FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UG/LIS/2018/0009
Property	:	Flat 6, Southfields House, 5 Southfields Green, Gravesend, Kent DA11 7BF
Applicant	:	(1) Natasha Bennett (2) James Bennett (Tenants)
Representative	:	In person
Respondent	:	Hyde Vale Ltd (Landlord)
Representative	:	Felicity Thomas of counsel
Type of Application	:	Landlord and Tenant Act 1985 s.27A (service charges) and Landlord and Tenant Act 1985 s.20C
Tribunal Members	:	Judge MA Loveday Mr R Athow FRICS Mr P Gammon MBE
Date and venue of hearing	:	5 September, 14 November 2018, Medway Magistrates Court and 27 November 2018 (reconvene)
Date of Decision	:	17 January 2019

DETERMINATION

Introduction

1. This is an application by tenants to determine liability to pay service charges under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985"). The matter relates to Flat 6, Southfields House, 5 Southfields Green, Gravesend Kent DA11 7 BF. The matter was originally listed for hearing on 5 September 2018 when the Tribunal inspected the block and the immediate surroundings. In the event, the hearing could not proceed on that date for reasons already given on 6 September 2018. However, certain matters were agreed as set out in a Scott Schedule. The matter was then relisted and heard on 14 November 2018 when the Applicants appeared in person and the Respondents appeared through counsel. The Tribunal reconvened to reach a decision on 27 November 2018, and its decision and the reasons appear below.

2. The issues which remained at the hearing related to charges payable in respect of the 2016/17 and 2017/18 service charge years. The Applicants contested their liability to contribute to the following relevant costs incurred by the Respondents in those two years:
   (a) Cleaning costs.
   (b) Communal electricity.
   (c) Fire Safety.
   (d) Grounds maintenance.
   (e) Responsive Maintenance.
   (f) Insurance.
   (g) Management Fee.

   There was also an application under LTA 1985 s.20C.

3. Some elements of the service charges for 2016/17 and 2017/18 have been agreed.
   (a) The Applicants withdrew their objection to the relevant costs of "provisions" (or sinking fund contributions). These amounted to £540 and £4,057.20 in 2016/17, and £550.08 and £4,129.20 in 2017/18.
   (b) The Respondents conceded that Communal Water Charges were not recoverable under the Lease.

(c) The Applicants withdrew their objection to the relevant costs of Electrical Maintenance including bulbs and inspections. These amounted to £744.25 in 2017/18.

4. Both parties referred at the hearing to an updated Scott Schedule, which summarised their respective cases, and which effective stood as their Statements of Case.

The Lease

5. The material provisions of the Lease appear in Sch.1 to this decision.

Inspection

6. Southfields House is located on a large modern residential estate in Gravesend. It forms the southern end of a crescent overlooking a large round grassed area. The block has brick and rendered elevations with aluminium window frames and Juliet balconies. There are three storeys with 4 flats on each floor. To the western end are flowerbeds and two grassed area which wrap around the side of the building into North Lane. At the rear of the property is a paved path leading from the back door of the block southwards. This forms a "T" with another path, which at its western end leads to a gate at North Lane, and at its eastern end opens into a car park. There are hedges and some planting along this path, together with three electric lamp pillars and a light on the back door. The car park comprises some 24 spaces, none of which are marked, and it has another 8 or so light pillars.

7. Internally, there is a hallway at ground floor level with two flights of stairs and two landings. The internal condition was fairly basic, and there were noticeable cobwebs to the ceiling and dust on woodwork. The controlled access doorway had a lightweight metal door closer.

Issue 1: Cleaning costs.

8. The Respondent employed a contractor called Cleanscapes to clean the block and the estate, and incurred costs of £1,201.12 for cleaning in 2016/17) and £1,322.98 in 2017/18. The Respondent produced invoices which show that the 2016/17 payments comprised block cleaning costs of £893.20, window clean-

ing costs of £83.60 and £224.32 paid for sundry items. In 2017/18, it spent £994.97 on block cleaning, £93.07 on window cleaning and £234.94 on sundry items.

9. Ms Bennett accepted that the Respondent had incurred these costs and (save in one respect), that the above sums would ordinarily be reasonable for regular cleaning of a block of 12 flats. The Applicants main argument was that the cleaning was not of a reasonable standard, and that the amount payable should therefore be limited under LTA 1985 s.19(1)(b).

10. Ms Bennett disputed the quality, completeness and the frequency of the block cleaning. She produced photographs taken on 29 October 2016, which indicated the condition of the premises after a cleaner had visited. These showed dirty cobwebs on a door post, dust on a stringer capping and grubby woodwork. The block cleaning should have been done weekly, but there was a "Cleaning Services Attendance Sheet" in the entrance hall for the period 1 December 2017-9 March 2018, which recorded block cleaner visits on just four occasions. Ms Bennett said that this sheet was representative of cleaning over the two years. As to window cleaning, the Applicants had never seen a window cleaner, and the Cleaning Services Attendance Sheet did not record any visits by window cleaners during that time. The 2016/17 sundry items included removal of a wasps' nest in September 2016 (£82.60), cleaning a slip hazard on the stairwell in October 2016 (£132) and removal of fly tipping in February 2017 (£9.72). The Applicants did not dispute that someone came in to deal with these items. The Applicants did not accept it would be appropriate simply to discount the cleaning costs by 50%, as suggested by the Respondent. Instead, a limit of 10% would reflect the standard of block cleaning.

