First-Tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**LON/00BE/LSC/2018/0274**
Property	**:**	**19 Flats at Hestia House, City Walk, London SE1 3ES**
Applicant	**:**	**Southern Housing Group Limited**
Representative	**:**	**Ms Clare Cullen of Counsel**
Respondent	**:**	**Parkbrace Limited**
Representative	**:**	**Ms Rebecca Ackerley of Counsel**
Type of application	**:**	**Liability to pay service charges - Section 27A, Section 20C Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Lancelot Robson** **Mr S Mason FRICS FCIArb**
Venue and date of Hearing	**:**	**10 Alfred Place London WC1E 7LR** **25th and 26th March 2019**
Decision Date	**:**	**29th April 2019**

DECISION

Decision Summary

(1) The Tribunal decided that the following disputed items in the service charge accounts of the Respondent for the service charge years commencing on 1st July 2013, 2014, 2105, 2016, and the estimated service charges for the year commencing 1st July 2017 were reasonable, reasonably demanded, and recoverable under the Lease:

a) Surveyors' fees for roof report dated 14th February 2014 (£3,480 inc. VAT), and oversight of roof and cyclical building works (11% of contract value plus CDM works and VAT (Building Logic invoices for £13,317 and £9,117.86)
b) Security services - whether payable under terms of the Lease - all years.

- as further detailed below.

(2) The Tribunal decided that the following disputed items in the same service charge accounts were not reasonably demanded, and not recoverable under the Lease due to the effect of Section 20B (time limitation on recovery);

a) Insurance charges for rebuilding valuation dated July 2012 (£2,511.60), charged in the year 2014/15

b) Contribution to additional Zurich insurance premium for the same year (resulting from the above valuation). (invoice dated July 2012 - £707.92)

(3) The "Pro Rata shortfall" error in the 2012/13 insurance accounts due to the application of accounting conventions to treatment of insurance premiums (£1,540.47) is recoverable, but not yet validly demanded for the reasons noted below.

(4) A settlement agreement dated 25th March 2019 made between the parties relating to CCTV charges (attached hereto) for all years in dispute is approved by the Tribunal, and attached to this Decision.

(5) Any sums due and outstanding under the relevant demands for payment (taking account of any credits already agreed) shall be paid within 21 days of the date of this decision.

(6) The Tribunal, in consultation with the parties, decided that its decision on the Section 20c issue should be adjourned pending the publication of this decision. The Tribunal gives the following Directions;

a) The Respondent shall within 14 days confirm in writing to the Applicant and the Tribunal if it considers that it has power under the Lease to add its costs in connection with this application to the service charge.

b) The Applicant shall within a further 14 days consider, and it so wishes, make a written Section 20C application, (with two copies for the Tribunal and one copy sent to the other party) with full reasons.

c) The Respondent shall within a further 14 days make a written reply with full reasons (with two copies for the Tribunal and one copy sent to the other party).

d) The Tribunal will then consider and decide the Section 20C application on the papers.

(7) The Tribunal also made the detailed decisions noted below

Preliminary Matters

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to its liability to pay, and the reasonableness of certain works challenged by the Applicant in service charge accounts issued pursuant to the terms of a (specimen) lease (the Lease) dated 23rd April 2004, for the service charge years commencing on 1st July 2013, 1st July 2014, 1st July 2015, 1st July and 2016, and estimated service charge accounts for the service charge year commencing on 1st July 2017. Initially a large number of items were in issue (51 items were noted in the Scott Schedule). In the Applicant's (amended) Statement of Case ten principal items remained in dispute, but at the hearing, the outstanding matters were the items noted at paragraphs (1), (2) and (3) above.

2. The Tribunal gave Directions for this hearing on 2nd October 2018.

3. Extracts from the relevant legislation are attached as Appendix 1 below.

4. The Tribunal's understanding of the background is based upon the summaries provided by Counsel for the parties in their skeleton arguments. The Respondent is the head leaseholder of an area of land on the north side of Long Lane, upon which is the development known as City Walk. Hestia House is one of four blocks in the development. The three other blocks are Vesta Court, Athena Court, and Antonine Heights. There are 49 Flats in Hestia House, the Applicant being the registered long leaseholder of (currently) 19 flats, which are: Nos 101, 104, 109, 201, 204, 207, 208, 209, 211, 301, 304, 307, 308, 309, 401, 406, 407, 408, and 411. These flats are currently let on long leases to subtenants on shared ownership leases.

