9374

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0250**
Property	:	**Flat 1 Beta Court, 117 Sydenham Road, Croydon, Surrey CR0 2EZ**
Applicant	:	**Ms A Akindele**
Representative	:	**Mr F Akinbisehin**
Respondent	:	**Solarbeta Management Company Limited**
Representative	:	**Mr M Lynch and Dr E Kavatha, directors of Respondent company**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**Mr C Beard of Warwick Estates Ltd**
Tribunal Members	:	**Judge P Korn (chairman)** **Mr A Lewicki, MRICS**
Date and venue of Hearing	:	**23rd October 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25th November 2013**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the following service charge items are payable in full:-

- Actual general repairs and maintenance for 2012
- Estimated general repairs and maintenance for 2013 *(this presumably being the item referred to in the 2013 budget as "General Minor Repairs")*
- Actual fire protection and security costs for 2012
- Estimated fire protection and security costs for 2013 *(this presumably being the item referred to in the 2013 budget as "Fire Defences Maintenance/Repairs")*
- Actual bulk refuse charges for 2012
- Actual contributions to reserve fund for 2012
- Estimated contributions to reserve fund for 2013
- Actual pump maintenance charges for 2012
- Estimated pump maintenance charges for 2013.

(2) No determination is made in respect of the following service charge items on the basis that a determination is unnecessary and/or the tribunal has no jurisdiction to make a determination:-

- The £341.24 charge for 2011
- Car parking costs for 2012 and 2013
- Solar panel charges for 2012 and 2013
- Lighting and electrical charges for 2012 and 2013
- Estimated bulk refuse charges for 2013
- Directors' expenses for 2012.

(3) No determination is made in respect of the adjustment to the Applicant's service charge percentage for 2013 as the Applicant's representative withdrew the Applicant's challenge to this adjustment during the hearing and consequently – in the absence of a continuing dispute – the tribunal does not have jurisdiction to make a determination.

(4) The following items are not payable:-

- The Applicant's contribution to the actual £1,410 lift maintenance charges for 2012
- The Applicant's contribution to the estimated £1,211 lift maintenance charges for 2013
- The Applicant's contribution to the estimated £500 directors' expenses for 2013.

(5) The tribunal determines that the Applicant shall not be obliged to pay any contribution towards the Respondent's costs in connection with these proceedings under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged by the Respondent.

2. The Applicant has challenged various service charge items relating to the years 2011 to 2013, details of which are set out below in the summary of the parties' respective cases on those issues.

3. The relevant legal provisions are set out in the Appendix to this decision. The Applicant's lease ("**the Lease**") is dated 30th November 2006 and is between Ruskin Homes Limited (1) the Respondent (2) and the Applicant (3).

The background

4. The tribunal was referred to two previous Tribunal decisions between the parties and relating to the Property, one dated 28th August 2009 ("**the 2009 Tribunal Decision**") and the other dated 17th May 2012 ("**the 2012 Tribunal Decision**").

5. On 14th May 2013 a Procedural Chairman sitting alone decided that the Tribunal did not have jurisdiction to hear certain aspects of the Applicant's case, in part because some of the issues were considered already to have been dealt with by the 2012 Tribunal Decision. This decision of the Procedural Chairman was effectively reversed by a two person Tribunal sitting on 13th August 2013 when it determined that all aspects of the Applicant's case should be dealt with at the full hearing, including any jurisdictional questions.

2011 – single issue

6. The Applicant's challenge in respect of the 2011 service charge year was to a charge of £341.24. In the Applicant's submission, this sum was not payable because the demand for payment did not comply with section 20B of the 1985 Act. At the hearing, the tribunal asked the Applicant's representative, Mr Akinbisehin, whether the sum in question represented an actual or an estimated service charge. He was unclear on this point, but after some discussion he said that he believed it was the actual charge for 2011.

