



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

Case Reference : **LON/00AE/LSC/2018/0143**

Property : **59 Barry Road, Stonebridge,
London NW10 8DE**

Applicant : **London Borough of Brent**

Representative : **Mr Alistair Cantor of Counsel**

Respondent : **Mr Rudolph O'Neil Allison**

Representative : **In person**

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

Tribunal Members : **Judge L Rahman
Mr T Sennett MA FCIEH
Mr P Clabburn**

**Date and venue of
Hearing** : **24th & 25th September 2018 at 10
Alfred Place, London WC1E 7LR**

Date of Decision : **11/3/19**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and section 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service or administration charge.
- (3) The tribunal determines that the respondent shall not reimburse any tribunal fees paid by the applicant.
- (4) This matter should now be referred back to the County Court.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent in respect of the service charge years ending 31/3/12 to 31/3/17.
2. Proceedings were originally issued in the County Court and subsequently transferred to this tribunal by order of Deputy District Judge Colquhoun.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicant was represented by Mr Alistair Cantor of Counsel and the respondent appeared in person. Also in attendance was Ms Todd from flat 73 to help the respondent with his case.
5. The start of the hearing was delayed whilst the respondent considered the applicant's skeleton argument and case law, which the respondent claimed to have only received at the hearing, and for both parties to have a discussion to identify the issues in dispute.

The background

6. The property which is the subject of this application is on the ground floor of a block comprised of 12 flats.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. The parties identified the relevant issues for determination as set out under each of the sub-headings below.
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Apportionment of the service charge

11. The applicant stated, as set out in its skeleton argument, that there are 73 properties on the estate, of which 35 are flats. The flats are contained in three blocks of 12, 12, and 11 flats. The boundary of the estate is marked in black on the map on page 118 of the bundle. The boundary of the estate has not changed for the last 30 years or so. In particular, the applicant stated that Biko House did not belong to it and was not a part of the estate. Furthermore, although Mandela Close belongs to the applicant, and the applicant uses the same contractors to provide services to Mandela Close, Mandela Close is charged separately for the services provided to it and is not a part of the estate. Biko House and Mandela Close are outside the boundary of the estate marked in black.
12. Under the terms of the lease, the respondent is required to pay a “reasonable part of the estimated expenditure” incurred by the applicant. The lease does not define the word “reasonable”. However, the applicant states that it has apportioned the amount payable by the respondent in a simple and logical way. With respect to the block repairs, which only include repairs done to the communal parts of the respondents block, the respondent is required to pay 1/12 as there are 12 flats in the respondents block. With respect to the internal cleaning, electrical maintenance, and communal electricity, the respondent is required to pay 1/35 as these services are provided to the 35 flats on the estate only. With respect to the external cleaning, grounds maintenance, and estate repairs, the respondent is required to pay 1/73 as these services cover the whole estate and are therefore shared between all the properties, which includes both houses and flats.

13. The respondent agreed that he should pay 1/12 of the block repairs. However, the respondent disagreed with paying 1/35 of the internal cleaning, electrical maintenance, and communal electricity costs. The respondent argued that Biko House should also contribute towards these costs as it was part of the estate and that the applicant sometimes included Biko House within the estate. The respondent disagreed with paying 1/73 of the external cleaning, grounds maintenance, and estate repairs costs. The respondent argued that Mandela Close was also a part of the estate as it shared the same resources and there were no physical barriers separating Mandela Close from the estate.
14. The respondent agreed at the hearing that he had no documentary evidence before the tribunal to show that the applicant had on occasions included Biko House within the estate, no evidence to show that the applicant owned Biko House, no evidence that the applicant provided services to Biko House or that the respondent had been required to contribute towards any such costs, and the respondent had no evidence to show that Mandela Close was not charged separately.
15. Although the respondent had not raised the point, the tribunal noted towards the end of the hearing on the second day, that there appeared to be four additional flats within the boundary marked in black (numbers 128, 130, 132, and 134 (“block 4”). Therefore, it appeared there were four blocks within the estate as opposed to 3 and there were 77 properties in total as opposed to 73.
16. The applicant stated at the hearing that block 4 was not a part of the estate despite previously stating that the boundary of the estate was marked in black. The applicant went on to state that under the terms of the lease block 4 was only charged for “block repairs” and did not contribute towards the “estate charge”. When asked why, the applicants acting leasehold manager stated he was “not sure”. He agreed that block 4 was within the boundary of the estate but nevertheless under the terms of their lease the four flats in block 4 were not required to contribute towards the “estate charge”. After a short adjournment, counsel on behalf of the applicant explained as follows: the boundary of the estate is marked in black, block 4 is within the boundary of the estate, under the terms of the lease the applicant is not entitled to recover any “estate charge” from the four flats in block 4, the only service provided to block 4 are repairs to the actual building itself and for which block 4 is separately invoiced, block 4 appears to be “an anomaly”, and although the tribunal may conclude that there are 77 properties within the estate and therefore the respondent is required to pay 1/77 of the “estate charge”, the respondent should still pay 1/12 of the block repairs and 1/35 of the internal cleaning, electrical maintenance, and communal electricity costs.
17. The respondent stated that the applicant’s evidence was inconsistent. The applicant had initially stated that the boundary of the estate

marked in black was correct but then suggested that it was incorrect. The respondent appeared to be changing the boundary of the estate. Block 4 is receiving a “benefit” and should therefore contribute towards the costs regardless of what their lease may say.