5. In 2018 one of the subtenants (Mrs Huang) commenced proceedings against the Applicant. The service charge paid under her lease was determined by the service charge payable by the Applicant to the Respondent in the Lease. Those proceedings were settled by agreement subject to a stay relating to the service charge for 2017/18, to allow the Applicant to issue its own proceedings against the Respondent. The parties to this application then entered into discussions, and the Applicant requested to inspect the Respondent's invoices at the offices of the Respondent's managing agents, (Property Partners Management Limited). Some matters were resolved, but others were not, and the Applicant decided to make this application. Further negotiations took place during the discovery process, resolving some further outstanding issues.

Hearing

6. The parties requested further time to negotiate prior to commencement of the hearing, which was granted. The parties were able to dispose of further matters. The remaining matters for resolution at the start of the hearing were:
    a) Security - payability under the Lease
    b) Out of Hours Service - missing invoices of Cunningham Lindsey (subsequently not pursued)
    c) Building Repairs (roof) - surveyors' fees for roof report and oversight of the major works
    d) Insurance - recovery of an underpayment, a revaluation and an additional premium in 2013 through the 2014 and 2015 service charges.

7. A Witness statement was made by Mr A Zubair (Home Services Manager), and three witness statements were made by Mr A. Hughes (Head of Home Management) on behalf of the Applicant. Ms C. Zaninello (Property Manager, Property Partners Management Limited) made three witness statements on behalf of the Respondent. All witnesses appeared and were duly examined on their statements.

Applicant's submissions

8. Ms Cullen for the Applicant, submitted that;

a) The Security charges were not payable for any year by virtue of Schedule 1 and Schedule 8 of the Lease, as the Respondent had suggested. Schedule 6 made no specific reference to security services. The Lease terms therefore made no reference to security services. There was general reference to "works or things" and "for the maintenance and/or improvement" of the Block and/or the Estate provided that they fell within Clauses 9c) and d) of the Lease and which were chargeable under the Fourth Schedule (para. 10). The Respondent's reliance upon Clause 9a), and para.7 and para.9g) of the Sixth Schedule was unsound. Clause 9a) was a "sweeper clause" limited to management costs only. Paras. 7 and 9g) of the Sixth Schedule allowed the Respondent to provide additional facilities to the Block and Estate respectively, but was required as a condition precedent to act reasonably, and to consult the tenants before the facility was provided. There was only limited evidence of consultation, and no evidence at all of the poll which was carried out prior to the reimposition of security patrols in 2014. A reference in an email to security patrols in 2010 was irrelevant to the 2014 service. The security services should have been consulted upon every year, in the Applicant's view.

b) Out of hours service; the Applicant had not seen the Cunningham Lindsay invoices. The principle of the charge was not disputed, just that there were no invoices. The burden of proof was on the Respondent to show that the charges were incurred.

c) Roof repairs: the items in dispute were finally identified as a surveyor's fee for testing and a report upon the roof condition (invoice dated 4th March 2014 (£3,480), and the fee for supervision of the roof works (invoices dated 19th January 2016 for £13,317 and dated 19th January 2016 for £9,117.68). It appeared that the charge for the roof report (which covered two blocks) had been charged to Hestia House only. In respect of the supervision costs, these charges were incurred prior to the consultation upon the works, and should have been included. Further the costs were unreasonable as they amounted to 11%. There was no evidence as to market testing by the Respondent, while the Applicant had evidence in the bundle that its own "panel" contractors would have charged between 5.9% and 7.75%.

