contained the service charge clause, at Clause 7.4 (c) the lease provided that :-"… all reasonable fees, charges and expenses payable to the Authorised Person any solicitor, accountant, surveyor, valuer, architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection of rent (but not including fees, charges or expenses in connection with the effecting of any letting…including the cost of preparation of the account of the Service Charge and if any work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work…" and sub clause (e) provided for the cost of any Administration Charges incurred by or on behalf of the Landlord.

16. Ms Osler submitted that these clauses enabled the Landlord to charge the Administration charges set out under the lease. Ms Osler referred to Ms Gentles who had attended the hearing to give evidence on behalf of the first respondent.

17. Ms Gentles, in her statement set out that she was a Home Ownership officer employed by Wandle Housing Association. Her statement had been prepared and enclosed in the bundle dated 1 July 2019. In her statement at paragraph 2 she explained that Wandle did not carry out any services for Derry Court however they "…Wandle Housing Association does not carry out any services themselves and is therefore simply passing down charges incurred by a management company (Streatham Management Ltd) with a manging agent being appointed to carry out all of the services … which was Savills Ltd until February 2019…"

18. Ms Gentles rejected the suggestion from the applicant that Wandle was effectively acting like a post box for the second respondent. She stated that they prepared the budget for the year ahead for the 1st April they received the final account and challenged the managing agent about any cost which were incurred, which was incorrectly billed to leaseholders. She stated that the Admin Charges included the costs of

the income team, the customer service team, the call centre and the finance and asset management teams.

19. The Tribunal noted that the charge was made on a percentage basis and that this was contrary to what was said in the code of practice produced by RICS in the Service Charge Residential Management Code, which suggested a per unit charge was more appropriate. Ms Gentles stated that the percentage charge had been reduced from 18 % to 8 % however it was considered that the leaseholder property had to make a fair contribution to the services that were provided by Wandle.

20. She also provided an explanation for the queries which were set out as issue 3 in the Scott Schedule, which was that the Service Charge Statement of Accounts is different between the 3rd party managing agents' fees and the applicants' service liability. In paragraph 3 of her statement Ms Gentles stated: - "All housing associations who manage externally managed schemes will have a two part billing and payment process. Invoices come in and are initially paid by use and are then passed on and recovered as a service charge, sometimes in the following financial year, Managing Companies/Landlords may also have a different financial year and billing cycle to ourselves. Therefore some costs are not applied to accounts until the following financial year. Therefore we sometimes play "catch up" when it comes to billing service charges…"

21. In the Scott Schedule the first respondent (Wandle) stated that although the financial years are the same April to March the first respondent did not necessarily receive the relevant information in the correct year, for example the credit for £22, 0611. Although this credit was for 2016/17 it was subsequently included in the accounts for 2017/18.

22. Mr Shakar Ul Hoque, in reply stated that the 1st respondent, although they were a housing association, they could issue a single bill, instead of a bill for the rented interest and one for the service charges. He did not accept that the lease necessarily meant that Wandle could charge for their services, as his reading of clauses 7.4 (C) and (e) referred to an 'authorised person'. This in his view did not have to mean the immediate landlord, Wandle; it could in his view be any person who was responsible for setting the budget. He also stated that the administration clause referred to sales and transfers, so in his opinion, this did not assist the first respondent in the payability of the charge.

23. The Tribunal noted what was said by the first respondent concerning the charges. The Tribunal asked the Applicant what he considered to be a reasonable charge for the service provided. He stated that he did not think an additional charge should be payable to the first Respondent.

The Decision of the Tribunal and the reason for the decision

24. The Tribunal having considered the representations made by the applicant and respondents has decided that the sum for

management/administration fee set out above should be limited to £250.00 which the Tribunal consider is reasonable and payable.

25. The Tribunal noted that although Wandle had responsibility for reconciling the charges and billing the applicants there were some issues caused by the fact that they operated in accordance to a different billing period from those with the day to day responsibility for managing the property. The Tribunal consider that the responsibilities carried out by Wandle were of a limited nature for example they did not supervise contractors or pay immediate contractors invoices. Given the limited nature of their role the Tribunal consider it is not reasonable for a charge to be levied on a percentage basis, even on the basis that the percentage was reduced to 8 per cent. This is because any increase in expenditure on the site will increase Wandle's Administration Charge without increase the level of their responsibility.