7. In response, Mr Lynch for the Respondent referred the tribunal to the relevant parts of the hearing bundle, including their written submissions on section 20B, copy letters and a statement of account. The statement of account showed an 'on account' service charge of £494.59 for 2011, and in the 2012 Tribunal Decision it was determined that this sum was reasonably incurred but that the Applicant was not required to contribute to the costs of insurance, car parking or the repair of solar panels. By a letter to the Applicant dated 24th July 2012 the Respondent stated that the amended service charges for 2011 were £341.24 (the disputed sum in question), which represented the £494.59 determined as payable in the 2012 Tribunal Decision less the buildings insurance, insurance claims excess and electronic gate maintenance to which the Applicant was not required to contribute.

2012

Car park costs

8. Mr Akinbisehin argued that the Applicant should not have to contribute towards the car parking costs shown on the 2012 service charge certificate. In response, Mr Lynch said that it was apparent from the service charge certificate itself that the Applicant's contribution towards the car parking costs was 0%. Mr Akinbisehin accepted this and consequently withdrew the Applicant's challenge on this point.

General repairs and maintenance

9. Mr Akinbisehin was unsure what the £3,125 covered and whether there was some duplication with other heads of charge.

10. Mr Lynch for the Respondent referred the tribunal to the Respondent's written submissions. This category was for general minor repairs, and the hearing bundle contained the relevant copy invoices which added up to £3,125. The Applicant had seen these and had been afforded the opportunity to raise specific objections but had not done so. The service charge accounts had been checked by an accountant.

Pump maintenance

11. The Applicant's position was that the pump did not benefit Beta Court, as the Applicant's water came direct from the mains and thee was therefore no need for a water pump. Consequently, the Applicant should not be obliged to pay towards its maintenance.

12. In response, Mr Lynch referred the tribunal to the relevant sections of the Lease. The second limb of the definition of "Service Charge" required the leaseholder to pay a specified percentage of *"the expenditure incurred by the Management Company in performance of its obligations in this Lease excluding obligations specific to the Parking Area on the Estate"*, and the Management Company's obligations themselves were set out in clause 6.2 of, and the 4th Schedule to, the Lease. In his submission, the pump was a water booster pump whose purpose was to give everyone on the estate good water pressure. The obligation to maintain it fell to the Management Company and therefore the Applicant had to contribute towards the cost of doing so, regardless of the level of benefit enjoyed by the Property. He also noted that the application was limited to the principle of whether this sum was payable, rather than also relating to the question of whether the amount was reasonable.

Solar panels

13. Mr Akinbisehin said that the Applicant should not be obliged to contribute towards the cost of maintaining the solar panels. Mr Lynch for the Respondent agreed that the Applicant was not obliged to contribute towards this cost but added that this point had already been decided as part of the 2012 Tribunal Decision and that therefore it was unnecessary to re-introduce the point. It was accepted that the solar panels had been demised to individual leaseholders and were therefore wholly outside the service charge regime.

Fire protection and security

14. The Applicant's argument on this issue was that nothing had been spent on fire protection and security and therefore there should be no charge.

15. Mr Lynch referred the tribunal to the Respondent's written submissions, including copy invoices. There was evidence that expenditure had been incurred, and this information had been provided to the Applicant in June 2013. In the Respondent's view the works concerned benefited Beta Court, there was not believed to have been any duplication between this head of charge and other heads of charge and the accounts had been verified by an accountant.

16. Mr Akinbisehin asked Mr Beard of Warwick Estates at the hearing who in practice maintained the dry riser on the outside of the building, but Mr Beard was unable to confirm this point.

Lighting and electrical

17. Mr Akinbisehin was unsure what this category covered and whether there was some duplication with other heads of charge.

18. Mr Lynch objected that this had of charge did not seem to form part of the original application nor part of the Applicant's detailed statement of case. The Applicant had provided no details of any alleged duplication, nor had she requested any copy invoices or other information to help to resolve this issue. Mr Lynch was not aware of any reason to think that there had been any duplication, and the accountant was happy with the accounts.

Bulk refuse

19. Mr Akinbisehin said that the Applicant felt that the cost of removal of just three items (£60 + VAT, £80 + VAT and £60 + VAT) was unacceptably high, and he also felt that this service should be provided by the local authority free of charge. In addition, he said that one of the charges related to removal of an item from the car park and that this was excluded from the Applicant's service charge.

20. Mr Lynch referred the tribunal to the invoices in question and said that he considered the charges to be reasonable. The Respondent had checked the position, and the local authority would not remove items on the instructions of the managing agents of an estate. In any event, the Respondent was entitled under the Lease to include this as part of the service charge.