18. After the conclusion of the hearing, and during the course of its deliberations, the tribunal noted that contrary to the submissions made on behalf of the applicant at the hearing that the only service provided by the applicant to block 4 was repairs, for which those flats were separately invoiced, according to pages 312, 386, 572, and 575 of the bundle, it appeared the applicant also provided, for example, additional cleaning and gardening services. The overall evidence therefore appeared to be unclear / inconsistent.
19. The tribunal noted that the issue regarding block 4 only arose at the very end of the hearing, the tribunal had only become aware of the additional evidence after the hearing had ended, and given the significance of the evidence, the tribunal determined that both parties be given the opportunity to make further written submissions answering the following, namely, what specific services are provided by the applicant to block 4, are gardening and cleaning services also provided to block 4, and if so, should the communal electricity and internal cleaning costs be apportioned 1/39 instead of 1/35?
20. The applicant was directed to file and serve written submissions addressing the above points within 14 days and the respondent was directed to provide written replies within 14 days thereafter.
21. The applicant submitted written submissions dated 10/10/18 and a further witness statement from Mr Patel, the Acting Leasehold Manager, dated 11/10/18, the material parts of which can be summarised as follows: Block 4 is part of the estate and the documents highlighted by the tribunal do suggest that (a) the applicant has monitored the external areas of block 4 for cleanliness/tidiness and (b) has responded to complaints by the occupants of block 4 regarding the external areas of it and/or addressed those complaints by performing maintenance type works. Accordingly, if the tribunal decides that the reasonable proportion to be paid by the respondent of charges benefiting the entire estate is 1/77, this would include not only “estate repairs” but also “ground maintenance” and “external cleaning”, since those types of charge benefit the estate as a whole. However, the communal electricity and internal cleaning charges should not be apportioned 1/39. This is because block 4 did not receive any “internal services” into which category would fall any other category of charge including internal cleaning and communal electricity. As clarified by Mr Patel in his witness statement, it is not possible for block 4 to be in receipt of such services since it has no internal communal areas. The photographs exhibited to his statement clearly show that each flat has its own front door opening directly to the outside space. The documents

highlighted by the tribunal, while indicative of external services being provided, do not contradict the above. As regards the LEQ sheets references, while the earlier dated sheet has a tick next to internal areas (page 312), the latter is indicative of the true position; no rating for internal cleaning is given, the author having written “individual properties” in the comments section (page 386). As regards the document at page 572, the complaint and resulting works referred to pertain to external areas only. There is no evidence that the applicant has ever cleaned, powered, or maintained any internal areas of block 4. Accordingly, the applicant has correctly apportioned 1/35 for “communal electricity”, “electrical maintenance”, and “internal cleaning”, across the three blocks comprising 35 flats in total. The tribunal’s reference to page 575 appears to be an error since that page does not seem to be relevant to the issues concerned.

22. The material parts of Mr Patel’s witness statement can be summarised as follows: as demonstrated in the photographs, it can clearly be seen that block 4 is a single building consisting of four purpose-built maisonettes. Each maisonette has its own front door, opening directly to the outside space, and therefore its own hallway. There are no communal areas inside. Wettons do not provide any internal cleaning service and there is no electrical maintenance undertaken at block 4. The charges for these items that appear in the respondents invoices relate solely to cleaning and maintenance of the 35 flats in blocks 1, 2, and 3. With respect to the communal electricity charges, meter numbers E122028288 and E122027728 relate only to the supply of electricity to the communal areas of blocks 1, 2, and 3 and not to block 4. However, block 4 may in fact benefit from other services that apply to the entire state, i.e. ground maintenance and external cleaning.
23. The respondent provided a number of letters/witness statements, including a 15 page witness statement, most of which related to other matters. The respondent already had the opportunity to explain these matters in his letters / witness statements / documents submitted prior to the hearing and during the course of the two-day hearing. In the circumstances, the tribunal did not consider it fair or appropriate to allow the respondent to raise such matters, including new evidence, after the conclusion of the hearing. The tribunal therefore only took into account the submissions / answers provided to the specific questions raised by the tribunal.
24. The material parts of the respondent’s submissions, dealing specifically with the issues raised by the tribunal, can be summarised as follows: The respondent had no objection to the applicant relying upon Mr Patel’s witness statement dated 21/10/18. The applicant’s written submissions and Mr Patel’s witness statement do not agree what services are to be apportioned for block 4. If block 4 is part of the estate, how will the communal electricity invoices that cover Barry Road and Biko house be split? The applicant appears to have provided various services to block 4 such as communal cleaning, bulk refuse

collection, grounds maintenance, tree pruning, and management services. Block 4 should pay for estate service charges. Block 4 should also pay their share towards the blocks communal electricity. The other blocks appear to be paying for communal electricity. Block 4 has two separate roof/porch areas that cover walkways in front of their individual front doors. The occupants step up onto the area and then go into their own properties. This area is therefore communal. The applicant may or may not tend to service this particular area but it is clear that block 4 would be entitled to the service as part of the communal estate charges and block 4 should also pay for such services. The applicant has revised its position and accuracy of the LEQ reports on pages 312, 386, and 572. Mr Cantor's submissions dated 10/10/18 refers to the "true position". Given this admission from the applicant, can the accuracy of any LEQ reports be relied upon? Block 4 would have to contribute to the internal and external lighting costs (and external repairs) as stated on page 255 and pages 241 to 254. Mr Patel refers to block 4 benefiting from grounds maintenance and external cleaning only. However, this is incorrect and inconsistent with the submission made by Mr Cantor that block 4 should contribute towards estate repairs, grounds maintenance, and external cleaning.