d) Insurance; the Respondent had conceded a sum of £720 in respect of the additional premium, but otherwise still demanded a sum of £3,136.03 in the 2013/2014 accounts, and £2,344.19 in 2014/15 accounts. The Applicant contended that these sums had not been transparently explained in the demands or accounts. It was only in connection with discovery for this

application that the true reasons for the charges were ascertained. The 18 month rule in Section 20B of the Landlord and Tenant Act 1985 (the 1985 Act) applied. Further, the Respondent was not allowed under the terms of the Lease to charge in the 2013/14, and 2014/15 accounts for expenditure incurred in 2012/13, (see particularly paragraph 12 of the Fourth Schedule, and para. 4 of the Sixth Schedule). The appropriate procedure would have been to make a supplementary demand relating to the 2012/13 accounts.

9. In support of her submissions Ms Cullen produced an authorities bundle including extracts of the 1985 Act, and a number of relevant cases. She relied particularly upon the following in her argument:
Ruddy v Oakfern Properties Ltd [2006] EWCA Civ 1389,
Arnold v Britten [2015] UKSC 36
Lloyds Bank Plc v Bowker Orford [1992] 2 EGLR 44
PAS Property Services v Hayes [2014] UKUT 0026 (LC) (at p.40)
Leonora Investment Co Ltd v Mott MacDonald [EWCA] Civ. 857
CIN Properties [1986] 1 EGLR 59
Northways Flats Management Co (Camden) Ltd v Wimpey Pension Trustees Ltd [1992] 2 EGLR 42
Forcelux v Sweetman [2001] 2 EGLR 173
Waaler v Hounslow London Borough Council [2017] EWCA Civ. EGLR 19
Country Trade Ltd v Noakes and ors [2011] UKUT 407 (LC)
Ground Rents (Regisport) Ltd v Dowlen [2014] UKUT 0144 (LC)
Skelton v DBSHOmes (Kings Hill) Ltd [2017] EWCA Civ. 1139
Urban Splash Work Ltd v Ridgway and anr [2018] UKUT 32 (LC)

Respondent's submissions

10. Ms Ackerley for the Respondent submitted:
a) Security charges - Clause 9(g) of the Lease allows recovery through the service charge if the Respondent is of the view that it would benefit the Block and lessees. Clause 9(a) of the Headlease allowed the Respondent to recover the cost of onsite security. Para.7 of the Sixth Schedule allowed the Respondent to provide additional facilities for the benefit of the Block (acting reasonably) and having due regard to the views of the [Tenant] and other tenants of flats within the Block. The Respondent asserted that it did have regard to the views of the lessees, including the Applicant, noting the terms of its email dated 13th August 2010 agreeing to this service, and noting the service's positive impact in the past. Thus it could not be said that the Respondent was acting unreasonably. The Applicant appeared not to be challenging the reasonableness in amount of the sums incurred.

b) Out of hours service - the Applicant had not challenged the amount expended, but sought clarification of the amount invoiced by Cunningham Lindsay. The 2nd witness statement of Ms Zaninello had dealt with this matter. (at Para 7.20). Cunningham Lindsay did not invoice this work by building, it invoiced the managing agent across all its managed portfolio which was then rebilled to each Block. City Walk as a whole was invoiced at £2,250 for out of hours service. This was then apportioned between the Blocks on a pro rata basis. Individual flats at Hestia House were apportioned the sum of £10.20 per annum for the service, which, it was submitted, appeared very reasonable for the service.

c) Roof repairs - The Applicant had not, in fact, advanced any grounds for objecting to the surveyors' charges in dispute. The Applicant appeared to now accept that only two reports were commissioned, rather than three reports. The fees were incurred in managing the replacement of the roof. These were recoverable under Clause 9(a) of the Headlease, and as part of the roof works. A section 20 process had been undertaken by the Respondent, without any objection by the Applicant during the consultation period. The Applicant brought no evidence to assert that the works and services had not been carried out to a good standard, or why the Applicant had not participated in the Section 20 process. The Respondent was severely prejudiced in its submissions, by the lack of grounds given for disputing the invoices.