Reserve fund

21. The Applicant objected to being required to contribute towards a reserve fund for replacement of carpets in common parts and for works to the flat roof. The carpets had been renewed recently and the flat roof did not need replacing.

22. Mr Lynch agreed that the above works did not need carrying out now. He said that the point of a reserve fund was to build up funds for the future so that when it did become necessary to replace or renew these items in the future the Respondent would be able to afford to do so. He also commented that the Respondent had received no complaints from any other leaseholders as to the level of the reserve fund monies being held, nor indeed had the Respondent received complaints from other leaseholders on any other issue.

Lift

23. The Applicant's argument was that Beta Court did not benefit from the use of the lift as it was in Solar Court and therefore she should not have to contribute towards its maintenance.

24. Mr Akinbisehin accepted that the 2012 Tribunal Decision had determined that the Applicant was obliged to contribute towards the cost of lift maintenance but pointed out that the (earlier) 2009 Tribunal Decision had determined that she was not obliged to contribute.

25. Mr Akinbisehin also referred the tribunal to the cases of *15 Marden Square (Ref: LON/00BE/LSC/2007/0267)*, *Charter House (Ref: CHI/29UE/LSC/2011/0010)*, and *London Borough of Barnet v Shulem B Association Limited (2011) EWHC 1663 (Ch)*.

26. Mr Lynch noted that the 2012 Tribunal Decision had determined that the Applicant was obliged to contribute towards the cost of lift maintenance. He also referred the tribunal to the management company's obligations contained in the 4th Schedule to the Lease. In his view, these provisions were wide enough to cove the maintenance of the lift, whether or not the Applicant derived any benefit from its maintenance.

Directors' expenses

27. This issue formed part of the application and was dealt with in written submissions although not, curiously, at the hearing. The Applicant's argument, as the tribunal understands it, is that this item is not covered by the service charge provisions of the Lease.

28. In its own written submissions, the Respondent has referred the tribunal to clause 6.2.1 of the Lease, which states that the management company may *"discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Estate"*.

2013

29. The Applicant's case in respect of 2013 was the same as for 2012, although she also had an issue regarding the adjustment to her service charge percentage for 2013 from 1.58% to 1.77% and on whose authority it was adjusted.

30. In relation to the adjustment to the service charge percentage, the reason for doing this was that it was noticed that the service charge did not add up to 100%. Mr Lynch produced a copy of the authorisation for this adjustment and Mr Akinbisehin withdrew the Applicant's objection to the adjustment of the percentage.

Tribunal's analysis and determinations

2011 – single issue

31. Having considered the parties' written submissions and listened to their oral evidence it seems clear to the tribunal that the £341.24 sum in question formed part of a larger sum which was determined to be payable as part of the 2012 Tribunal Decision. As such, the tribunal's view is that it has no jurisdiction to make a determination in respect of this sum, it having already been determined by a previous Tribunal that it was payable.

2012

Car park costs

32. As Mr Akinbisehin conceded during the course of the hearing that these are not in fact charged to the Applicant there is no dispute and therefore no basis or jurisdiction for the tribunal to make a determination.

General repairs and maintenance

33. In the tribunal's view, the Applicant's challenge to these costs is very weak. In response to that challenge the Respondent has provided copy invoices which add up to the total claimed and which seem to reflect reasonably incurred costs in the absence of a stronger, or more detailed, challenge. The tribunal has seen no evidence of duplication

between this head and other heads of charge. Accordingly, the tribunal determines that these costs are payable in full.

Solar panels

34. This issue was dealt with in the 2012 Tribunal Decision and the Respondent confirmed during the course of the hearing that it had no intention of including the cost of maintenance of the solar panels in the service charge. Therefore there is no dispute and therefore no basis or jurisdiction for the tribunal to make a determination. The tribunal is unclear why the Applicant felt the need to raise this issue again.