26. The Tribunal in reaching this decision has applied the 2.3 of the *Service Charge Residential Management Code* which was referred to by the Tribunal at the hearing which states: - "Your charges should be appropriate to the task involved and be pre-agreed with the client whenever possible. Where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered to be preferable so that tenants can budget for their annual expenditure. However, where the lease specifies a different form of charging, the method in the lease will be used by the managing agent."

27. The Tribunal consider that although Mr Shakar Ul Hoque in his submission considers that no charge should be payable this was not reasonable. The Respondent is required to prepare a draft budget and also prepare and serve service charge demands. The Tribunal consider that the reasonable charge for this should not exceed £250.00.

28. The Tribunal noted that Wandle operated to a different accounting period; the Tribunal consider that Wandle should in its accounting ensure that it is in line with the review period which is the 1st April.

The External Audit Fee

Item	***Wandle Audit Fees***
2016/17	£816.00
2017/18	£816.00

29. The Applicant in the Scott Schedule stated: - "…This is an unnecessary activity. The First Respondent has asked the SMC Managing Agent to invoice twice a year for all 102 flats, then added Wandle's Administration Charge … and then asked their own Auditor (Deloitte in 2016/17) to check these numbers and prepare a document "Report of Factual Findings". This was the information sent to Wandle leaseholders. Without the Administration Charge, there is no need for this additional fee. The Service Charge Certificate prepared by the SMC Auditors (Philip Carroll) should be provided to leaseholders and be the basis of the service charges demanded…"

30. Ms Osler did not accept this, she referred to the Respondent's reply in the Scott Schedule and stated that there was an obligation on the housing association to audit the service charges to ensure that they were billing leaseholders the correct sum. She referred to the report prepared by Wandle dated 3 August 2017. In particular, she referred to the ninth paragraph of the report headed Audit Work which stated:- "*The audit work of Deloitte LLP on the financial statements of the Association was carried out in order to report to the members as a body in accordance with United Kingdom accounting standards… and the Co-operative and Community Benefit Societies Act 2014…"*

31. She stated that Wandle Housing Association was required to have the accounts audited. In respect of the provisions of the lease which enabled the Respondent's to charge for this service, she referred to clauses 7.4 (c) and (e).

32. Mr Shakar Ul Hoque noted that although the charge had stayed the same from the auditors, the leaseholders charge had increased from £8.00 in 2016/17 to £24.00 in 2017/18.

The Decision of the Tribunal and the reason for the decision

33. The Tribunal accepted that it was reasonable for the first respondent to have arranged for an audit to be carried out. The Tribunal noted that the charges from the audit for each of the years in issue was the same, however the Applicant had been charged £24.00 for 2017/18.

34. The Tribunal considers that given the extent of the audit carried out by Deloitte. The reasonable and appropriate charge for this should be limited to £8.00. For 2017/18.

Static Security Guarding and the costs of the additional security guard

Item	***The Security costs***
2016/17	*£22,899.42*
2017/18	*£10737.27*

35. In the Scott Schedule, the Applicants had stated: - entrance, where they can take in parcel deliveries (aka 'concierge' service). Their main duties are to patrol the Estate and Car Park, and when at their foyer desk to monitor the CCTV cameras located throughout the Estate. *"…There is Static Guarding 24/7, where 7am to 7pm on Mon-Fri there is a single guard, and 7pm to 7am two guards, plus from 7pm Fri to 7am Mon two guards on duty. These guard(s) are located in the foyer of the Derry Court*

In the SC certificates, there has been a significant increase in total Security charged to Residential: 2015/16 it is £103,990.69;

2016/17 it is £144,086.27; and 2017/18 it is £146,931.77.

We question the necessity of 24/7 Static Guarding at all for Residential Blocks – the Applicants have lived in Blocks without any guarding – the Commercial tenants must require this and should therefore pay…"

36. Mr Shakar Ul Hoque noted that the resident's share of the static guards' charges had increased from 40% to 60%; he stated that this was unreasonable and that the increase charge should be refunded.