11. Nothing should be allowed for the window cleaning. It had not been done.

12. Ms Bennett did not suggest any deduction should be made for the sundry items in 2016/17. But she took issue with the 2017/18 sundry items, which covered bulk refuse disposal in April, June and September 2017 (£139.68, £47.63 and £47.63 respectively). Ms Bennett suggested these costs were ex-

tremely high and compared unfavourably with bulk collection charges of £10 made to the RTM company after it took over the management of the block.

13. The Respondent accepted that the cleaning services had not been to a reasonable standard but argued that the relevant costs in each year should be limited by 50%. As far as block cleaning is concerned, the Respondent admitted the Applicants had raised dissatisfaction with the standard of cleaning in both service charge years. But the Contractor Sheets could not be relied upon as an accurate reflection of the attendance of cleaners. These were pinned to a noticeboard in the hallway and they frequently disappeared and re-appeared. In any event, the Respondent referred to a photo taken by Ms Bennett of an earlier "Operative Attendance Sheet" for the period 16 August-6 December 2016, which showed weekly attendance by cleaners during that period. One could assume from the invoices that someone did attend. Moreover, the Respondent's Property Manager visited quarterly, and would normally be expected to comment if the cleaning was not up to scratch. There were no written complaints. The photographs produced were very limited and had there been continuous problems one would have expected to see a lot more of them. As to the sundry items, there was no serious challenge to these items, and no evidence to suggest that bulk collections could be obtained for £10 per visit. The issue of window cleaning had not been specifically raised by the Applicants and was not mentioned in the Scott Schedule. The Respondent's case is that there has never been any problem with the standard of window cleaning.

14. The Tribunal's decision. The parties agree the cleaning overall was not of a reasonable standard, particularly the block cleaning. But the evidence of the standard of cleaning is rather patchy. The Tribunal found the photographs taken by Ms Bennett in October 2016 to be useful. In particular, the photographs of the dirty cobwebs indicated the contractors had not dusted the walls and woodwork for some time. This is supported by the fact that the Respondent admits some complaints were made about cleaning at the time (albeit the Tribunal has not seen any written complaints). Nevertheless, the photographs show only relatively minor problems with cleaning on one day in 2016 and given the likelihood that they were taken to show the worst aspects of the cleaning, they do not suggest a complete breakdown in the cleaning regime. As

to the attendance sheets, the Tribunal accepts the reservations made by the Respondent. One cannot necessarily rely on the second sheet to show non-attendance over the Christmas and Bank Holiday period in 2017/18. But in any event, the two attendance sheets taken together show that weekly cleaning took place for most of the period 16 August-9 March 2018. This evidence suggests to the Tribunal that it should not reduce the relevant costs of cleaning costs as substantially as suggested by the Applicants. Regular and significant cleaning did take place, and the leaseholders of the flats in the block obtained some utility from this.

15. As to window cleaning, there is effectively no documentary evidence. The invoices from the contractor raise an inference that some window cleaning was carried out, but this must be balanced against Ms Bennett's evidence that she had "never seen" window cleaners. The attendance sheets have a section for window cleaners to sign, but it is unclear whether window cleaners were ever aware that these sheets existed. There is no documentary evidence about the standard of window cleaning, no photographs and no written complaints that the windows were dirty. On the limited evidence available, the Tribunal finds the contractors did carry out some window cleaning, although this was carried out to the same poor standard as the block cleaning. Hence Ms Bennett was not aware the window cleaners had even been to her block.

16. The Applicants have not made any specific contentions about the sundry items for 2016/17. As far as the 2017/18 sundry items are concerned, the Tribunal is not persuaded that the bulk removal charges were unreasonably incurred. It appears from the figures that Cleanscapes charged £47.63 per item for 5 items of bulk waste removed from the block in 2017/18. A charge of under £50 for attending, carrying away, transporting and safely disposing of a bulky item of refuse is not in the Tribunal's experience an excessive one.

17. The Tribunal considers that the reduction of 50% suggested by the Respondent properly reflects the extent to which cleaning costs were not reasonably incurred. The largest item (block cleaning), was plainly not to a reasonable standard, though substantial cleaning was carried out. Similarly, the Tribunal has found that window cleaning was not to the expected standard, although

work was carried out. The minor sundry items add little to this. Looking at matters in the round, the Tribunal prefers the broader brush approach of the Respondent in making an overall allowance to cleaning costs of 50% to reflect the extent to which these services were not of a reasonable standard. This produces relevant costs of £600.56 for 2016/17 (50% x £1,201.12) and £661.49 for 2017/18 (50% x £1,322.98). The Applicants are liable to pay service charges of 1/12th of this, namely £50.05 for 2016/17 and £55.12 for 2017/18.

Issue 2: Communal Electricity

18. The service charge accounts showed the Respondent incurred relevant costs of £1,062.75 (2016/17) and £1,108.94 (2017/18) for "Communal Electricity". The Respondent produced invoices showing supplies by SSE Electricity (26 April - 31 December 2016 and 1 January-1 April 2018) and Opus (1 February-31 December 2017). There were also invoices from the utilities consultants Monarch Partnership in relation to the electricity supplies.

19. The difficulty arises because (by common consent) part of the above relevant costs relate to electricity provided for the car park at the rear of the block, use of which was shared with other residents on the Estate. There is a single electricity supply for both the internal hallways, lighting of the curtilage of the block and the car park, which the suppliers' invoices refer to as meter no.S07B 30258. Broadly speaking, the Applicants argue that the lessees in the block should pay a lower proportion of the car park costs, whilst the Respondents argue for a 50% share. There is no dispute that this kind of apportionment was within the Tribunal's jurisdiction under LTA 1985 s.19(1). One difficulty is that before apportioning any of the relevant costs relating to the Estate, the Tribunal must first establish the physical extent of the areas of the Estate which are covered by the Applicants' service charge obligations. If there is no obligation to contribute to the cost of maintaining the car park, such costs will be excluded from the apportionment exercise.

