FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/LSC/2018/0010**
Property	**:**	**Apartment G2, G5, G6, 108, 201, 204 and 206, Mayfair Court, 120 West Bar, Sheffield, S3 8PP**
Applicant **Assisted by**	**:**	**BES (1993) Limited** **Mr Matthew Poste, Management Agent**
Respondent	**:**	**Mr Graeme Cook**
Type of Application	**:**	**Service charges, Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	**:**	**Judge C. P. Tonge, LLB, BA.** **Mrs S. A. Kendall, B Sc, MRICS.**
Date of Determination	**:**	**8 May 2019**
Date of Decision	**:**	**31 May 2019**

DECISION

Application and background

1. This case comes before the Tribunal by means of a transfer from District Judge Morgan, sitting at Newcastle upon Tyne County Court. The Tribunal is to decide whether or not service charges and administration charges relating to the normal day to day management of the properties, for service charge years 2014 and 2015, are chargeable and if so whether or not they are charged at a reasonable level. The value of the claim made by BES (1993) Limited before the County Court is £7,784. The County Court left open the issue of costs for this Tribunal to consider and therefore this Tribunal considers the costs provisions of section 20C of the Landlord and Tenant Act 1985 and Paragraph 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal has jurisdiction to deal with service charges, but has no jurisdiction in relation to ground rent relating to the seven apartments over these 2 service charge years.

2. The Applicant BES (1993) Limited holds the remainder of the "head lease", granted by Sheffield City Council on 11 March 1915, that commenced on 29 September 1912, for the building (then referred to as The Hostel and also referred to as Tudor House). That building, now called Mayfair Court, contains the apartments subject to this case, "the properties".

3. The Respondent is Mr Graeme Cook who holds "the properties" on the remainder of 7 long leases with a term of 200 years, less one day, commencing on 29 September 1912.

4. It should be noted that in the County Court proceedings there is no counter claim or application to set off any such claim against the claim being made by the Applicant.

5. The Respondent paid the sum claimed to the Applicant during the County Court proceedings before transfer to this Tribunal.

6. The Respondent in written submissions and his statement of case seeks to extend the matters that can be considered by this Tribunal outside the matters transferred to it by the County Court. This resulted in a differently constituted Tribunal holding a Case Management Hearing on 19 June 2018 and the issue of a Case Management Note and Directions on 27 June 2018. These Directions limit the matters that can be dealt with by this Tribunal. There has been no application at any time to alter these Directions. This Tribunal therefore applies these Directions and a copy of them will be attached to this Decision. Where case papers provide evidence relating

to matters that the Directions exclude from our consideration, this Tribunal has not considered them.

7. Neither party requested a hearing. The Tribunal therefore arranged an inspection of the apartment complex Mayfair Court, to commence at 10am on 8 May 2019. The case then being decide later that day based upon the observations of the Tribunal during the inspection and the written evidence contained within two lever arch files.

The inspection

8. The Tribunal inspected Mayfair Court at 10 am on 8 May 2019 . Present at the inspection on behalf of the Applicant was Mr Michael Powell a Director and owner of BES (1993) Limited. Also in attendance was Mr Matthew Poste on behalf of the management agent, Brownhill Vickers. The Respondent Mr Graeme Cook was also present. It was raining during the inspection.

9. Mayfair Court contains 42 apartments, the Respondent holding long leases upon the 7 apartments subject to this case. The Applicant holding long leases for 27 apartments. The Applicant therefore being both the holder of the "head lease" and long leaseholder for the majority of the apartments on the complex.

10. The complex is a converted grade 2 building, built originally as a hostel. There is a basement restaurant that is run as a separate commercial entity. The apartments have a common entrance doorway reached off the pavement by a fairly steep flight of steps covered in floor tiles. Entry is governed by an electric door buzzer system. This gives access to a large communal hallway that houses the building fire alarm system and some wall mounted post boxes for the delivery of mail to some of the residents. There are two electric lights in this area, one of which was not working. The Tribunal could not find any light switch capable of switching these two lights off. There was also 2 emergency lighting lights which were low energy lights and are fitted in such a way as they cannot be switched off. The management agent stating that the emergency lighting system had been fitted in this way upon the advice of the fire service. That system provides emergency lighting to all common areas, 90% having low energy bulbs.