Fire protection and security

35. The Applicant's objections on this issue do not seem to be wholly without merit, in that it is not clear on the basis of the evidence provided that there is a significant amount of fire protection or security-related work which is needed to be done to the building. However, in response the Respondent has produced copy invoices giving details of work carried out and the tribunal considers that it has no proper basis on which to query these in the absence of a stronger challenge. The tribunal has seen no evidence of duplication and the invoices have seemingly been checked by an accountant. Therefore, on the balance of probabilities, the tribunal determines that these costs are payable in full.

36. Specifically on the issue of the dry riser, the Respondent is encouraged to establish who maintains it in practice so as to avoid confusion in the future.

Lighting and electrical

37. This item did not form part of the application and therefore a determination is not required on this point.

Bulk refuse

38. The tribunal has considered the copy invoices provided in the light of the evidence given by both parties and is of the view that the sums charged are reasonable and were reasonably incurred.

39. As regards the objection to paying towards the cost of removing an item from the parking area, there is excluded from the Applicant's service charge expenditure in performance of *"obligations specific to the Parking Area"*. Whilst the tribunal accepts that there is some merit in the Applicant's argument on this point it considers that the intention behind these words was to exclude the cost of works to the parking area

itself. It was not, in the tribunal's view, intended to exclude the cost of refuse removal simply because a specific item of refuse happened to be located within the parking area rather than within another part of the estate.

40. Therefore, the tribunal determines that the cost of all of these items is payable in full.

Reserve fund

41. The tribunal is not persuaded by the Applicant's argument on this issue. Her objection seems to be based on nothing more than that the items in question do not seem to her to need renewing or replacing at present. This is to misunderstand the purpose of a reserve fund, which is to build up funds to enable a landlord or management company to pay for works at such time as they do need to be carried out. In the absence of any more serious objection to the reserve fund contributions, the tribunal determines that these contributions are payable in full.

Lift

42. The tribunal notes that in the 2009 Tribunal Decision it was determined that the Applicant was not obliged to contribute towards the cost of lift maintenance but that in the 2012 Tribunal Decision it was determined that the Applicant was obliged to contribute towards this cost. It is not ideal that there are conflicting decisions on this issue, albeit that technically the decisions relate to different years, as does the tribunal's decision in the current case.

43. If there had only been one decision on this issue the tribunal might have considered that it did not have jurisdiction to re-open the issue, but as there are two decisions and they conflict (and neither relates to the service charge years which form the basis of the current application) the tribunal considers that it is entitled to make a determination on the point. The tribunal is also conscious that the parties are now confused as to the legal position on this issue and believes that a clear ruling on the point would help the parties in their future dealings with each other.

44. The tribunal notes the points made by Mr Akinbisehin in relation to the cases cited by him. In the case of *15 Marden Square*, the lease defined "the building" as 6 to 77 Marden Square although the relevant leaseholders' building itself (which had no lift) was 6 to 15 and 68 to 77. The remaining units numbered 16 to 67 were contained in another building which contained the lifts. The Tribunal found as a matter of construction of the lease that the relevant leaseholders only had to contribute towards the cost of services in their own building (as distinct

from services within other buildings), and that their 'building' was just numbers 6 to 15 and 68 to 77 and did not contain a lift and so there was no obligation to contribute towards the cost of maintaining lifts in other buildings.

45. In the *Charter House* case it was held that the leaseholder was not obliged to contribute towards the cost of works to the lift, the Tribunal noting that there was no mention of any lift in the lease, and nor was there any provision for her to contribute towards the cost of works to the main entrance hall, common passages etc. The Tribunal's factual finding was that she did not use any of these items and nor did she use the lift and that this was probably why these items were not specified in the lease as service charge items.

46. In the *Shulem B* case, Morgan J sitting in the High Court quoted the service charge provisions in the lease and noted that the leaseholder's obligation to pay was limited to expenses which related to the flat and the building of which it formed part and that therefore the relevant leaseholder was not obliged to contribute towards the cost of repairing the roof of another building on the estate.

47. There is a common thread linking the abovementioned cases, in that in each case it was decided that the relevant leaseholder was not obliged to contribute towards the cost of repairing or maintaining something which formed part of a different building (albeit that in *Shulem B* this issue was not the central part of that case). Equally, to a large extent each decision turned on the construction of the particular wording of the relevant lease, although in relation to the *Charter House* case perhaps it would be more accurate to state that it was the **absence** of certain wording coupled with the factual matrix which was considered pivotal.