25. Having considered all the evidence, the tribunal finds as follows. On balance, the tribunal accepts the explanation provided by the applicant, that the boundary of the estate is marked out in black on the map on page 118 of the bundle. The tribunal notes that Biko House and Mandela Close are outside of that boundary. Although the respondent argued that Biko House was a part of the estate and that the applicant sometimes included Biko House within the estate charges, the respondent agreed at the hearing that he had no documentary evidence before the tribunal to show that the applicant had on occasions included Biko House within the estate charges, no evidence to show that the applicant owned Biko House, no evidence that the applicant provided services to Biko House, or that the respondent had been required to contribute towards any such costs. Whilst the tribunal accepts that Mandela Close is owned by the applicant, the applicant uses the same contractors to also provide services to Mandela Close, and there are no physical barriers separating Mandela Close from the estate, it does not necessarily follow that Mandela Close is or should be a part of the estate. The applicant states Mandela Close is charged separately for the services provided to it and the respondent agreed at the hearing that he had no evidence to show that Mandela Close was not charged separately.
26. Irrespective of what is stated in their leases, given that the four flats in block 4 are within the boundary of the estate and benefit from services provided to the estate as a whole, the tribunal found the reasonable proportion to be paid by the respondent of charges benefiting the entire estate is 1/77.

27. However, it was unclear whether block 4 should also contribute towards the internal cleaning, electrical maintenance, and communal electricity, as do the 35 flats on blocks 1, 2, and 3, as the LEQ on page 312 suggested the applicant was providing a cleaning service to block 4, the LEQ on page 386 shows the applicant removed bulk refuse from block 4, the information on page 572 showed the applicant was dealing with complaints raised by block 4 with respect to litter etc., and the applicant stated that “Wettons had been providing a cleaning service at the estate since 2008” (page 575) and the tribunal noting that block 4 is within the boundary of the estate and the inference therefore being that Wettons also provided a cleaning service to block 4.
28. The tribunal has considered the further submissions made, and the evidence provided, by both parties on this issue. The photographs of block 4 clearly show, as stated by Mr Patel, that block 4 is a single building consisting of four purpose-built maisonettes, each with its own front door opening directly to the outside space. The respondent does not disagree with this, other than submitting that the two separate porch areas in front of the individual front doors to each property, which the occupants step up onto to get into their own properties, is a communal area. The tribunal notes that the two separate porch areas, each allowing access to 2 of the four flats, are very small. Although the respondent suggests that the 4 flats should be entitled to have the porch area serviced by the applicant, the applicant denies, and there is no evidence to the contrary from the respondent, that it provides any internal cleaning, electrical maintenance, or communal electricity, to the porch area or to any other part within block 4.
29. The tribunal accepts that on the face of it, the tick in the box next to “internal cleaning of block” on page 312, suggests internal cleaning of block 4. However, the tribunal notes also that the LEQ on page 386 does not have a tick next to “internal cleaning of block” but instead states “individual properties”. The applicant argues that page 386 “is indicative of the true position”. The tribunal notes the evidence from Mr Patel, that Wettons (the cleaning contractor) do not provide any internal cleaning service to the block. The tribunal notes the respondent’s evidence that the applicant “may or may not tend to service this particular area [porch area] and no other evidence from the respondent that the applicant actually cleans the porch area or any other internal part of block 4. The tribunal further notes as regards the document at page 572 and the LEQ on page 386, the complaint and resulting works referred to pertain to external areas / works only. Given the overall evidence, on balance, the tribunal finds that block 4 is a single block with no communal areas and there is no evidence that the applicant provides any internal cleaning, electrical maintenance, or communal electricity, to the porch area or to any other part within block 4.
30. For the reasons given, the tribunal found that the respondent is liable to pay 1/12 of the block repairs, 1/35 of the internal cleaning, electrical

maintenance, and communal electricity costs, and 1/77 of the external cleaning, grounds maintenance, and estate repairs costs.

Cleaning – was it to a reasonable standard?