11. The entrance hallway also contains two double radiators and is carpeted. The Tribunal was informed that the common heating system, served by three boilers, provides heating by radiators to all the internal common areas and that all such areas have carpets. The common areas include the entrance hallway, stair cases, landings, corridors and the laundry room. The hallway contains a lift for access to the upper floors that is not presently functional, repairs having

been found to be too expensive to justify. Access to the remainder of the apartment complex is now only by corridor and stairs.

12. The laundry room is situated on the second floor of Mayfair Court and is a small room containing one clothes washing machine and one clothes drying machine, these are both coin operated. The Tribunal accepts that this laundry is provided for the use of residents. The Respondent stated that he had placed these machines or similar machines in this room some time ago. They had always been slot operated and the Tribunal therefore concludes that at one stage the Respondent must have been in receipt of the coins that were put into the machines. At the point that the then management agent had discovered that electricity was being used to power machines belonging to the Respondent a pre- payment electricity meter had been fitted to this room so that persons using the laundry would not use common electricity without payment. Subsequently the Applicant had become responsible for the machines in the laundry and the pre-payment meter had then been removed. The result being that residents during the period relevant to this case have been able to use the laundry utilising common electricity. The coins being put into the machines by those residents become the property of the Applicant and the value thereof is paid into a service charge account.

13. The Tribunal noted that the laundry room still has a wall mounted electricity meter, it is no longer a pre-payment meter. The Respondent was permitted to show a photograph of the meter, taken on 10 April 2017 and at that date the meter had a reading of 20023.9 kilo watts used. The Tribunal further noted that as at our inspection the meter has a reading of 23662.8 kilo watts. This means that 3638.9 kilo watts of electricity has been used in this room over a period of just over 2 years. The management agent gave an estimation that this amount of electricity may have a cost of approximately £300.

14. The Tribunal noted that the basement Indian restaurant has 2 neon signs that are affixed to the basement exterior walls, but are designed so that the signs stand at pavement height one facing into West Bar and one facing into Steel House Lane. The raised signs are therefore in front of the exterior walls of the part of the building housing the apartments. There are electricity cables, an alarm box, a second box with electricity cables going into it and wires going to a satellite dish that are affixed to the exterior walls of the apartments.

15. The private car park area of Mayfair Court is reached by driving under an archway through the Mayfair Court building and into an open air parking and storage area said to be capable of having 10 cars park in it. There were 4 cars parked in it during our inspection and the Tribunal doubts whether it would be possible to park more than five

cars in this area without blocking vehicles in. The Respondent stated that he has the right to have three parking spaces in this area and that he is renting out two such spaces to his residents. There are two fire escapes leading down into this car park area from the apartment areas.

16. The Tribunal noted that a there is a narrow area against one external wall in the car park where the restaurant has erected a barrier to protect two air conditioning units. There is also a box said to have something to do with refrigeration for the restaurant near to a second wall and a large wheelie bin marked as belonging to the restaurant which was so full that the lid of the wheelie bin could not shut.

17. The Tribunal also noted that there is a key operated metal bollard that if the lid were cleaned so that the lid could open properly, would permit the metal bollard to be raised shutting off the car park to persons who do not have a key. This has not been in use recently because the management agent has come to an agreement with the restaurant proprietor about access to the car park area. The management agent pointed out that any problems caused by the restaurant should be communicated to him and he would take whatever action he thought proper. The Respondent made it clear that he thought that the restaurant was impinging too much into a car park that was already too small for the 10 cars that were supposed to be able to park in it.

18. The Tribunal inspected the external windows to apartment 201. To do this the Tribunal, standing inside the building in a corridor on the same level as the apartment (the second floor) looked out of corridor windows across a part of the car park court yard area. The Tribunal saw that all the wooden window frames to apartment 201 are in need of repair or replacement. It was agreed by all present that this is the case.

19. The Respondent had arranged with the resident of apartment 201 that we be given access to the interior of that apartment and we inspected the window frames internally. The Respondent had caused secondary glazing to be fixed to the inside of all but one of these windows and the Tribunal could see that there was some black mould in the areas between the exterior single glazed window and the interior secondary glazing.