d) Insurance - The Applicant did not challenge the reasonableness of the charges in the two years in question, i.e. 2014 and 2015. The Respondent had made it clear that the discrepancy within the insurance payment schedules for the years ending 2014 and 2015 was because the total for the earlier year ending 2013 did not match the total invoices, leaving a shortfall. The insurance invoices run from January to December, while the service charge year runs from July to June. The 2013 accounts showed £19,571 for insurance, however when the invoices were pro-rated to fall in line with the service charge year end, the figure produced totalled £21,111.47, leaving a difference of £1,540.47. Also within the invoices for the year ending 2013, was one for £2,511.60 (described by the Respondent as "insurance reinstatement", but could be more accurately described as an insurance revaluation), and an additional premium (charged part way through the year) of £709.92, reflecting the increase in the sum insured as a result of the revaluation. The shortfall for the year ending 2013 was thus £4,759.99. The Respondent had agreed to credit £720.23 to the Applicant relating to the discrepancy.

11. Ms Ackerley referred to the following cases in argument:

Veena SA v Cheong [2003] 1 EGLR 175
Forcelux v Sweetman [2001] 2 EGLR 173
City of Westminster v Fleury [2010] UKUT 136
Wembley National Stadium Ltd v Wembley London Ltd [2007] EWHC 756 (Ch)
Schilling v Canary Riverside Development PTY Ltd [2005] LRX 26 2005
Arrowdale Ltd v Coniston Court (North) Hove Ltd LRX 72 2005 (unreported)
Regent Management Ltd v Jones [2010] UKUT 369 (LC)

Decision

12. The Tribunal considered the evidence and submissions. The material extracts of the Headlease are as follows:

Clause 9 commences: "FOR the sake of clarity the parties acknowledge that notwithstanding anything herein contained or implied:-

(a) in the management of the Block and/or the Estate and the performance of the obligations of the Landlord shall be entitled to comply or retain the services of any employee agent consultant service company contractor engineer or other advisers of whatever nature as the Landlord may reasonably require and the expenses properly incurred by the Landlord in connection therewith shall be

deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto."

(b).....

(c) Unless otherwise specifically provided nothing herein shall inhibit or in any way restrict or prevent the Landlord (acting reasonably) providing or installing any system or service not in existence at the date hereof for the purposes of good estate management of the Block and/or the Estate and the maintenance of the Block as a block of residential flats and live/work/commercial units and for the avoidance of doubt and the sake of clarity the costs charges and expenses properly incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions of the Fourth Schedule hereto."

The Tribunal noted that subclause (d) dealt in very similar terms to subclause (c) above with the removal changing adding to or otherwise altering any system or service in existence at the date of the lease.

13. The Sixth Schedule provides:
Para 7 - *"To provide such additional facilities for the benefit of the Block as the Landlord may from time to time determine (acting reasonably) and having due regard to the views of the Tenant and other tenants within the Block."*

Para 9(g) - *"To provide such additional facilities for the benefit of the Estate (excluding the Block and the other Blocks and the Car Park) as the Landlord may from time to time determine (acting reasonably) and having due regard to the views of the Tenant and other tenants within the Estate."*

13. The Tribunal decided that the security issue required interpretation of the terms of the Headlease. The three other issues appeared to turn mainly upon factual matters. It is also noted that the current managing agents have only been in post since 2015, and many of the issues in dispute relate to periods before that time. Ms Zaninello disclosed that there had been difficulties in recovering files and other information from the previous (two) agents, which had been asked to provide the information demanded by the Applicant. Those files were still incomplete, and the Tribunal noted that there was apparently little incentive for the previous agents to do more. While the Tribunal agreed with the Applicant's submission that the burden of proof lay upon the Respondent, it decided that it was entitled to consider other reasonable evidence, if a satisfactory explanation for e.g. missing invoices was offered. The Tribunal found Ms Zaninello to be a credible witness, while accepting that some parts of her evidence were hearsay, relying upon the statements of previous managers to her.