31. The applicant states as follows:
32. Wettons have been the cleaning contractors since 2008. On a daily basis the internal entrance area is swept and mopped, and all other areas are spot cleaned and litter and bulky items are removed. On a daily basis, externally, the litter bins are rotated and emptied, foul-smelling litter bins are cleaned, bulky items are removed from the bin stores and the area is swept, and litter and bulky items are removed from all other areas. On a weekly basis, on Wednesdays, all internal areas are swept and washed and vacuumed, and marks from the floors and ceilings are removed. On a weekly basis, on Wednesdays, the external bin area is checked for rubbish and cleaned, and all the estate noticeboards and signs are wiped down. On a weekly basis, on Mondays, litter is removed, and the ground is swept and fallen leaves are removed externally.
33. Ms Bedward, the Estate Services Team Leader for the period 2008 to July 2014 and Interim Property Manager (public Realm) from September 2016 to August 2018 for the applicant, states as follows in her witness statement:
34. She was responsible for managing the day-to-day operations of the estate cleaning services contract. She managed a team of estate inspectors who were responsible for the estate inspections and ensuring that Wettons were adhering to the service specification of the contract. As a means of monitoring their performance the applicant used a “local environmental quality” (LEQ) rating system. Under this system an inspection of the estate is undertaken and the score is provided for various categories which include litter, graffiti, chewing gum, cigarette butts, dog mess, and bulk refuse. A gold rating is given where there is compliance with the contract.
35. Although the LEQ’s for the calendar years 2012, 2013, and 2014, and for the period February 2015 to January 2017 are missing due to a technical failure resulting in all captured data being lost and for which there is no paper backup, an examination of the LEQ’s provided up to 23/2/18, shows that the estate and the respondents block were predominantly rated gold. This suggests that the cleaning was to a reasonable standard. Although there are missing LEQ’s, to her knowledge, she has no recollection of the standard of the service being provided by Wettons falling or there being any major issues with the performance of the contract or the quality of the service provided.

36. In addition to the LEQ's, monthly operations meetings took place with Wettons as well as joint inspections. Furthermore, Wettons themselves carried out monthly inspections to ensure that the cleaning operatives were achieving the required standards on cleanliness and they also kept a complaints log for the period 1/4/11 to 31/3/17. The inspections show that the estate was rated either good or very good for internal and external areas in all but one recorded inspection where it achieved satisfactory for external cleaning. The complaint log reveals only 18 complaints during the period mentioned and it shows that all complaints were responded to and closed and there were no complaints from the respondent.
37. With respect to fly tipping, her experience of Wettons was that she always found them very responsive, removing items within the required 24 hours of them being reported and letting the applicant know if they were unable to do this and then prioritising that item for the following day.
38. Finally, contrary to the claim by the respondent, the same water was not being used for all the internal cleaning of his block. She had been informed by Wettons that fresh water was used on each floor and the water was obtained from a tap situated at the rear entrance of the respondents block.
39. Mr Nunes, Contract Manager employed by Wettons, stated in his witness statement and in oral evidence as follows:
40. He has been the contract manager at the Barry Road Estate since 2000. He is responsible for the running of the contract and for overseeing the work undertaken to ensure that cleaning schedules and the terms of the contract are being complied with. Regular inspections are carried out to ensure that all tasks are being both performed and performed to a good standard by the cleaning operatives. Wettons monitoring sheets cover the period 15/10/14 to 29/12/17. Seventy-two examples have been provided in the evidence bundle. All 72 state that the internal cleaning was good and 68 out of the 72 state the external cleaning was good (two rated as satisfactory and two fail to give any rating). The reports clearly show that a good quality cleaning service has been provided. He has not been able to locate the report of the inspections that were carried out during the years 2011, 2012, 2013, and part of 2014. However, he has no recollection of there being any issue with the quality of service being provided during those periods. He has personally undertaken random inspections to ensure that all was being done correctly and to a high standard. He is also responsible for making sure that any complaint received is resolved. All complaints are recorded on the "complaints log". The complaints log exhibited to Ms Bedward's witness statement is a complete log of all complaints received for the period which is the subject matter of this dispute. The log does not record any complaint from the respondent and he does not recall ever receiving a complaint

from the respondent either. With respect to fly tipping, they have a van and a team in the area on a daily basis to collect both refuse. Finally, the same water is not used for all the internal cleaning of the respondents block. Freshwater is used on each floor. The water is obtained from the tap at the rear entrance of the respondents block. The tap is not disconnected as claimed by the respondent. The tap does not have a handle so that children cannot misuse the water however the contractors have a key with which to turn on the tap.

41. It was further stated on behalf of the applicant that with respect to the photographs on pages 1781 and 1784, it was unclear what the photos showed or who took them. The letter and photographs on page 1789 from Ms Todd relates to fly tipping on one particular date. The letter and photograph from Ms Todd on page 1719 does not show evidence of failing to provide a reasonable service as the photograph simply shows fly tipping which is a common issue. The overall evidence does not show cleaning to a poor standard. The respondent complains that waste is not collected on the due date every Tuesday. However, collection of refuse is a local authority service and is therefore not relevant to the service charges. The roof has leaked and is under repair but this does not impact the cleaning. Only the entrance area is swept and mopped on a daily basis and all other internal areas are swept and mopped on a weekly basis on Wednesdays. Therefore the roof leak may leave water on the floor but this does not necessarily mean that Wettons do not clean the whole of the internal block on a weekly basis as contracted.
42. Ms Todd has complained a lot, however the respondent had only complained once in his letter dated 17/11/15 (page 1800 of the bundle in which he refers to “...*Little cleaning on the scheduled days... management of cleaning is lacking...the nappies still remain in situ which was also reported...Wettons do not clean, sweep and mop, the ground floor where I live every day...There is cracked dirt on/under the stairs, in the window frames...*”). The applicant responded to this in its letter dated 2/12/15 (page 186 of the bundle, in particular on page 188 it states “*You referred in general terms to the poor standard of cleaning provided by Wettons. You referred specifically to nappies that had not been removed from the communal areas, encrusted dirt on and under the stairs, and in window frames... I will ask BHP to arrange for your estate officer to inspect these issues, and to contact you with the outcome of her inspection, within two weeks of the date of this letter...*”). When asked whether there was in fact an inspection and a response provided to the respondent, it was stated on behalf of the applicant that it was unclear whether any inspection took place and that the relevant records have been lost. (The respondent confirmed at the hearing at this stage that he was never contacted about any inspection or outcome). However, an inspection did take place on 18/11/15, as confirmed by the “daily supervisor reports” on page 525 the bundle, which refers to the internal and external areas add “good”. The evidence therefore shows that the respondent had only made one complaint over the entirety of the whole period in dispute.