20. The Tribunal also noted that apartment 201 has an external flat roof area. This could be reached by going down a flight of exterior metal steps to the level of the roof. The steps appear to be secure but there are fittings in the hand rails that appear to be in need of repair or attention. The flat roof has a raised lip around its perimeter and it was

clear from the steps that the flat roof is not draining efficiently into the drainage pipe affixed for that purpose because the flat roof area had several inches of standing water upon it. The Respondent pointed out that this could leak into his apartment and the management agent responded that it was not doing so and that if it did then the leak would be fixed.

The law

Section 18 of the Landlord and Tenant Act 1985. Meaning of "service charge" and "relevant costs".

(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 purposes—

(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 27A of the Landlord and Tenant Act 1985. Liability to pay service charges: jurisdiction

(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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or
(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

The Commonhold and Leasehold Reform Act 2002

SCHEDULE 11
ADMINISTRATION CHARGES
PART 1
REASONABLENESS OF ADMINISTRATION CHARGES
Meaning of "administration charge"
Para 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration

charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.
(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

REASONABLENESS OF ADMINISTRATION CHARGES
Para 2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Relevant Provisions of the lease

21. All 42 leases for the apartments in Mayfair Court are drafted in a similar manner in so far as the terms relevant to this case are concerned. The Tribunal considered in detail the content of the lease for apartment 108 (Tudor House) this being the lease for apartment 108 Mayfair Court.

22. These are tripartite leases. "The vendor" originally being Wilkinson Developments (Yorkshire) Limited, now being BES (1993) Limited, the Applicant.

23. "The Purchaser" is the purchaser of the lease and is now the Respondent.

24. "The Company" were Alderman Truelove Tenants Association Limited. It is common ground that "the Company" went into liquidation some time ago.

25. Clause 6(6) of the lease includes the exterior walls of each demised apartment within the demise, ownership passing to the long leaseholder during the period of the lease.

26. Clause 3 [page 1] states that "the Company" was incorporated to provide services for the complex and to manage the complex that is now known as Mayfair Court.

27. Clause 2 (3) [page 2] requires "the Purchaser" to pay a one forty-second share of the costs of insuring the building.

28. Clause 3 (5)(i) and (ii) [page 4] requires that "the Purchaser" pay a one forty-second share of the costs of services provided by "the Company". Further, that if "the Vendor" carries out any of the

responsibilities of "the Company" that "the Purchaser" pay a one forty-second share of the costs of providing that service. The word any is used in this clause, suggesting that "the Vendor" can choose which responsibilities of "the Company" to take over.

29. Clause 3 (5) also provides for an accountants certificate to be prepared for each service charge year as administered by "the Company" to be furnished to "the Purchaser" as soon as reasonably practicable after it has been certified by the accountant Clause 3 (5)(g). Sub-Clauses relating to this permit service charges to be collected in advance with a balancing exercise after the certificate is provided, with Clause 3 (5)(d) requiring "the Company" to supply "the Purchaser" with a copy of the certificate. Clause 3 (5)(f) permits "the Company" to charge by means of a service charge the cost of reasonable contributions to a reserve fund.

30. Clause 4(4) requires "the Vendor" to insure the building "against loss or damage by fire and such other risks as "the Vendor" shall deem desirable or expedient..."

31. Clause 6(3) states "If...."the Company" shall go into liquidation the Vendor is entitled (but not obliged) to undertake (by any action....) the obligations or any of them.... and shall be entitled to recover from "the Purchaser" a due proportion of all monies, costs, charges and expenses...."

32. Part IV of the lease makes payment of service charges a pre-requisite of "the Company" providing services. Section A requires "the Company" to repair, redecorate and renew all the common areas within the complex and to provide suitable floor coverings and pay for gas and electricity used in the common areas. Section B lists the services to be provided by "the Company". Paragraph 3 requires "the Company" to paint the exterior paintwork once every seven years (this must include the exterior windows of the Respondent's apartments). Paragraph 7 permits "the Company" to provide such other service.... (this includes the laundry room).

Summary of the written evidence

33. The written evidence is contained within two full lever arch files and is far too extensive to recite here. A brief summary will therefore be given of the opposing cases and where necessary further detail will be given in the determination.