Security charges
14. Relating to the security charges, the Tribunal noted in that connection that the parties have agreed on the CCTV element, and that there no longer appears to be any disagreement that (so long as certain conditions in the Headlease and the settlement agreement dated 25th March 2019 are fulfilled) the Landlord is entitled to install

CCTV and charge for the costs of installation and maintenance thereof. The "onsite" security (e.g. security patrols on the Estate) remains in dispute. There was discussion of the necessity for security patrols as well as CCTV surveillance during Ms Zaninello's examination. In the light of experience since 2015, her unchallenged view was that both were necessary to be effective. The amount of crime was affected by the lack of patrols.

15. The Tribunal considered the terms of the Lease and the case law proffered. Counsel for both sides agreed that there was no helpful case law in the circumstances of this application. The Tribunal decided that from the words of the Lease taken together (noted above), it was clear that the Respondent had considerable freedom to alter or end existing services, and to institute new services, acting reasonably, in consultation with the tenants collectively. The Applicant considered that Clause 9(a) of the Lease was limited to management services, but the clause expressly also refers to "the obligations of the Landlord hereinafter set out". While it might be argued that this was limited to the services specifically mentioned in Schedule 6, the Tribunal decided that this argument ignored the very clear terms of paras. 7 and 9 of that Schedule, i.e that the Landlord was entitled to add new services, so long it complied with the terms of those paragraphs (relating to consultation and reasonableness).

16. On the issue of reasonableness, the unchallenged evidence before the Tribunal was that the security patrols reduced the level of crime. The Tribunal decided that without contrary evidence, it was reasonable for the Landlord to provide the service.

17. The evidence relating to consultation was less clear. There was no dispute that consultation had taken place in 2017 during Ms Zaninello's management, which had been acted upon, i.e to remove the patrols. The Applicant's point was that there was little or no evidence of consultation in 2014, (apart, the Tribunal notes, from what Ms Zaninello had been told by her predecessors). The Applicant invited the Tribunal to discount the 2010 email from a member of its own staff, as it could not suggest agreement to the consultation in 2014. However the Tribunal noted that the evidence before it in fact demonstrated that security patrols had been in place prior to 2010, and at some point were withdrawn, but then apparently continued from 2010 until 2017. Thus they appeared to be an established feature of the services prior to 2017, and in 2010 at least, the Applicant's staff member was keen to see them reinstated, stating that the patrols had had an impact previously. The changes in management personnel had not assisted the Respondent's case relating to the position in 2014, but the 2010 correspondence suggested that there was a friendly and positive relationship between the staff of the parties at the time, which only appeared to deteriorate after the Applicant started to question the service charges after 2016. Ms Zaninello's evidence on apparent delays in supplying information was that she had had to refer many points to previous managers, who had given no priority to her requests.

18. The Applicant suggested consultation was a "Condition Precedent" to being able to being able to lawfully charge for the service. The Tribunal notes that the Lease does not require any specific form or procedure for consultation. It is not a statutory requirement. There was clearly some consultation in 2010 and in 2017. In 2014 Ms Zaninello's instructions were that there had been a consultation, but had no documentary evidence. Mr Hughes said he had found no evidence of such a consultation in his files, but admitted that he had not carried a comprehensive search

for it. On the balance of such inconclusive evidence, the Tribunal decided that the Applicant had not convinced it on the balance of probabilities that no consultation had taken place in 2014. The Applicant's further suggestion that consultation should take place on an annual basis has no support within the terms of the Lease, and would also seem impractical. Consultation on adding or withdrawing an important service may be reasonable, but merely continuing a service in the absence of complaint or a significant change in circumstances without consultation, does not appear unreasonable. The Tribunal decided that the Applicant had not established a breach of the consultation requirements. The costs of the security service for all years in dispute were therefore recoverable under the terms of the Lease.

Roof Repairs

19. The Applicant accepted in the light of the explanations given by the Respondent that the charge for the Roof Report and Testing applied only to Hestia House. However the charge of £3,480 (or £2,900 plus VAT) was excessive. The Applicant had obtained alternative quotes recently for £1,734 and £1,920 inclusive of VAT. By contrast the Respondent had obtained another quote in 2014 for £7,452. The Tribunal noted that the evidence of the alternative quotes obtained by either side was sufficient for it to form a view. In the end, the Tribunal decided that sum of £2,900 plus VAT seemed high, but could not be said to be unreasonable.