20. The Applicants were not legally represented at the hearing, but the Tribunal took Ms Bennett through the terms of the Lease. The primary obligation to pay a "service charge" was under clause 3(2)(b). The landlord's relevant costs were limited by clauses 7(1)(d), 7(1)(c) and 7(5) to expenditure on certain

items which include (under clause 5(3) the costs of maintaining "the Common Parts". The issue was therefore whether the car park areas were "Common Parts" as defined by clause 1(2)(b) of the Lease.

21. Of the various elements of clause 1(2)(d), the Applicants argued that the car park clearly did not form part of "the entrances landings lifts staircases and other parts (if any) of the Building", since these plainly related to items within the envelope of the block itself. A car park could not be described as an "accessway", "footpath" or "garden". The only question was whether the car park and surrounds were "other areas appurtenant to" Southfields House "which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with the occupiers of the other units in the Building only". Factually, Ms Bennett relied on the fact that the 24 car parking spaces in the car park were not exclusively used by residents in the block. 12 spaces were allocated to Southfields House, 7 were allocated to the town houses at 7-19 (odds) Southfields Green, 1 was allocated to 1 North Lane and there were 3 visitor spaces. The car park was separated from the block with a secured electrically operated gate, although all 12 lessees had fobs to access the gate. It was not contiguous with the block itself (one had to walk along the paths at the rear of the block to get to the gate). The car park was "shared with another block" and was part of the Estate, not Southfields House. It might well be that the costs of lighting and power for the car park could be included in the "Estate Charge" referred to in clause 1(2)(d) of the Lease, but not the service charge.

22. As a consequence, the Applicants argued that only the electricity costs for powering the internal lighting for the block and the garden lights to the south of the garden gate should be included in the service charges.

23. Counsel for the Respondent agreed that the issue here was whether the car park was an "appurtenant" area in clause 1(2)(b) of the Lease. The words used in this provision plainly did not restrict the appurtenant area to the block itself. She referred to *Gala Unity* [2012] EWCA Civ 1372; [2013] 1WLR 988, which concerned s.72 of the Commonhold and Leasehold Reform Act 2002. At paragraph 14, Sulivan LJ said:

> "14 … there is nothing in the wording of the Act which suggests that appurtenant property is limited to property that is exclusively appurtenant to the self-contained building".
> "15 Appurtenant property, as defined by section 112(1), includes appurtenances belonging to or usually enjoyed with the building, part of a building or flat. Appurtenances such as gardens and yards are frequently enjoyed by a building, or a part of a building or a flat, in common with other buildings, parts of buildings or flats. In ordinary language, the car parking ports/spaces included in the leases of the flats "belong to" the flats which comprise the self contained block, whereas the bin area, access road and gardens are "enjoyed with" the flats which comprise the two blocks. The fact that the occupiers of other property, in this case the two coach houses, also enjoy those appurtenances does not mean that they fall outside the definition in section 112(1). The fact that the definition is not limited to appurtenances which belong to the building in question is a powerful indication that Parliament did not intend that appurtenant property for the purpose of section 72(1)(a) should be limited to property that is exclusively appurtenant to the self contained building in question. In effect, Mr McGurk's approach is an attempt to substitute in section 72(1)(a) the words "self contained premises" for premises which consist of a self contained building together with appurtenant property".

24. Ms Thomas relied on the following as indicating that the car park was appurtenant to the block:
    (a) The flats had an exclusive legal right to use a defined parking space in the car park, but more importantly a "right to pass and repass over the access ways and footpaths within the land edged in yellow[1] on the Plan for the purpose of giving access to and egress from the said parking space": see Sch.6 para 6.
    (b) The car park was not a space to which the public at large had access.
    (c) It was close to the block itself.
    (d) It was contiguous to the pathway and the gardens of the flats at the rear of the block.

25. However, if the Respondent was wrong, counsel suggested the only realistic way to apportion the electricity charges was to allocate 50% to the car park and 50% to Southfields House.

[1] The plan attached to the Lease shows the car park edged in yellow.

26. Discussion. The Tribunal finds the authority of *Gala Unity* to be of limited assistance. *Gala* dealt with the meaning of "appurtenant property" in s.112 of 2002 Act and concerned the statutory Right to Manage. The decision largely turned on the express words of s.72(1)(a), and the absence of any specific requirement that the appurtenant property should appertain exclusively to the relevant "self contained building". Although this case involves an RTM Company, the issue is not about the meaning of "appurtenant property" in s.112 of the 2002 Act. Instead, the issue relates to the meaning of "appurtenant" areas in a rather different contractual context. The meaning of the word "appurtenant" in a contractual context has been considered on numerous occasions by the courts and Tribunals, but perhaps wisely, neither party in this case sought to rely on any such previous decisions. A court's interpretation of a word in one lease or agreement is plainly of very limited assistance in interpreting a differently worded provision of another lease or agreement.