Summary of the written evidence on behalf of the Applicant

34. The case on behalf of the Applicant is that upon "the company" going into liquidation there was an interim period in which Mayfair Court Management Limited managed the complex, this later being dissolved. Mr Powell's company BES (1993) Limited bought the head lease so that his company could intervene as "the Vendor" and adopt some (but not necessarily all) of the responsibilities of "the Company" to keep the complex running. Since doing this he has charged service charges to pay for the services that have been provided through BES (1993) Limited. Both the Respondent and present management agent accept that the windows in "the Respondent's" apartments are in need of repair or replacement and planning permission is being applied for, this being necessary because the building is a grade 2 listed building. The planning department have so far indicated that if windows are to be replaced then they would want all work to be undertaken at the same time and (at least where visible from either adjoining street) wooden frames are likely to be required.

Summary of the written evidence on behalf of the Respondent

35. The Respondent takes the view that there is a conflict of interest in the Applicant owning the head lease, putting it in the position of being "the Vendor" and also owning the long leases to the majority of the apartments in the complex. The Respondent suggests that the Applicant chooses to carry out works that enhance the prospects of renting out the apartments that it has to rent, whilst not properly protecting the Respondents apartments. In this regard the Respondent refers to a failure to replace his apartment windows that are beyond repair, failure to deal with problems in the car park and problems with the basement restaurant, including the signage erected by the restaurant (these signs being excluded from further consideration by virtue of conclusion 15.9 of the Case Management Note and Directions on 27 June 2018). "The Respondent" withheld payment of the service charges under consideration in an attempt to bring things to a head so that this Tribunal would become involved. In particular he is of the opinion that the leases at Mayfair Court are defective.

The Deliberations

36. The Tribunal reminds itself that its jurisdiction to decide issues is limited to service charges and administration charges for service charge years 2014 and 2015. In light of submissions being made by the Respondent it was necessary for this to be clarified after a Case Management Hearing and further Directions (Tab 4 in the bundle). The Tribunal now summarises those Conclusions and Directions. The Tribunal will consider Conclusion 15.2, maintenance responsibilities. Conclusion 15.4, electricity charges, assessing whether it is necessary

to make any deduction for electricity used in the private laundry. Conclusion 15.5, to consider whether a deduction from service charges should be made to cover repair, maintenance and servicing of the private laundry machines and facilities. Conclusion 15.6, the Tribunal will determine the insurance charges that are payable and reasonable. Order 17, to consider the Respondent's application under section 20C of the Landlord and Tenant act 1985 "the Act".

37. The Tribunal firstly considers Direction 3 of these Directions. This requires the Respondent to use a schedule or spreadsheet to identify the service charges in dispute, for service charge years 2014 and 2015. The Tribunal notes that the Respondent has attempted to comply with this Direction in the table (Tab 3, second page). The table satisfies most of the requirements of Direction 3 except for the fact that it does not state the reasons why the listed item is disputed. The Tribunal is aware of the fact that the Respondent's three statements of his case do state the reasons why each item is disputed and considers this to be a minor breach that does not prejudice the Applicant. The Tribunal accepts this document as stating which service charges are in issue and will now deal with each item in the list of seven items.

38. The first issue is a charge dated 22 January 2013, £780 maintenance charge for laundry equipment. In addition to this being a relevant service charge listed under Direction 3, it is also subject to Conclusion 15.5. The Respondent alleges that since the washing machine and dryer both require the use of coins before they will work, there must be a profit element and as such the Applicant should pay for maintenance of the laundry equipment out of the profit (Tab 7, Respondent's third statement of case, paragraph 24).

39. The Tribunal refers to paragraph 32 above, a laundry room can be operated for the private use of residents at Mayfair Court. This is a service that is permitted by Part IV, section B, paragraph 7 of the lease. It is reasonable for "the Vendor" to provide this service and "the Vendor" has paid £780 maintenance charge for laundry equipment. "The Vendor" can charge such an expense as a service charge expense under Clause 6(3). Having been charged this amount it is reasonable for the Applicant to pay the bill and charge the full amount as a service charge cost. The Tribunal accepts the Applicant's explanation as to how the laundry room came into existence and that all the value of the coins inserted into the machines is paid into the reserve fund, for the benefit of the long leaseholders at Mayfair Court. (Tab 4, Applicant's statement of case, paragraph 33).