20. Relating to the supervision charges the Applicant considered that an effective charge of 11% by the supervising surveyors was excessive. It suggested that between 5.9% and 7.75% was reasonable, based on their own panel's framework agreement charges for a job priced at £268,872.30. The Respondent had an alternative quote for 12% plus 1% for for CDM services. The Tribunal notes that a Section 20 consultation was not required. Again, the Tribunal considered that none of the evidence was particularly satisfactory. The Applicant's evidence was not market tested, but merely seemed merely a floor price. The Respondent's successful quote seemed high, but its alternative quote was even higher. The Tribunal noted that the Respondent had chosen a contractor with which it had a track record. The Tribunal decided that while the fee seemed to be at the high end, in the circumstances it was not unreasonable.

Out of hours service

21. The Applicant stated that it would not pursue this issue, but for clarity, the Tribunal sets out its views on this matter, in case it becomes a live issue again later. The mere fact that an invoice (as primary evidence) is missing, is not fatal to the landlord's claim for payment. In this application some invoices were missing. However the sums involved were included on the annual service charge accounts schedule of invoices and payments, which suggests that the missing invoices were available to the accountants. In any event, where some in a series of invoices for, e.g. electricity and telephone charges (as in this case) are missing, the Tribunal is entitled to take into account other reasonable secondary evidence. If that secondary evidence is consistent with the likely sum of a missing invoice, the Tribunal might reasonably take the view that the charge was in fact paid, and therefore the amount is payable in the absence of contrary evidence.

Insurance

22. The Tribunal noted that the Applicant did not dispute the reasonableness or amount of the charges in issue, but submitted that the charges were irrecoverable pursuant to Section 20B of the 1985 Act. Section 20B effectively requires the landlord to demand payment for a sum expended and charged through a service charge within 18 months of the landlord incurring that cost. Normally a cost is deemed incurred when an invoice is presented for payment (see the discussion of the authorities at para 31 et seq in Ground Rents (Regisort) Ltd v Dowlen [2104] UKUT 0144 (LC) .

22. The facts surrounding the demands for contributions to the insurance charges made in 2014 and 2015 are very complex, and even at the hearing the Respondent had to work quite hard to explain what had happened, but in simple terms the following occurred:

(a) The final service charge accounts for the insurance premiums in 2012/13 were understated by £1,540.12 as the result of accounting conventions requiring insurance premiums to be pro rated across the service charge year, rather than just using the premium invoices as presented. This discrepancy was only picked up after the 2012/13 accounts had been published. These accounts were signed off on 30th June 2014.

b) In July 2012 an insurance revaluation report was sent to the Respondent. The Respondent was charged £2,511.60 for the report.

c) As a result of the insurance revaluation report the insurance premium increased, resulting in an additional premium of £707.92 for the current insurance year being notified to the Respondent in July 2012. The additional premium and report fees may not have been invoiced to the Respondent until Tysers insurance invoice of 3.1.13.

d) The service charge demands issued in the period 2013 to 2015 did not clarify that the above items had been included within the insurance charges, and this point was only properly explained to the Applicant shortly prior to the hearing.

e) In negotiations the Respondent gave the Applicant a credit of £720.23.

23. The Applicant submits that the disputed sums are not payable either pursuant to Section 20B, or under the terms of the Lease; para 12 of the Fourth Schedule, and para 4 of the Sixth Schedule. The Tribunal decided that neither para. 12 nor para. 4 assisted much. Para. 12 is a standard provision allowing the landlord to collect service charge as if it were rent. Para. 4 requires the landlord to keep proper books of account, and prepare a certificate of expenditure in each year (tenants are obliged to pay service charge demands on receipt of the certificate). However, relating to Section 20B the Applicant appears to be on stronger ground. The insurance revaluation report and the additional premium payable in respect of the year 2012/13 were invoiced to the Respondent on 3rd January 2013. The pro-rating under-statement in the 2012/13 accounts was only signed off in June 2014, and presumably the error was only corrected in the 2013/14 accounts, which were signed off in June 2015. The Tribunal scrutinised both sets of account and the service charge demands in the bundle but were unable to find any reference to the insurance issues in dispute, nor was it directed to any. Thus it appears that, as submitted by the Applicant, the true position was only discovered during discovery of documents for this application.