27. In this particular case, one indication of the meaning of the words "areas appurtenant" is that they follow otherwise more clearly identifiable areas of the Estate, namely "the entrances landings lifts staircases and other parts … of the Building". These are clearly parts of the structure of the block itself. The draftsman then moves outside the block itself with the next sub-clause, and the Tribunal accepts that this relates to areas outside the block itself. Before turning to the word "appurtenant", it is perhaps worthwhile looking at the other "areas" covered by this subclause, namely the "accessways footpaths [and] garden". These are qualified by the expression "which are intended to be or are capable of being enjoyed or used by the Leaseholder". It is immediately apparent that if these were the only words of the covenant, the Common Parts could encompass an indefinite area, the cost of which would be borne solely by the 12 lessees at Southfields House. The draftsman therefore includes the important words of limitation "in common with the occupiers of the other units in the Building only" (the Tribunal's emphasis). It is therefore abundantly clear that the provision is limited to areas which are exclusively used or capable of being used by the 12 leaseholders. When one turns to the "appurtenant" areas, the Common Parts are also expressly limited to areas enjoyed or used "in common with the occupiers of the other units in the Building only". Unlike

s.112 of the 2002 Act, "appurtenant" areas in clause 1(2)(b) should therefore cover areas "exclusively" enjoyed by the 12 lessees. And on the facts of this case, the car park is admittedly enjoyed by at least 12 others.

28. In any event, the Tribunal considers the car park is not "appurtenant" to "the Building" as required by clause 1(2)(b). The car park is contiguous to at least one of the "gardens" of the Building (i.e. the garden of one of the flats at the rear of the block), but it is not contiguous to the main structure of "the Building" itself. The car park is also a little distance away from this structure and (perhaps more significantly) separated from it by a secure electronic gate. The leases of flats within Southfields House enjoy legal rights to use the car park, but that does not outweigh the other considerations. It is of course possible for a lease to grant ancillary rights over land some distance away from the demised premises.

29. For these reasons, the Tribunal rejects the Respondent's arguments. The car park is not "appurtenant" to the Building within the meaning of clause 1(2)(b) of the Lease, and the Applicants are not liable to contribute to the cost of power for the car park.

30. The only remaining issue is apportionment of the electricity costs in 2016/17 and 2017/18 to reflect the above decision. The Applicants have not advanced any specific percentage, but the Respondent concedes 50%. The power supplied to the Building is largely for lighting – both internal and external – as well as the electronic door entry system and the gate to the car park. The car park will need power for the main vehicular entrance gate and some lighting. There is no early evidence about which of the two would require more power, and in any event a significant element of the electricity charges relates to standing charges and utility consultants' fees. The Tribunal sees no reason to depart from an apportionment of 50% for the electricity costs. This produces relevant costs of £531.38 for 2016/17 (50% x £1,062.75) and £554.47 for 2017/18 (50% x £1,108.94). The Applicants are liable to pay service charges of 1/12th of this, namely £44.28 for 2016/17 and £46.21 for 2017/18.

Issue 3: Controlled door entry

31. This issue was originally referred to in the Scott Schedule, but Ms Bennett did not raise it at the hearing until a very late stage.

32. The service charge accounts show the Respondent incurred relevant costs of £700.88 (2016/17) and £1,987.24 (2017/18) for "Controlled Door Entry". The Respondent's invoices suggested the services were provided by the contractor SCCI Alphatrack. The invoices themselves were missing for 2016/17, although the costs appeared to relate to missing key fobs, a non-operational electric gate in the parking area, repairs to the fireman's switch etc. In 2017/18, SCCI undertook a wide range of work for the Respondent across numerous properties, rendering periodic invoices for hundreds of pieces of work. The invoices almost all related to broken gates to parking areas. There was, however, an item of £1,207.14 for "door entry" to the block.

33. At the hearing, the Applicants made one simple point. The £1,207.14 door entry item was for fitting a lightweight overhead door closer to the front door of the block. This kind of closer can be bought cheaply in a DIY store for no more than £40. In fact, the door closer was wholly inappropriate, and more heavy duty closer should have been fitted.

34. The Respondent contended that the door closer was appropriate, and that no complaints had been made about it when fitted.

35. Discussion. The Tribunal saw the door closer on inspection, and there is a photo in the bundle. It is a lightweight budget model, suitable for domestic light duty applications. These products can be acquired quite cheaply. No reasonable landlord, spending its own money, would purchase a door closer of this kind for £1,207.14. But it is in any event wholly unsuited to heavy duty locations, particularly multi occupier dwelling sharing a front door. In the circumstances, the Tribunal does not allow anything at all for the door closer. This reduces the landlord's relevant costs from £1,987.24 to £780.10.

36. No challenge was made to the other items of cost under this heading. The Tribunal therefore adopts the relevant costs of £700.88 for the relevant costs of

"Controlled Door Entry" in 2016/17, and £780.10 in 2017/18. The Applicants are liable to pay service charges of 1/12th of this, namely £58.41 for 2016/17 and £65.01 for 2017/18.

Issue 4: Fire Safety

37. The service charge accounts show the Respondent incurred relevant costs of £1,522.28 (2016/17) and £1,415.99 (2017/18) for "Fire Safety". The Respondent's invoices suggested the fire and safety services were provided by SCCI Alphatrack. The bills included periodic testing of alarms, emergency lighting, automatic smoke hatches, risers etc.

38. The Applicants argued that the fire and safety testing service provided by SCCI were not of a reasonable standard. They referred to an Electrical Certificate provided to the Respondent dated 22 November 2017 by Mr John Martin, an NICEIC approved contractor. This gave a "satisfactory" assessment. After the Right to Manage was acquired, the RTM Company obtained an Electrical Installation Condition report from an NICEIC approved contractor, Mr Simon Asser. A copy of Mr Asser's report dated 17 October 2017 was also provided to the Tribunal. This suggested there were three electrical safety issues with a C2 Code ("Potentially dangerous - urgent remedial action required"). The RTM Company also obtained a fire safety report dated 23 June 2017 which identified problems with emergency lighting and defective fire doors (including some front doors to the flats). Ms Bennett argued that the work carried out by SCCI was of no value at all, since the contractor had missed these important safety matters.