43. The photographs provided by the respondent show evidence of fly tipping but not evidence of a lack of cleaning.
44. The respondent has failed to provide cogent evidence setting out the specific failings and the applicant has a reasonable system of monitoring the level of cleaning.
45. The material parts of the respondents written evidence (page 16-17 of the bundle) can be summarised as follows:
46. The applicant should provide evidence that the cleaning work is carried out and that it continues to monitor this daily, weekly, monthly, and annually. The internal cleaning is not done on a daily basis as per the cleaning schedule and the applicant should produce evidence that the cleaning has been carried out as set out in the cleaning schedule. The litter and fallen leaves are not removed and have been left for significant periods over months. The meter boxes show no signs of having been cleaned. The bin chute area is not washed as described in the schedules. When there has been disrepair, the areas have not been cleaned of liquid from the leaking roof and the skylight or the repair works. The same water is used for the internal cleaning of the whole block without change of water and therefore dirt from one area is simply transferred onto another area when being mopped. Adequate facilities do not exist for changing the water. Cleaning fluid and disinfectant had only been used recently within the previous 10 months.
47. The material parts of the respondents oral evidence can be summarised as follows:
48. The local authority will only take away rubbish once Wettons have collected and prepared it for collection.
49. There is a tap in the block which has been disconnected for 6 to 7 years and therefore the cleaners cannot access clean water.
50. The photographs on pages 1781 and the petition dated 11/9/14 on page 1783 were handed to the applicant as examples of poor cleaning. The LEQ's for that year are missing. Despite the matter being raised, Wettons' "daily supervisor report" dated 15/10/14 on page 498 of the bundle shows the internal and external areas for the estate to be "good". Photographs were taken on 13/10/14 of water on the floor (page 1784) and a complaint was made by the respondent regarding this and a "lack of communal cleaning" (page 1785) yet Wettons' "daily supervisor report" dated 15/10/14 on page 498 of the bundle shows the internal and external areas for the estate to be "good".
51. There is a rota for cleaning but this is not followed as per the schedule. Leaves have been left on the floor for up to 2 months and were not

cleaned on a daily basis. When asked whether the respondent had made complaints at the time that the cleaning schedule was not being followed, the respondent stated that he had complained but there is no evidence of any such complaints in the bundle.

52. The photograph on page 1794 was taken on 8/6/15 and shows accumulated rubbish that had been left for a week. When asked whether the respondent had complained about this to the applicant, the respondent stated that no such evidence was in the bundle before the tribunal. When asked whether the respondent had taken a second picture to show that the rubbish had been left there for a week, the respondent replied “no”.
53. Bulk rubbish had been left by the bin chute for days and days.
54. Although the respondent stated that Miss Todd had made a complaint to the Ombudsman regarding the cleaning provided by the applicant, the respondent agreed that the incomplete copy of the letter from the Ombudsman on page 1803 does not refer to any cleaning issues.
55. Having considered all the evidence, the tribunal found as follows.
56. We note the photographs provided by the respondent of rubbish but the photographs do not confirm how long the rubbish had been in situ. The photographs and letters of complaint concerning the roof leak and the pooling of water (pages 1781-1785), does not necessarily mean that the cleaning was lacking as those particular areas were scheduled to be cleaned once weekly and not on a daily basis. Given the evidence from Mr Nunes, the tribunal accepts that the cleaners have access to clean water and use clean water as and when required. The respondent claimed that leaves had been left on the floor for up to 2 months but when asked whether he had made complaints at the time, that the cleaning schedule was not being followed, the respondent stated that he had complained but there was no documentary evidence of any such complaints before the tribunal. The respondent claims that accumulated rubbish had been left for a week (photograph taken on 8/6/15), but when asked whether he had complained about this to the applicant, the respondent stated that no such evidence was in the bundle before the tribunal.
57. The tribunal notes that although Miss Todd had complained about the cleaning service, Miss Todd did not provide any witness statement and was not a party to these proceedings. Although Miss Todd stated that she had complained to the Ombudsman, regarding the cleaning service provided by the applicant, the tribunal notes that the copy of the letter from the Ombudsman does not deal with issues concerning cleaning.