40. The next five items on the table are electricity bills forming part of the service charges to be considered. The Respondent seeks a reduction of £100 from each of the five bills. Looking at the Respondent's three

statements of case he takes issue with these charges in two ways. Firstly, that electric lights are always lit causing wastage of electricity and secondly that electricity is being used in the laundry room.

41. The Tribunal accepts the evidence given on behalf of the Applicant that the Applicant's management agent has been told that the emergency lighting must be left on at all times and that they have been fitted with this in mind. The Tribunal also accepts that thee emergency lights are mostly low energy bulbs. The only two bulbs that are not emergency lighting that are left on permanently (the Tribunal could find no switch capable of switching them off) are in the entrance to Mayfair Court, where two electric light bulbs providing light in a large room approaching a steep flight of steps. The Applicant's decision to keep these two light bulbs lit permanently is within the scope of reasonable decision making. Considering the Tribunal's observations during the inspection and evidence that the fire brigade has required the emergency lighting to remain illuminated, the Tribunal determines that electricity is being used in a reasonable manner in so far as the lighting is concerned.

42. The Tribunal also determines that since the laundry room is run for the benefit of the residents, it is reasonable for the electricity used in that room to be charged as part of the service charge, charging this as a service charge cost.

43. The Tribunal finds the electricity charges to be a service charge cost pursuant to Clause 6(3) of the lease and it is reasonable for the Applicant to pay the electricity bills in question. The Tribunal does not require any deduction to be made.

44. The last item on the table is a bill dated 9 May 2014, £138 to investigate a leak at Mayfair Court. The Respondent's third statement of case (Tab 7, paragraph 27) indicates that he takes issue with the invoice because the plumber should have found the leak straight away and should not have needed to charge for investigating the leak.

45. The Tribunal determines that the plumber having been called to make a repair felt it necessary to investigate the leak and has charged £138 for that service. It is a service charge expense payable under the terms of the lease Clause 6(3) and it is reasonable to pay a bill charged for that service, charging this as a service charge cost.

46. The Tribunal now returns to the remaining matters that the Tribunal is to consider subject to the Conclusions in the Directions of 27 June 2018 (paragraph 36 above).

47. Conclusion 15.2, maintenance responsibilities in respect of service charge years 2014 and 2015. The Tribunal has considered the lease in detail and takes account of the Respondents views that the Applicant in exercising any choice as to what repairs it will and will not make under the terms of Clause 6(3) of the lease is acting in a way that disadvantages the Respondent and that further the lease is defective in that this conduct, which if permissible at all, should not be allowed. The Tribunal does not agree with the Respondent in either regard.

48. The lease is quite clear in that it envisioned that services would be provided by and charged for by "the Company". It sets out apparatus for dealing with the problem that would be caused if "the Company" were to go into liquidation. That did happen and "the Vendor" has stood into the gap there caused. The Applicant is dealing with day to day service charges and charging as a service charge expense the cost of doing so. The Applicant is also dealing with day to day repairs, as is evidenced by the invoice for investigating a leak in the Respondent's table, seventh item, referred to above (paragraph 36).

49. The Applicant is entitled to choose which (if any) of "the Companies" responsibilities pursuant to the lease it will take upon itself (Clause 6(3) and Clause 3(5)(i) and (ii).

50. The complaints raised by the Respondent in this regard are threefold. The first is that widows in his apartments (especially apartment 201) are in need of painting and/or repair or replacement. The Tribunal determines that the Applicant is entitled under the terms of the lease to adopt the requirement to paint only when it sees fit. The Tribunal accepts that the Applicant is concerned about a shortage of funds to undertake a very costly project of window replacement, which it appears to accept as the appropriate way forward. The Tribunal also accepts that planning permission is being applied for.

51. At this point the Tribunal considers whether or not to admit the expert report of Mr Wood, served as part of the Respondent's case. The Tribunal takes account of the fact that the Applicant objects to its admission in evidence because there is no counter claim pending before the County Court and therefore nothing that the County Court Judge could set off against the claim being made by the Applicant. Further, since the Applicant doubts the relevance of that expert report he has not seen fit to instruct his own expert. The Tribunal also takes note of the fact that both parties agree that the windows at apartment 201 are in need of painting/repair or renewal. On balance the Tribunal determines that this report will be excluded as it takes the case before the Tribunal no further.