37. The Tribunal noted that essentially there were two challenges to these charges firstly whether the cost of guarding was a service which had been reasonably incurred, and secondly the percentage share that was payable by the Applicants.

38. This issue was dealt with by Mr Madge Wyld on behalf of the second respondent. He referred to the Lease between Spenhill Residential 1&2. Streatham Management Company Limited and Wandle dated 10 June 2014. In his Skeleton Argument he stated: - "…Schedule 2 provides that the Tenant shall pay "the Service Charge Contributions" in accordance with its covenant in Schedule 5. Paragraph 1 of Schedule 5 provides that the Tenant shall pay to the Landlord the Service Charge Contributions in any service charge period.

Paragraph 2.1 of Schedule 5 provides that the Service Charge Contributions

"relate to the respective Services supplied under each Head in Schedule 4 (Service Charges) as the case may be."

Schedule 4 provides for a number of services to be supplied. For the purposes of the application before the Tribunal, they include:

Payment of electricity attributable to the Apartment Common Parts and the Estate Common Parts (paragraph 1.2 and 2.5).

Gritting the Estate Common Parts (paragraph 2.17).

Cleaning and general maintenance (including landscaping) to the Apartment Common Parts (paragraph 1.7).

Cleaning, planting, maintenance, lighting and replacement of landscaped areas to the Estate (paragraph 2.7)

Cleaning and provision of any services to the Estate Common Parts (paragraph 2.18).

Securing the Estate (including the provision of security guards/patrols if necessary) (paragraph 2.3).

The employment of staff to perform the services (paragraph 1.6 and 2.16).

39. In addition Clause 1.14 of Schedule 4 of the Lease ("The Service Charge Provision") provided that:- Any other service or amenity that the Company may in its reasonable discretion (acting in accordance with the principles of good estates management) provide for the benefit of the tenants of the Apartments.

40. Mr David Matika was the block manager employed by Savills, he stated that in 2015/16 the security charged carried out a patrol of the estate for 30-40 minutes and that in 2016/17 the second respondent in consultation with the company directors which included leaseholders, employed a second security officer which meant that they could increase patrols and at the same time monitor the CCTV. He explained that the estate was a mixed commercial and residential with the leisure centre and the Tesco store.

41. In paragraphs 13 and 14 of Mr Madge Wyld's Skeleton Argument, he set out that *"The Second Respondent set out in its response to this issue that the apportionment between commercial and residential remained at 60/40 for 2016/17 and 2017/18). This was incorrect. For 2016/17 and 2017/18 separate contracts had been entered into for the provision of security guards for the commercial and residential areas. The contract for residential areas increased because it included provision for an additional security guard that had not been previously employed… it was decided to employ an additional security guard to provide a permanent presence on the front desk of the Apartment Block. The benefit is therefore entirely for the residential tenants…"*

42. Mr Matika stated that the hours covered by the guards was as follows 7am to 7pm one guard, 7pm to 7am two guards. 180 man hours were provided between- Monday to Friday. And on Saturday and Sunday 44 hours per day was provided.

43. The Tribunal was informed that the static guard provided services for the residents such as collecting parcels. It was noted that although the heading was static security and additional security; this description was incorrect in that the cost included all of the security costs such as CCTV Costs, Fire Alarm and Facilities Management Cost.

44. The second applicant also stated that it was incorrect to state that the charge was apportioned 60% to the Residential units. The charge had

remained at 40%. In respect of additional security costs, this was to cover holiday and sickness.

45. Mr Shakar Ul Hoque stated that the guards were always disappearing and in addition he queried why the services could not be provided on the basis of the square footage. Mr Matika stated that it was charged based on the duties carried out by the guards for the differing areas. In addition, given Mr Shakar Ul Hoque's complaint about the security guards disappearing, Mr Prague, Managing director of the management company confirmed that he had not had any complaints about the static guards at the premises.

The Decision of the Tribunal and the reason for the decision

46. The Tribunal having considered the evidence and having noted the nature of the estate that is a mixed development with commercial units, it noted that the lease between the second respondent and the third respondents which enables the landlord provide security services and make a charge. The Tribunal noted that no complaint is made concerning the service provided, and that the only issue is the apportionment.