39. The Respondent argued that it had engaged competent safety contractors in good faith, and that they had visited the property regularly and provided all the appropriate safety certificates. Counsel referred to the fact that the report form Mr Martin post-dated the report from Mr Asser, and that it disagreed with Mr Asser's findings.

40. <u>Discussion.</u> The Tribunal can deal with this issue fairly briefly. The evidence is that the Respondent employed specialist contractors to inspect and provide fire and safety certification. It may well be that subsequently, different con-

tractors employed by the RTM Company may have reached different conclusions about important safety considerations. These specialists appear to differ – albeit that they were dealing with different periods of time. The Tribunal did not have the advantage of hearing evidence from any of these specialists, and it cannot therefore conclude (on current evidence) that the services provided by SCCI were not of a reasonable standard. The Tribunal therefore adopts the relevant costs of £1,522.28 (2016/17) and £1,415.99 (2017/18) for "Fire Safety". The Applicants are liable to pay service charges of 1/12th of this, namely £126.86 for 2016/17 and £118 for 2017/18.

Issue 5: Grounds maintenance

41. The service charge accounts originally showed the Respondent incurred relevant costs of £3,732.86 (2016/17) and £836.18 (2017/18) for "Grounds Maintenance". But the 2016/17 figures have been revised downwards to £632.59, substantially because the contractors agreed to waive their fees for months when it was agreed that the grounds maintenance was substandard. The revision also includes substantial reductions for poor service. The Respondent's invoices largely comprised grounds maintenance undertaken by contractors called Greenscapes, but also included an element of charges made by Gravesham BC for emptying litter bins etc. In fact, these figures were a proportion of the total bill rendered by the contractors and the Council for work to the Estate. As part of its review of the service charges, the Respondent has now allocated grounds maintenance equally to each of the 211 properties on the Estate, so that the block was liable for 12/211 of the overall costs of grounds maintenance across the Estate.

42. Although the Scott Schedule raises issues about the quality of grounds maintenance services, by the date of the hearing the only issue which remained was the area covered by grounds maintenance works. The Respondent's contracts with Greenscapes covered the whole estate, including the verges of the roads, landscaped areas and grassed areas such as the large circular grassed area outside the front door of the block, and the issue again arises as to which areas are covered by service charge provisions in the Lease. This is similar to Issue 1 above.

43. The service charge provisions require the lessees to contribute towards the relevant cost of maintaining the Common Parts. As explained, clause 1(2)(b) of the Lease specifically referred to the "gardens used in common with the occupiers of the other units in the Building only". The private gardens at the rear of the block are not used "in common" with anyone else. The only "gardens" used in common by the 12 lessees only are the grassed area and shrubs to the side of the block and the hedge along the pathway at the rear leading to the car park gate.

44. Is it therefore reasonable for the Respondent to allocate 12/211 of the overall grounds maintenance costs to the maintenance of the external areas around the block? The Respondent produced a copy of a transfer dated 11 October 2007, which showed the extent of the "Estate" for the purposes of the Lease by reference to a plan. Having regard to this plan, and its inspection, the Tribunal considers it was reasonable to allocate 12/211 of the total Estate grounds maintenance costs (i.e. about 5.7%) to Southfields House. The "Estate" is quite a limited area of the entire development, and (for example) excludes the main grassed area in the middle of Southfields Green. The Tribunal was then able to cross check this conclusion against the costs allocated to the external areas around Southfields House. The costs of £632.59 and £836.18 suggest a total figure of £1,468.77 over a 24-month period, or an average monthly grounds maintenance cost of £61.20. This is not an unreasonable figure for tending the grass, shrubs and hedge at Southfields House.

45. In short, the Respondent's allocations of the grounds maintenance costs to Southfields House were reasonable, and the contributions to the Estate grounds maintenance bills were reasonably incurred. The Applicants are liable to pay service charges of 1/12th of this, namely £52.72 for 2016/17 and £69.68 for 2017/18.

Issue 6: Responsive Maintenance

46. The service charge accounts originally showed the Respondent incurred relevant costs of £1,739.85 (2016/17) and £1,301.68 (2017/18) for "Responsive Maintenance". But the 2016/17 figures have been revised downwards to

£977.29, and the 2017/18 figures revised to £1,006.88. The Respondent's invoices show various minor repairs undertaken by the contractors Engie Property. In some cases, the works cover other parts of the Estate (where the Respondent now allocates costs to the 12 lessees in a proportion of 12/211) and in some cases the works cover features shared with the car park (where the Respondent allocates 50% of the costs to the 12 lessees).

47. At the hearing, Ms Bennett confirmed that the Applicants were not arguing that the works themselves were not of a reasonable standard or that they had not been properly incurred. However, the Estate-wide works were challenged on the same basis as above, namely that "the Estate" did not include the area argued by the Respondent.

48. Once again, this raises the question of the meaning of clause 1(2)(b) of the Lease. The "Common Parts" include "the entrances landings lifts staircases and other parts (if any) of the Building and the accessways footpaths garden and other areas appurtenant to it which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with the occupiers of the other units in the Building only". This means the Respondent may only recover the cost of minor repairs to Southfields House itself, the pathways at the rear and the garden at the side (see above). It may not recover any charges for works to the car park.