48. In the present case, one is faced with a service charge definition which in the tribunal's view is not well drafted. The full definition is as follows:-

"the Service Charge" means:-

Firstly such percentage as the Landlord shall reasonably and properly determine as being an appropriate and fair proportion in respect of the Premises with regards to the parts of the Buildings as are constructed and capable of occupation (whether or not demised in a Lease upon similar terms (mutatis mutandis) to this Lease) and notified from time to time to the Tenant of the expenditure payable by the Landlord under the Underlease

Secondly 1.58% of the expenditure incurred by the Management Company in performance of its obligations in this Lease excluding obligations specific to the Parking Area on the Estate.

49. The first part of the above definition (the one beginning "Firstly") appears to envisage the tenant paying to the landlord an amount equal to the sums payable by the landlord under the superior lease (referred to in the Lease as "the Underlease") insofar as they relate to the Property. However, the superior lease was not produced or referred to in evidence and the Respondent made it clear that at the hearing and in written submissions that it was charging to the Applicant a proportion of the cost of lift maintenance pursuant to the second part of the above definition (the one beginning "Secondly") coupled with the tenant's covenant in clause 5.1 of the Lease and the management company's obligations contained in clause 6.2 and the Fourth Schedule.

50. Based on the Respondent's submissions one needs to consider what the management company's obligations are. Clause 6.2 states that it is obliged to perform the Services, and the Services are simply defined as the services set out in the Fourth Schedule.

51. Turning to the Fourth Schedule, paragraph 1 refers to the repair etc of *"any party walls or other facilities used in common by the tenants of the Estate and the owners or occupiers of any adjoining or neighbouring property"*. In the tribunal's view, this relates to any party walls or other structures or conduits etc which are shared between this estate and another estate. In other words, it relaters solely to the interface between this estate and others and does not cover items (such as lifts) within the estate of which the Property forms part.

52. Paragraph 2 of the Fourth Schedule relates specifically to cleaning and lighting the entrance hall and maintaining any entry-phone system and this cannot be construed as including lift maintenance.

53. Paragraph 3 contains an obligation on the management company to *"provide such other services and discharge such other obligations or functions as the Management Company shall reasonably from time to time consider necessary or expedient for the use and occupation of the flats in the Buildings and the Landlord's adjoining premises"*. On the face of it this seems quite a wide provision. However, as in the *Charter House* case it seems clear as a factual matter that the Applicant receives no benefit from the lift as it is not in her building and there is no specific mention of a lift or even a generic concept that could reasonably be said to include a lift in this paragraph 3. In the case of ambiguity service charge provisions are construed in favour of the paying party, and the tribunal does not consider that the above words are sufficient to oblige the Applicant to contribute towards the cost of maintaining a major item in respect of which it does not, and cannot, have any benefit.

54. Paragraphs 4 to 8 inclusive are not relevant in this context as they clearly cannot be construed as referring to the lift. Paragraph 9 is a 'sweeper' paragraph which refers to "such other services or functions as the Management Company shall think fit for the upkeep and enhancement of the Estate or for the benefit of the flats erected thereon", but again this is not considered to be nearly specific enough to cover the maintenance of a lift not otherwise mentioned and in respect of which the Applicant has no benefit.

55. Accordingly, the tribunal determines that the Applicant's share of the lift maintenance charges of £1,410 (as per the 2012 service charge accounts) is not payable.

Pump maintenance

56. The tribunal notes the Applicant's submission that she does not feel that the pump benefits the Property and the tribunal also notes the Respondent's counter-submissions. It seems to the tribunal that the available evidence on this issue is quite thin, making it difficult to make a conclusive factual finding. However, having considered the matter the tribunal considers that the pump can be distinguished from the lift and that, on the balance of probabilities in the absence of more detailed evidence showing otherwise, it is capable of benefiting the Property and is also an estate-wide facility. As such, it would seem to fit within the management company's obligation in paragraph 3 of the Fourth Schedule to the Lease to *"provide such other services and discharge such other obligations or functions as the Management Company shall reasonably from time to time consider necessary or expedient for the use and occupation of the flats in the Buildings and the Landlord's adjoining premises"*.