47. The Tribunal has heard no evidence which undermines the apportionment. In respect of the additional security the Tribunal has noted the hours and the fact that round the clock security is provided at a multi-use development given the extent of the development the Tribunal consider the overall charge to be reasonable. It has no information before it, other than the anecdotal evidence of the Applicant to suggest that the apportionment is unreasonable. Accordingly the Tribunal allows the charge in full.

Electricity Charges

48. Ms Osler stated that it was now accepted by the first respondent, that although the charges were correct VAT should not have been charged in relation to the residential supply. This was being pursued with the electricity company and a full rebate would be provided to the leaseholders. Accordingly the Tribunal decided not to make any finding in relation to this issue.

Contract cleaning expenses

49. Mr Shakar Ul Hoque main complaint concerning this charge was that the apportionment of the costs between the commercial and residential tenants was unfair. He stated that although the building had two man cleaning teams which worked from Monday to Saturday during the hours of 6am to 2pm and 2pm to 10pm and part-time on Sunday. The cleaning team's work was divided between Commercial and Residential.

The Applicant stated that the residential occupants currently paid 77.62% and the commercial side contributed 22.38%. The Applicant proposed that the apportionment should be 50-50. He stated that the cleaners spent a lot of time cleaning the area in front of Tesco's.

50. In reply, Mr Madge Wyld referred the Tribunal to the cleaning contract which showed the agreed split of duties between the Residential Units. The bundle also included a list of tasks for Tuesday Morning Staff, the expectation was that the residential area would take 1 hour and the commercial would take 30 minutes. He also referred to the tenant document and the fact that as VAT was paid on the residential proportion this had also made the leaseholders contribution seemed disproportionate.

51. He also stated that although the area before Tesco was large, the degree of cleaning for the residential units was more intensive and time consuming than litter picking at the front of the store.

The Decision of the Tribunal and the reason for the decision

52. The Tribunal noted that no issue has been raised concerning the standard of the cleaning. The Tribunal noted that the contract was extensive, and that unusually in the Tribunal's experience cleaning was carried out on a daily basis.

53. The Tribunal noted that the applicant was concerned that the same cleaners who cleaned the premises also cleaned external parts of the development for example the courtyard before Tesco's. The Tribunal heard evidence that this charge was apportioned to the commercial units, and that although the area was large the cleaning of this area was not as time consuming as cleaning the premises.

54. The Tribunal noted that there was no complaint about the standard of cleaning and this suggest that the cleaning was being undertaken in line with the leaseholder's expectations.

55. The Tribunal noted that the respondent's had apportioned the time that the cleaner was expecting to spend at the premises and that the apportionment of the time was in accordance with the charges. The Tribunal considers that there may be occasions when the Cleaner's spend longer outside the property however the keeping of the development in a clean condition is also in the interest of the leaseholder. The Tribunal in reaching its decision also considered the overall charge for the level of service provided. The applicant's share is £159.52 per annum the Tribunal considered that the overall charge was not unreasonable. Accordingly the Tribunal finds on a balance of probabilities that this charge is reasonable and payable.

Cleaning Contract expenses incorrectly demanded

56. Mr Shakar Ul Hoque referred to contract cleaning expenses which had been incorrectly demanded in the period 2016/17, this was in the sum of £3435.44. This was conceded by the second respondent's

representative, who referred to the schedule of accounts and various entries which showed credits which cancelled out the incorrectly demanded payment. This was also the case for the M&E Maintenance Contract were the Applicant had raised the issue that the sums had been incorrectly demanded as a result of duplicate invoices.

57. In his Skeleton Argument Mr Madge Wyld submitted, in paragraph 19 that: - "Where debits for certain invoices appear twice in the ledger, there is also a credit. This means that the expense has not been paid for, or billed, twice. Invoice 304803 is credited at [Tab 6, 2289, 2307, 2320]; invoice 306812 is credited at [2307]; invoice SIN008602 is credited at [2302]; invoice SIN008633 is credited at [2302, 2317, 2330]. 20. In respect of invoice 319939, the Second Respondent's managing agent will confirm that this invoice was not in fact paid on one occasion because the incorrect address was used."