49. The Tribunal has checked the various invoices. Some items are plainly works to Southfields House, namely £486.69 in 2016/17 and £782.44 in 2017/18. Some involve works both to Southfields House and the Estate, where we accept the Respondent's allocation of 12/211. These amount to £1.40 in 2016/17 and £4.51 in 2017/18. Certain items relate to the car park and for the reasons given above, we reject the Respondent's allocation of 50% of these costs to Southfields House. In the Tribunal's view, the car park repairs should be treated in the same way as Estate Costs, and 12/211 of the total costs should be allocated to Southfields House. These amount to £55.64 in 2016/17 and £25.02 in 2017/18. The relevant costs for responsive maintenance are therefore £543.73 for 2016/17 and £811.97 for 2017/18. The Applicants are liable to

pay service charges of 1/12th of the above figures, namely £45.31 for 2016/17 and £67.66 for 2017/18.

Issue 7: Buildings Insurance (Homeowner)

50. Hyde Housing insures Southfields House under a block policy covering numerous of its properties. The Respondent produced copies of the block policies placed with NIG Insurance. In 2016/17 there was a total premium of £2,262,011 including IPT and in 2017/18 there was a premium of £2,578,250. For both years, the brokers Arthur J Gallagher produced a schedule of all the properties covered by the policy, with a premium allocated to each property based on reinstatement values. The total premiums for Hyde's leasehold stock with known reinstatement values was given as £666,037.58 in 2016/17. Since the property reinstatement value for Flat 6, Southfields House in 2016/17 was given as £130,000, it was possible to allocate an appropriate portion of the overall premiums for the leasehold stock by dividing the reinstatement value of Flat 6 by the total reinstatement values. This suggested that Flat 6, Southfields House's share of the overall premium in 2016/17 was 0.0171% of the total, namely £114. A similar process was used in 2017/18 to arrive at an insurance contribution of £134.10 for Flat 6 in 2017/18.

51. The Applicants argued that the reinstatement value for Southfields House was significantly overstated. The rebuilding cost given for the block in Gallagher's schedule was £1.464m[2]. Ms Bennett worked for a firm of architects and stated that in her experience a 12-flat block of this kind would attract a reinstatement cost of no more than £1m. The premium could therefore be reduced accordingly.

52. Counsel for the Respondents suggested there was no substance to this challenge. Ms Bennett was not an expert on build costs. Moreover, a change in reinstatement values might only have a marginal effect on insurance premiums, and there was no evidence to that effect either.

[2] In fact, the schedule omitted two 2-bedroom flats at 1 and 7 Southfields House. But one could easily supply the missing figures using the £130,000 reinstatement values of the seven other 2-bedroom flats in the block.

53. Discussion. The basis for a challenge to the cost of insurance premiums has recently been considered by the Upper Tribunal in *Cos Services v Nicholson* [2017] UKUT 382 (LC), a case which involved a similar block insurance policy. Unlike the landlord in *Cos*, the Respondent in this case has given some a great deal of detail about the way in which the premium was allocated to Flat 6. And unlike the tenant in *Cos*, the Applicants have not produced evidence from an insurance broker, insurance professional or valuer and they have not produced any alternative premium quotations for the block. There has to be some evidence to substantiate the bold assertion that an appropriate reinstatement value would be £1m or some other sum. Regrettably, the Tribunal is not satisfied that Ms Bennett can supply that expertise, whatever her experience of rebuilding costs in the architect's practice where she works.

54. The Tribunal recognises the Respondent's approach to apportionment is not strictly in accordance with the terms of the Lease. The Applicants' contribution has been assessed by reference to a fraction where the nominator is the reinstatement value of the flat, and the denominator is the reinstatement value of leasehold properties with known reinstatement values. The correct allocation should be to assess the premium attributable to the block (whether on the basis of reinstatement values or some other method) and then to apply the apportionment of 1/12 to that premium to arrive at the Applicants' contribution: see clause 7(5)(a) of the Lease. Neither party suggested the Tribunal ought to adopt the approach stipulated in the Lease, and it is unclear whether the Tribunal has sufficient information before it to enable it to do so. The effect on the Applicants' service charges is in event likely to be fairly marginal. The Tribunal therefore adopts the Respondent's figures for insurance premiums of £114 in 2016/17 and £134.10 in 2017/18.

Issue 8: Management Fee (Hyde Services)

55. Clause 7(5)(c) of the Lease permits the Respondent to charge" a reasonable allowance" for management work "if any such work is undertaken by an employee of the Landlord.

56. The service charge accounts show the Respondent incurred relevant costs of £1,798.92 (2016/17) and £2,151 (2017/18) for management fees. The Respondent retained its in-house management arm, Hyde Services Ltd and it charged 15% of the total costs incurred in relation to the Building (excluding utilities and insurance).

57. The Applicants submitted that the management services provided by Hyde Services was not of a reasonable standard and that none of the management fees should be allowed. Ms Bennett gave three examples:
    (a) The Respondent became involved in a dispute about the RTM Company which was in the process of acquiring the Right to Manage. In January 2018, it obtained an injunction from Central London County Court requiring the RTM Company and its managing agent to vacate the premises and to cease management.
    (b) Hyde Services did not respond promptly to complaints. For example, in December 2017, the door closer to the main door to Southfields House broke. A complaint was made about Hyde's delay in repairing the door. Eventually, the RTM Company was recently forced to mend the door. But the Respondents admitted the complaint was not in the bundle.
    (c) General failure to supervise cleaners and contractors.