52. The second area of complaint in this regard are the problems in the car park area. The fundamental problem in the car park area is that it would never have been possible to park ten cars in this area. It will only accommodate five cars at best without significant problems in relation to blocking other cars in. There is nothing that the Applicant can do about this problem. It is evident that the basement restaurant is occupying some space in this area with a wheelie bin, air conditioning and refrigeration apparatus. However, for the restaurant to exist at all some space would have to be utilised and the Tribunal determines that the restaurant does not reduce the effective parking space available by any significant amount because of the places in which these items have been positioned. Further, The Tribunal accepts that the management agent has come to agreement with the restaurant proprietor as to access to the car park that can be varied or cancelled (by bringing back into use a lockable bollard) if it is abused.

53. The third area of complaint is that the apartment leases are defective in that the Applicant can for example, choose not to repair the lift (Tab 7, Respondent's statement of claim, paragraph 16) and choose not to repair or replace windows in apartments. The Tribunal determines that this is not a defective lease. It is working exactly as it was intended when it was executed. The Tribunal accepts that since the Applicant holds leases to the majority of the apartments in Mayfair Court it is more of a detriment to the Applicant than it is to the Respondent that the lift does not work. In any event this Tribunal cannot order the Applicant to repair the lift.

54. The Applicant has adopted day to day repairs under the terms of the lease. The Applicant has not yet adopted the requirement to paint the exterior woodwork, but is in the process of obtaining planning permission so that this can be adopted in the future. The Respondent is clearly not happy by the way the Applicant is dealing with repairs and maintenance at Mayfair Court. The Respondent might wish to take legal advice upon the possibility of making an application to vary the terms of the lease.

55. Conclusion 15.4 has already been dealt with (paragraphs 39, 41 and 42 above).

56. Conclusion 15.5 has already been dealt with (paragraphs 37, and 38 above).

57. Conclusion 15.6, insurance charges. The Respondent's complaint here is that the insurance arranged for the building is not sufficient for the needs of the Respondent in that there is a high excess of £750 so that for practical purposes most potential claims will be excluded (Tab 7, Respondent's third statement of case, paragraph 25).

58. The Tribunal accepts the Applicant's case that the presence of a restaurant in the basement of the building increases the risks involved and therefore the premiums being charged by the insurance company. As a result the high excess was accepted to keep the premium low. The Tribunal determines that this was a reasonable approach to take. The insurance policies issued by AXA insurance are produced (Tab 8.4). Insurance costs are service charge costs and are chargeable as such (the lease, Clause2(3) [page 2]). The Tribunal agrees with the Applicant that these charges are reasonable.

59. The Respondent submits that Clause 3(5)(b) of the lease has been breached in that accountants certificates have not been provided to him for service charge years 2014 and 2015. The Tribunal notes that the relevant certificates are both contained within the bundle, dated 28 February 2014 and 15 May 2015 (Tab 4). The Tribunal determines that the Respondent's submission is incorrect.

60. The Tribunal determines that all service charges and insurance charges (which are also a service charges) in this case are payable under the terms of the lease and are reasonable. In this regard the Tribunal notes that the Respondent contends that the service charge demands for these two years were served without the tenants right and obligations forms that should accompany them. The Tribunal accepts the Applicants case that these forms were sent to the Respondent as required and notes that copies are exhibited in the bundle. The Tribunal does not have jurisdiction to consider ground rent.

Decision

61. The Tribunal decides that all service charges and insurance charges (which are also a service charges) in this case are payable under the terms of the lease and are reasonable. The Tribunal does not have jurisdiction to consider ground rent.

62. The Tribunal does not make any order under section 20C of the Landlord and Tenant Act 1985 or Paragraph 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal sees no good reason why such an order should be made.

63. This case should now be transferred back to the County Court.

64. Should either party wish to appeal against this Decision they must do so within 28 days of the Decision being sent, by delivering to the tribunal office an application asking for permission to appeal, stating the grounds for the appeal and particulars of the appeal.

Judge C. P. Tonge
31 May 2019