58. Given the evidence referred to above, the tribunal is satisfied that the standard of cleaning was not as significant as claimed by the respondent.
59. However, the tribunal notes that the respondent did in fact make a complaint about the standard of cleaning in his letter dated 17/11/15. The applicant claims that this was the only complaint made by the respondent regarding the cleaning. Nevertheless, the tribunal notes that despite the specific and explicit complaint made by the respondent, and the reply provided by the applicant that it would inspect these issues and contact the respondent with the outcome of the inspection within two weeks, there is no evidence that it did so. There is no evidence before the tribunal as to what the applicant made of the complaint or whether it disputed the complaint.
60. The tribunal notes the evidence from Ms Bedward, Mr Nunes, the copies of the LEQ's provided by the applicant, and the copies of the "Daily Supervisor Reports" provided by Wettons, which suggests that there is in place a system of records, both by the applicant and Wettons, monitoring and checking the cleaning service provided. However, they are meaningless unless the applicant is able to rely upon them and provide a reply to the respondent regarding the complaint made. There is no evidence that the applicant wrote back to the respondent disputing the complaint raised by the respondent or claiming that the level of cleaning was to a reasonable standard. Although the respondent did not pursue the complaint further, the fact remains that the applicant did not provide any response to resolve the matter or to state that the cleaning was to a reasonable standard.
61. The tribunal is therefore satisfied that although the standard of cleaning was not as significant as claimed by the respondent, nevertheless, in light of the issues raised by the respondent in his letter dated 17/11/15 and the lack of any response from the applicant, the tribunal is satisfied that the standard of the cleaning failed to reach the required "reasonable" standard.
62. As to the amount to be deducted from the cleaning cost, to reflect the failure to provide cleaning to a reasonable standard, the evidence from both sides is inadequate. In the circumstances, using the tribunal's specialist knowledge and its accumulated knowledge and experience, the tribunal determines that a deduction of 10% in the internal and external cleaning cost for each disputed year is reasonable in all the circumstances.

Fire safety works invoice £10.42

63. This relates to the fitting of a lock on a bin door subsequent to a fire risk assessment. The respondent had argued that other residents also have use of the door and should also contribute towards the cost. The

applicant explained that only contractors, the local authority, and the caretaker, should have access to this area. The respondent further stated that the lock was not working and therefore other residents have access to the bin area. Given that the applicant was only made aware of the faulty lock at the hearing, the applicant agreed to repair or replace the lock at no extra charge. In the circumstances, the respondent agreed that £10.42 was reasonable and payable by him.

Electrical & Communal Maintenance

64. The applicant explained that it has a communal electrical contract with Engie FM Limited under which it provides (1) planned preventative maintenance, (2) communal electrical testing every five years, (3) responsive repairs costing less than £350, this being the figure for Engie's financial risk and (4) responsive repairs costing more than the financial risk limits. It is only the planned preventative maintenance and the responsive repairs costing less than £350 that form part of the electrical maintenance charge that appears on the respondent's annual service charge invoice. The way in which this works is that if repairs cost for example £400, the applicant will only be charged £50, in other words, the applicant would not be charged for the first £350. If the cost is £350 or less, there is no additional charge as it is already charged under the planned preventative maintenance. The respondent stated at the hearing that he had not previously understood what the cost under this heading covered. Now that it had been explained to him, the respondent agreed that the amount charged was reasonable and payable.

Repairs

65. Charge of £30.01 for repairs to the communal door: The respondent argued that the communal door was damaged by vandals and others not living on the block. However, the respondent agreed that if there was damage to the communal door then the applicant was required to repair this and that under the terms of the lease he was required to pay his share. The respondent then stated that the cost of repairing the communal door should come under "electrical maintenance". The respondent then agreed that whatever head the charge came under, he would still have to pay his share towards the repair cost. In the circumstances, the tribunal found the amount of reasonable and payable
66. Charge of £68.58 regarding communal lights: The respondent agreed at the hearing, given the explanation provided by the applicant that this cost was not covered by council tax, that he was liable to pay the amount charged. However, the tribunal noted on page 144 of the bundle that the charge relates to communal lights on one block and streetlamps, in which case part of the costs should be divided amongst the whole estate and the other part payable by the relevant block. On

behalf of the applicant it was conceded that the respondent should only contribute towards the replacement of the streetlamps. However, the respondent was unable to say what proportion should be attributed to the block (for which the respondent is not liable) and therefore the applicant agreed to cancel the whole charge of £68.58.