58. Counsel did not accept there were any legitimate criticisms of the management by Hyde Services. Their extensive menu of services was included in the bundle the It was true that the Respondent (not Hyde Services) obtained an injunction to stop the RTM Company from managing the property, but that application protected a legitimate interest. Despite the protracted RTM process, Hyde continued to provide management services to the premises. At the last hearing, the Respondent had offered a reduction of the management fee from 15% to 10% for 2016/17 and 2017/18 to reflect any concerns about management. Counsel did not resile from this offer, although it was made without any admission of liability. As to the alleged delay in replying to complaints, Ms Thomas referred to correspondence in August and November 2016, which showed prompt responses from the agent to complaints. For example, the reply on 16 November 2016 dealt very fully with a number of concerns raised by

the Applicants about cleaning, landscaping etc. The letter was prompt and full, even if it did not give the answer the Applicants wanted.

59. Discussion. The Tribunal rejects the criticism of Hyde Services in relation to the RTM, since the court documents provided suggest that the opposition to the Right to Manage was instigated by the Respondent, not its management arm. In any event, as counsel pointed out, the application for an injunction succeeded. The Respondent was simply protecting a legitimate interest. As to complaints that the agent failed to reply promptly to complaints, there is no clear evidence this is the case. It is also clear enough that Hyde Services have provided the lessees with substantial services in return for their fees, as set out in the menu of services. They have plainly prepared accounts and demands, arranged insurance, provided contacts for the lessees, employed contractors and so on.

60. But the Tribunal has found that errors were made in the charging regime (at least in relation to the car park) and very substantial adjustments have been made to the service charge accounts even after the sums involved have already been demanded from lessees. These matters alone would be the basis for a finding that some of the management services are not of a reasonable standard. The Tribunal considers that the errors are made worse, given the very full fee of 15% of net expenditure paid to the agent. The lessees should have got a better standard of service for this fee.

61. Doing its best, the Tribunal would therefore accept the concession made by counsel that the 2016/17 charges should be reduced by 5% to 10% of net costs in 2016/17. This reflects the substandard service provided in that year. For 2017/18 (where the concession was not offered), fewer dramatic changes have had to be made to the annual accounts, so the level of default is less serous. The Tribunal would reduce the fee by 15% to 12.75% of net costs. In each case, "net costs" means the relevant costs which the Tribunal has allowed above, less utilities and insurance. This is in accordance with the evidence given about the basis of the charge made for Hyde Properties' management fees. The calculations of the reasonable management fee in each year appears in Ap-

pendix 2 to this decision. This produces figures of £859.72 and £1,241.16 for management fees in the two relevant service charge years.

Issue 9: Management Fee (RTM Process)

62. The service charge accounts show that Hyde Services incurred relevant costs of £2,829 in the 2016/17 service charge year for what is described as "Management Fees on [the] RTM Process". The Respondent has produced a detailed time costed claim for dealing with the Right to Manage Company. It is clear that Hyde Services was instructed to support the litigation with the RTM Company and was involved in detailed work about the RTM Company's premature attempt to take over management of the premises.

63. The Applicants were aggrieved at the involvement of Hyde Services in the litigation. Ms Bennett suggested that the agent did not have any business doing so. Counsel for the Respondent countered by suggesting that the work was squarely within the scope of "general" management in clause 7(5)(c) of the Lease. The agent was not carrying out work in connection with the Right to Manage application. It was instead carrying out work to enable the management of the building to continue.

64. Discussion. The Tribunal has already found it was not inappropriate, or unreasonable in itself, for the Respondent to resist the Right to Manage this property. Had the agent undertaken work in connection with the application for the right to manage itself, it is unlikely that the costs incurred in dealing with the Right to Manage claim would be recoverable as service charges. Again, that is not the case here.

65. Nevertheless, these costs did not arise during the ordinary course of management, which is why they are sought in additional to the basic management fees. The Tribunal reminds itself that the covenant at clause 7(5)(c) permits the recovery of "fees charges and expenses" payable to the Surveyor etc. "whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building". While dealing with the Right to Manage, was the agent employed "in connection with these functions, and were they functions of "management or maintenance of the Building"? Ul-

timately, the Tribunal concludes it was not. The work undertaken by Hyde Services assisted the Respondent in its opposition to the exercise of the statutory right to manage. That is not a function of "management or maintenance" of the building but was rather (in effect) litigation support for the Respondent in its dispute with the RTM Company. It follows that the Tribunal does not allow the agent's fees incurred in dealing with the right to manage process.

Issue 11: s.20C

66. The Applicants argued that their service charges should not include any costs incurred by the Respondent in relation to the Tribunal proceedings. The Applicants had tried to address the issues on numerous occasions, but the respondent failed to give any answers.

67. Counsel argued that the Respondent had had to meet very detailed challenges to the service charges over two years, and it was perfectly proper for it to incur costs. Indeed, it had attended two hearings and undertaken disproportionate work to meet the ambulatory nature of the complaints. There was no suggestion it had acted improperly in the course of the proceedings. The respondent had made concessions throughout and acted reasonably.

68. Discussion. The Tribunal considers it is just and equitable in all the circumstances to make an order under LTA 1985 s.20C. The Tribunal accepts that the matter is complex, and that it was reasonable for the Respondent to employ solicitors and counsel. Moreover, there is nothing to suggest the Respondent has acted improperly during the proceedings. The submissions and the documentation by the Respondent in this case were relevant, were not excessive and they were proportionate to the issues involved. But the Applicants have succeeded on a significant number of issues, amounting to about a third of the sums originally claimed. In many instances, very large concessions were made by the Respondent only after the issue of the application, including concessions that the standard of service was poor. The Applicants have also succeeded on the important "appurtenance" point, something that has potentially wide impact of the service charges in future. The Tribunal therefore orders that the relevant costs incurred by the Respondent in connection with pro-

ceedings before this Tribunal should not be regarded as relevant costs in determining the amount of any service charge payable by the Applicants.