57. According this item is determined to be payable.

Directors' expenses

58. This issue was not specifically covered but formed part of the application and there have been written submissions on behalf of both parties. The dispute boils down to the question of whether the service charge provisions in the Lease are wide enough to cover directors' expenses.

59. The Respondent relies on clause 6.2.1 of the Lease, which states that the management company may *"discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Estate"*. Whilst at first glance one might think that the directors fall within the phrase *"such agents or such other person who may be managing the Estate"* the tribunal does not consider that this phrase is wide enough to cover directors' expenses. The directors

manage the company, not the Estate, and – particularly in the light of the general principle that in the case of uncertainty or ambiguity payment provisions in leases are construed in favour of the paying party – the tribunal considers that directors' expenses are not payable by the Applicant as a matter of construction of the Lease.

60. However, looking at the certificate of actual service charge expenditure for 2012 it would seem that although this item was budgeted for it was ultimately not actually charged for. Therefore, on the understanding that the Respondent accepts that it needs (if it has not already done so) to make an appropriate balancing service charge adjustment to reflect the actual service charge for 2012 the tribunal does not need to determine that the directors' expenses are not payable as, ultimately, they have not been charged for (merely erroneously budgeted for).

2013

Service charge percentage adjustment

61. Having initially objected to the service charge percentage adjustment, the Applicant – through her representative Mr Akinbisehin – withdrew that objection at the hearing. There is therefore no dispute on this issue and consequently no basis or jurisdiction for the tribunal to make a determination.

Other issues for 2013

62. The Applicant's objections in relation to 2013 were stated to be in relation to the same issues as for 2012. The difference in relation to 2013 is that the amounts concerned are all estimated amounts. No specific arguments were advanced at the hearing in addition to those advanced in relation to 2012.

63. For the same reasons as in respect of 2012, the tribunal has no jurisdiction to make a determination in relation to the following heads of charge:-

- Car park costs
- Solar panels
- Lighting and electrical

64. In relation to bulk refuse, there is no specific reference to this in the 2013 budget and therefore no determination is necessary or possible.

65. In relation to the lift, for the same reasons as given above in relation to 2012, the Applicant's share of the £1,211 estimated lift maintenance charges for 2013 is not payable.

66. In relation to the directors' expenses, unlike in relation to 2012 where the actual amount charged in respect of directors' expenses was zero, the actual amount for 2013 has not yet been established. As the Applicant has been invoiced on the basis of a budget which does make provision for charging directors' expenses the tribunal is in a position to make a determination for 2013. For the reasons already given above in relation to 2012, the tribunal considers that the Applicant is not obliged to contribute towards the cost of directors' expenses and therefore the Applicant 's share of the £500 estimated directors' expenses for 2013 is not payable.

67. The tribunal considers that the remainder of the 2013 estimated charges are payable in full. This is partly for the reasons already given in respect of 2012, but also because these are estimated amounts and no evidence of actual expenditure is needed, the issue being whether the estimates are reasonable. Having considered the estimated amounts in the light of previous expenditure and what the tribunal generally considers to be reasonable and in the absence of any persuasive objections on behalf of the Applicant, the tribunal considers the estimated amounts to be reasonable.

Cost Applications

68. At the end of the hearing, the Respondent made an application for an order for costs (which the tribunal explained was up to a maximum of £500) under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("CLARA"). Paragraph 10 of Schedule 12 to CLARA states that a tribunal may determine that *"a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in ... circumstances ... where ... he has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings"* subject to an upper limit of £500.

69. The tribunal accepts that some of the Applicant's arguments have been weak and that she has raised a couple of issues which had already been dealt with by a previous Tribunal. However, she has also been successful on two issues. The test for awarding penalty costs under paragraph 10 of Schedule 12 to CLARA is quite stringent one, and the tribunal does not consider – taking everything in the round – that the Applicant has acted *"frivolously, vexatiously, abusively, disruptively or otherwise unreasonably"* within the meaning of this provision. Accordingly the tribunal declines to make the cost order sought by the Respondent.

70. There were no other cost applications.

Name: Judge P Korn **Date:** 25th November 2013

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.