The installation of Guardrail 2017/18- £1,722.35 and the installation of the running man signs-£4571.18

58. Mr Shakar Ul Hoque argued that the leaseholders should not have been charged for this item as the guard rail should have been installed when the building was completed, as this had not occurred, he stated fencing was missing from this area in 2014, he argued that the cost should be met by the freeholder.

59. Mr Madge Wyld stated that the guard rail was not missing from the building. The work was required because occupiers of the building were forcing the fire doors open and going up onto the roof area. In the Scott Schedule, it was submitted that this work was not for the Building to pass building control regulations; it had only become necessary because of the actions of occupiers of the building.

60. Mr Shakar Ul Hoque stated that the work to the running man signs should have been carried out prior to completion. He stated that the freeholder should be responsible for the cost of this work.

61. Mr Madge Wyld stated that the cost of this work was for renewal of the signs, this was recommended by a Fire Risk Report as a replacement rather than a new item as such the cost was payable by the leaseholders.

The Decision of the Tribunal and the reason for the decision

62. The Tribunal is satisfied that the incorrect cleaning charges have been dealt with appropriately accordingly the Tribunal makes no finding in respect of this charge.

63. In respect of the guard rails and the running man sign, it is satisfied that these charges are payable under clause 7 (C) of the lease. The Tribunal accepts the respondent's evidence that these expenses were not items which should have been in place at the outset of the lease, and that they have either deteriorated due to wear and tear (the "Running Man") or been put in place due to the usage of the building. Accordingly the Tribunal is satisfied that this charge is reasonable and payable.

Lift Servicing expenses charges

64. Mr Shakar Ul Hoque stated that the affordable residents are being charged £9,091.36 which was double what the commercial units. This was accepted by the Second Respondent who stated that there are two separate contracts and although the leaseholders are paying more, this is reflective of the lift cost.

The Decision of the Tribunal and the reason for the decision

65. The Tribunal is satisfied that this charge is payable, no evidence was provided to undermine the charge.

Gritting Landscaping, and Empire Stores

66. This work was carried out by the cleaners Mr Shakar Ul Hoque was concerned that the leaseholders were paying a disproportionate share of this cost. The Respondent in the Scott Schedule set out that no charge had been levied under this heading accordingly the Tribunal did not consider this charge.

67. The landscape cost were £920.63 , the applicant noted that there were two areas of shrubs and grass, there was also an enclosed court yard, Mr Shakar argued that the cost of this should be apportioned at 50% each, this was included under the cleaning and environment and as a result the Respondent set this charge at £0. The charges for Empire Store was for the cleaning and staff supplies however the Respondent was prepared to set this charge at nil. The Tribunal did not consider this charge.

Application under s.20C and refund of fees

68. In the Application, the Applicant indicated that he wished to apply for an order under section 20C of The Landlord and Tenant Act 1985. Although Ms Osler made no representations other than the fact that the lease provided that the cost of the proceedings should be recoverable under clause 7.4 of the lease.

69. Mr Fieldsend and Mr Madge Wyld submitted that it would be inappropriate for an order to be made against the second and third respondents.

70. The Tribunal noted that the decision to join the second and third and fourth respondent was at the behest of the first respondent Wandle who wished the second and third respondent to provide additional information.

71. The Tribunal also noted that the issues raised by the Applicants were raised in part, because of the delay in the accounting and balancing charges. The Applicants were concerned that the Charges levied by Wandle was not reasonable as the work was being undertaken by Savills this is a legitimate concern which was worth exploring. The

Tribunal made a reduction for this charge as such the Applicants were successful in respect of the Admin charge, and also raised issues concerning duplicate charges and the VAT on the electricity.

72. These charges were conceded by the first and second Respondents', Accordingly the Tribunal considers it reasonable to make an order under Section 20C of the Landlord and Tenant Act 1985.

73. The Tribunal also determines that the second and third Respondent's cost should not be passed down from the first respondent to the applicant.

Signed Judge Daley

Date:21/10/19

ANNEX - 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

(1) **Section 27A**

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party

to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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