67. Charge for NICIEIC test £11.63: Upon reading the explanation provided by Mr Winchcombe in his witness statement the respondent agreed that the sum was reasonable and payable.
68. Charge of £43.54 for statutory lighting test: The applicant explained that these works arose due to improvement works to the lightning protection system identified as necessary after a statutory annual inspection. The respondent stated at the hearing that he accepts the explanation provided and further accepts the sum to be reasonable and payable by him.
69. Charge of £3.24 to repair pothole: The applicant explained that although the pothole was referred to as being outside “2 Biko House”, this was only a reference point but the actual road was within the boundary of the respondent’s estate. The respondent stated at the hearing that he accepts that the relevant road is within the boundary of the estate and therefore the charge is reasonable and payable.
70. Charge of £11.93 for tree works: The respondent agreed at the hearing that a charge was payable by him if the relevant tree was within the boundary of the state. The respondent further agreed at the hearing that the tree was in fact within the boundary of the estate. The tribunal therefore found the amount reasonable and payable.
71. Charge of £33.24 for tree works: The respondent agreed at the hearing that the relevant tree was within the boundary of the estate and therefore the charge was reasonable and payable.
72. Charge of £66.57 for pest control: The respondent had objected to this charge on the basis that no traps were set in his flat. However, the respondent agreed at the hearing that the applicant had no obligation to control pest within the respondents flat and that traps had been set within the communal parts of his block. The respondent agreed that the amount was reasonable and payable.
73. Charge of £4.77 for adjustments to a communal door: The respondent disputes the amount charged on the basis that the works were repetitive or performed to a low standard. The applicant referred the tribunal to the minor repairs log on page 141 of the bundle which described the work as “ease and adjust communal front door”. The tribunal notes that the respondent has failed to provide any supporting evidence to show that any previous works were done to a poor standard or that the same

work had been done repetitively other than stating that if the door had been fixed properly then it should last a while. The tribunal agrees that a communal door to a block of flats may reasonably need easing and adjusting from time to time without necessarily being due to previous poor workmanship. The tribunal finds the amount reasonable and payable.

74. Charge of £174.13 for gutter works in 2012: The applicant referred the tribunal to page 142 of the bundle in which the fault is described as “*Trace and repair leak following report of water coming through the skylight/walkway above affecting the front of no. 73*”. Page 157 refers to the works carried out as “*Cleaned out 24 mtrs of gutter, 12 mtr per side and repaired all leaking gutter joints. Replaced 1 no concrete interlocking tile and refitted all disturbed/loose tiles. Cleaned/dried off defective area of flat roof 3 mtrs long x 2 mtrs wide and coated with a single layer of Acropol*”. The applicant stated that the respondent’s argument was that works had previously been undertaken and the problem may have arisen as the previous works were not done properly. However, the respondent had failed to provide any cogent evidence to support this. The respondent stated at the hearing that he could see from his kitchen window that the scaffolding had been up for a very long time. The applicant at this stage clarified that there were no additional costs for the scaffolding staying up for longer than anticipated. The respondent further stated that instead of doing temporary repairs, the applicant should have replaced the whole roof. When asked whether there was any evidence that the whole roof should have been replaced, the respondent stated that he relied upon the chronology on page 186 of the bundle, which shows that in June 2014 the roofing contractors initial recommendation was to replace the roof. The respondent then agreed that the letter on page 186 did not recommend that the roof be replaced in 2012. Furthermore, the respondent agreed that this letter referred to problems with the roof since at least mid-2013. However, the respondent maintained that there were problems before 2013. The tribunal found no evidence that any previous works that may have been undertaken were completed to poor standard, no evidence that there were any additional costs for the scaffolding staying up for longer than anticipated, no evidence that it was not reasonable to carry out repairs in 2012, and no evidence that the roof was in such a poor state that it needed to be replaced in 2012. In the circumstances, the tribunal found it reasonable for the works to have been carried out to the gutters and therefore determine that the amount is reasonable and payable.
75. Charge of £6.50 to replace communal door handle: Although the respondent initially argued at the hearing that the work was of a repetitive nature or that the previous work was to a poor standard, the respondent then agreed that he had no evidence for this and agreed the amount was reasonable and payable.

76. Charge of £9.50 for repairs to the communal door, £4.86 for defective intercom, £8.99 for temporary repair to the skylight, £0.81 for filling in a pothole, £33.84 for fixing the communal door intercom, £30.01 for communal door handle, £3.32 for repair to the communal door handle, £27.08 for pest control, and £2.77 for pothole repairs: The respondent agreed at the hearing, having considered these items over a short adjournment, that all of these items were reasonable and payable.
77. Charge of £5.07 for letterbox repair: The applicant confirmed at the hearing it was not pursuing this charge.
78. Charge of £1.03, £1.93, and £0.64, for replacement of paving slabs: The respondent argued that the cost should be split more than 1/73 for the same reasons put forward under the apportionment argument above. In light of our finding with respect to apportionment, we find the respondent is liable to pay 1/77.
79. Charge of £2.48 for replacing fencing: Given the very low amount involved, the applicant stated it would not argue over the amount claimed and will cancel the charge.
80. Charge of £51.09 to fix leak to the skylight: The respondent stated at the hearing that it was recommended that the roof should be replaced and therefore it was not reasonable to repair the skylight in the meantime on 15/9/14. The applicant referred the tribunal to its letter dated 2/12/15 on page 186 of the bundle, where it states that the roof inspection on 9/6/14 resulted in the roofing contractor's initial recommendation to replace the roof. However, the applicant agreed with its contractor on 5/8/14 a revised programme of work short of roof renewal. The revised programme of works was carried out on 15-16 September 2014. Around October 2014, the applicants Major Works Team decided, taking into account the complaints from the residents, that the best course of action was to replace the roof. The roof replacement was finally completed in April 2015. However, given the nature of the works and the necessary consultation and tendering process, which was likely to be very time-consuming, it was reasonable to carry out patch repairs to stop the leak until the roof could be replaced. Once the decision was made to replace the roof, it still took six months to complete the work. The total cost of just over £600, split amongst 12 flats, was not a significant expenditure to ensure that the leak was stopped until the roof was replaced. The tribunal notes that the respondent has not challenged the standard of the work and has not provided any reports to state that it was unreasonable to repair the roof instead of replacing it. The tribunal notes that despite the roofing contractor's initial recommendation to replace the roof, the contractor agreed to a revised programme of works short of roof renewal. There is no evidence before the tribunal to show that it was not reasonable to carry out repairs as opposed to replacing the roof. In any event, the tribunal notes that once the decision to replace the roof was made in