24. The Tribunal decided that the saving in subsection 20B(2) had no application in relation to the additional costs for the insurance revaluation and additional premium While the Applicant should have been well aware that annual insurance

premiums would be chargeable, it could only have been aware that the additional costs for the insurance revaluation and additional premium had been incurred if it had been specifically informed of them. The Tribunal decided that Subsection 20B(1) was engaged. Applying the 18 month rule, even giving the Respondent the benefit of any doubt relating to dates when the charges were incurred, time started to run in respect of the insurance revaluation and the additional premium invoices on 3rd January 2013 at the latest, which means that the charges for those items became irrecoverable by 4th June 2014. It appears they only came to the Applicant's attention on discovery in early 2019.

25. The pro-rating problem is slightly different. It was not an additional cost incurred, it was a book-keeping error which lay undiscovered for some time. The Tribunal noted that if it had been corrected in the 2013 accounts, it would undoubtedly have been payable. Section 20B(1) does not appear to have been engaged. However it appears to have been incorrectly included in the accounts for subsequent years, without any adequate explanation. As matters stand, the Tribunal decided that the sum is not payable at this time, but may be recoverable if properly demanded in accordance with the Lease.

Section 20C application

26. The Directions given above shall have effect from the date of receipt of this decision.

Tribunal Judge: Lancelot Robson Dated; 29th April 2019

Appendix 1

Landlord & Tenant Act 1985

.**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 20B

Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months, beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) and (6)....

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or leasehold valuation 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 a leasehold valuation tribunal;
- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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

"Meaning of "administration charge"

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 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) .....
(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).....

Reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable

3. .....

Notice in connection with demands for administration charges

4.- (1) a demand for the payment of an administration charge must be accompanied by a summary of rights and obligations of tenants of dwellings in relation to administration charges.

(2) (3) and (4).....

Liability to pay administration charges

5.- (1) An application may be made to a leasehold valuation 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) (4) (5) and (6).....”

Claim No. LON/00BE/LSC/2018/0274

IN THE FIRST TIER TRIBUNAL
(RESIDENTIAL PROPERTY)
B E T W E E N:

SOUTHERN HOUSING GROUP

Applicant

-and-

PARKBRACE LIMITED

Respondent

CCTV AGREEMENT
(wording to be included with FTT decision)

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1. On the morning of the hearing on 25 March 2019, the Respondent agreed the following further credits in respect of the disputed 'CCTV repairs' costs (being costs of downloading and sharing CCTV footage) as set out within the Amended Schedule dated 21 March 2019 (the 'Schedule'):

    a. 15.7.14: £144
    b. 15.7.14: £151.20
    c. 19.8.14: £17.28
    d. 29.7.15: £144
    e. 13.10.15: £144
    f. 22.2.17: £294
    g. 16.7.16: £397.20

2. In respect of the remaining 'CCTV repairs' costs as set out within the Schedule, including the CCTV cost of £288.00 set out within the Schedule as 'Estate repairs', the Applicant agreed not to continue with its challenge in respect of these costs on the basis that the Respondent will, via its agent and by 15 April 2019, write to all registered leaseholders in the City Walk development, including the Applicant, and the Applicant's shared ownership leaseholders, to invite their views on how the cost of downloading and sharing CCTV footage should be paid for.

3. Based on the Applicant's agreement set out at 2. above, the Respondent agreed that if it is to seek to recover its costs of proceedings, it shall not seek to recover any such costs associated with either i) the 'CCTV repairs' element of the Application as set out within the Schedule or, ii) the CCTV cost of £288.00 set out within the Schedule as 'Estate repairs', from the Applicant by way of service charge.