Conclusions

69. The Tribunal determines that the Applicants are liable to pay to the Respondent the following service charges for the 2016/17 service charge year:

a.	Cleaning costs	£50.05
b.	Communal electricity	£44.28
c.	Controlled Door entry	£58.40
d.	Fire Safety	£126.86
e.	Grounds maintenance	£52.72
f.	Responsive Maintenance	£45.31
g.	Insurance	£114.00
h.	Management Fee Hyde	£71.64

70 The Tribunal determines that the Applicants are liable to pay to the Respondent the following service charges for the 2017/18 service charge year:

a.	Cleaning costs	£55.12
b.	Communal electricity	£46.21
c.	Controlled Door entry	£65.01
d.	Fire Safety	£118.00
e.	Grounds maintenance	£69.68
f.	Responsive Maintenance	£67.66
g.	Insurance	£134.00
h.	Management Fee Hyde	£103.43

71 Under LTA 1985 s.20C, none of the costs incurred by the Respondent in connection with the Tribunal proceedings shall be treated as relevant costs for the purposes of determining the amount of any of the Applicants' service charges.

Judge Mark Loveday
21 January 2019

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 1: RELEVANT PROVISIONS OF THE LEASE

a. In the Particulars:
    i. "Building" is defined as "The Building on the Estate within which the Premises are located".
    ii. "Premises" are defined as "First Floor Flat No.6…" etc.
    iii. "Estate" is defined as "All that land now or formerly comprised in [title no.K931993]".
b. Clause 1(2)(b): "the 'Common Parts' means the entrances landings lifts staircases and other parts (if any) of the Building and the accessways footpaths garden and other areas appurtenant to it which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with the occupiers of the other units in the Building only".
c. Clause 3(2)(b): "The Leaseholder hereby covenants with the Landlord … (b) to pay the Service Charge in accordance with Clause 7".
d. Clause 5(3): "… the Landlord … shall maintain repair redecorate renew and … improve … (c) the Common Parts."
e. Clause 7(1)(c): "the 'Service Provision' means the sum computed in accordance with sub clauses (4), (5) and (6) of this clause".
f. Clause 7(1)(d): "the 'Service Charge' means the "Specified Proportion[3] of the Service Provision".
g. Clause 7(5): "The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing):-
    (a) the costs of and incidental to the performance of the Landlord's covenants contained in Clauses 5(2), 5(3) and 5(4)".
    … (c) all reasonable fees charges and expenses payable to the Surveyor any … surveyor valuer … or other person whom the Landlord may from time to time reasonably employ in connection with the management or

[3] The "Service Proportion" is defined by the Particulars as "A fair and reasonable proportion attributable to the Premises". Note that in this case it was common ground that the "fair and reasonable proportion" attributable to Flat 6 is 1/12th.

maintenance of the Building including the computation and collection of rent … including the cost of preparation of the account of the Service Charge and if any such work is undertaken by an employee of the Landlord then a reasonable allowance for such work."

APPENDIX 2: MANAGEMENT FEES

	2016/17				2017/18			
	original claim	revised claim	decision	lessee due	original claim	revised claim	decision	lessee due
Cleaning	£893.20	£893.20	£446.60		£994.97	£994.97	£497.49	
	£83.60	£83.60	£41.80		£93.07	£93.07	£46.54	
	£224.32	£224.32	£112.16		£234.94	£234.94	£117.47	
	£1,201.12	£1,201.12	£600.56	£50.05	£1,322.98	£1,322.98	£661.49	£55.12
Communal Electric Bills	£1,062.75	£1,062.75	£531.38	£44.28	£1,108.94	£1,108.94	£554.47	£46.21
Communal Water Charges	£84.95	£0.00		£0.00	£126.25	£0.00		£0.00
Controlled Door Entry	£700.88	£700.88	£700.88	£58.41	£1,987.24	£1,987.24	£780.10	£65.01
Electrical Maintenance					£744.25	£744.25	£744.25	£62.02
Fire Safety	£1,522.28	£1,522.28	£1,522.28	£126.86	£1,415.99	£1,415.99	£1,415.99	£118.00
Grounds Maintenance	£3,732.86	£632.59	£632.59	£52.72	£836.18	£836.18	£836.18	£69.68
Responsive Maintenance	£1,739.85	£977.29	£543.73	£45.31	£1,301.68	£1,006.88	£811.97	£67.66
Insurance	£1,055.82			£114.00	£1,436.51			£134.10
Provision Reserve	£540.00	£540.00	£540.00	£45.00	£550.08	£550.08	£550.08	£45.84
Provision Reserve	£4,057.20	£4,057.20	£4,057.20	£338.10	£4,129.20	£4,129.20	£4,129.20	£344.10
Costs excl. utilities/insur	£13,494.19	£9,631.36	£8,597.24	£716.44	£12,287.60	£11,992.80	£9,929.26	£827.44
Management Fee (Hyde)	£2,151.00	£963.14	£859.72	£71.64	£1,798.92	£1,798.92	£1,241.16	£103.43
Management Fees (RTM)					£2,829.00		£0.00	£0.00
Total	£17,848.71			£946.36	£19,587.22			£1,111.17