October 2014, it took 6 months to complete the roof replacement. Therefore, even if the advice to replace the roof was followed in June 2014, it is unlikely that the roof would have been replaced by September 2014, therefore it was reasonable to carry out repairs in September 2014. For the reasons given the tribunal finds the amount reasonable and payable.

81. Charge of £0.96 for waste removal from the boiler room: The applicant explained at the hearing that this involved the removal of a dead cat from the boiler room. The respondent agreed at the hearing that the amount was reasonable and payable.

82. Charge of £0.61 for a slab repair: The applicant explained that this involved repair works carried out to the step into the respondents block. However, Mr Patel then clarified that the photograph exhibited to his statement on page 130 of the bundle shows the location of the floor slab, which shows that the slab was actually inside the respondents block. When asked why the applicant referred to works being carried out to the step to the respondents block, Mr Patel stated that he was unable to provide an explanation. However, he had spoken with the estate officer, having looked at the repairs raised in relation to this case, and he was told that the slab that had been replaced was inside the respondents block and hence providing the photograph on page 130. The respondent argued that there were no steps into his block and therefore the repair should be under the estate charge not under block charge. The tribunal notes the description of the work on page 146 as “*Attended site, located step, removed slab bed..job completed...*” However, given that the work specifically refers to the respondents block, and the explanation provided by Mr Patel, on balance, the tribunal is satisfied that the works related to the respondents block and therefore the amount is payable as a block charge.

83. Charge of £30.23 for repairs to the door handset system: The applicant states that the occupant of flat 81 reported a fault with the equipment affecting the whole block. The job description on page 146 states “*Report flat 81 cannot hear any sound on the handset, and when the button is pressed, it does not let anyone in. Attended site, replaced heavy duty lock release. Tested and adjusted door entry system*”. Mr Patel added that the words “replaced heavy duty lock release” refers to the communal main door, a photograph of which he has provided on page 126 of the bundle. The respondent argued that the information on page 146 was misleading. The job description refers to “flat 81 and handset”. Therefore, the occupant of flat 81 should pay for this repair. When asked whether he had spoken to the occupant of flat 81 concerning this, the respondent replied “no”. Given the job description on page 146 and the explanation provided by Mr Patel, on balance, the tribunal is satisfied that works were carried out to the communal handset, which required the replacement of the heavy duty lock release on the communal door. Therefore the charges are reasonable and payable as a block charge.

84. Charge of £2.06 for repairs to the refuse chute doors: The respondent stated at the hearing that he had no objection to paying this sum.
85. Charge of £70.99 for checking respondents own drain: The applicant referred the tribunal to page 147 of the bundle, which describes the relevant work as “... *Flat 59 ground floor leaseholder/sink is blocked from outside main drain outside his flat is blocked/front of block - attended site, no blocked drains - blocked sink in flat 59 leaseholder*”. The applicant further stated that an external contractor was called to inspect the drains. The respondent stated at the hearing that he accepts that there was a block inside his flat. However, he did not know this and asked the applicant to inspect as he thought the block could be from outside his flat. Once the contractor attended, he was told that the block was inside his flat and the contractor unblocked this for him. However, the price was too high and should be reduced by 50%. The respondent stated that he has previously used plumbers to unblock drains at a cost of £30 only. When asked whether the respondent had any evidence or quotes to support this, he replied “no”. Given that the respondent does not challenge that an external contractor had attended and had invoiced the applicant for the sum of £70.99, and in the absence of any alternative quotes or evidence of a lower price from an alternative and comparable contractor, the tribunal is satisfied that the amount is reasonable and payable.
86. Given the tribunals finding in relation to the issue concerning apportionment, any estate charge the tribunal has determined as reasonable and payable under this subheading is of course subject to the applicant splitting the charge 1/77 as opposed to 1/73.

Application under s.20C and refund of fees and costs

87. The tribunal notes that although the applicant was successful on many of the disputed issues, it conceded on others. The respondent had raised issues concerning the apportionment of his service charge over a number of years. Although the respondent’s success in changing the estate charge from 1/73 to 1/77 may not represent a significant sum financially, the respondent was nevertheless successful in clarifying an unfair set of circumstances affecting him and a large group of other lessees, of which the applicant was effectively unaware. The respondent was also successful in having the cleaning costs reduced by 10%. In all the circumstances, the tribunal does not order the respondent to refund any fees paid by the applicant and further considers it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and section 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that the applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge.

The next steps

88. This matter should now be returned to the County Court.

Name: Mr L Rahman

Date: 11/3/19

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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).