FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LSC/2018/0278**
Property	**:**	**Flats 201, 301, 401 Caroline Adams House, 37 Pedley Street, London E1 5FQ**
Applicants	**:**	**Mr Joseph Young (Flat 201)** **Mr Matthew McHugh (Flat 301)** **Mr Alex Abrahams (Flat 401)**
Representative	**:**	**Mr Joseph Young**
Respondent	**:**	**Spitalfields Housing Association Limited (SHA) (the landlord)**
Representative	**:**	**Ms Elodie Gibbons, Counsel, instructed by Capsticks Solicitors LLP**
Type of application	**:**	**Liability to pay service charges / administration charges**
Tribunal member(s)	**:**	**Tribunal Judge Miss A Seifert** **Mr M C Taylor FRICS**
Date and venue of hearing	**:**	**13th December 2018 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**11th May 2019**

DECISION

The Application

1. In an application dated 23rd July 2018, the applicants, the leaseholders of flats 201, 301 and 401 Caroline Adams House (CAH) applied for determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985. Section 27A of the Act concerns jurisdiction in respect of liability to pay service charges. Section 18 of the Act provides the meaning of 'service charge' and 'relevant costs'. Section 19 of the Act states that relevant costs shall be taken into account only to the extent that they are reasonably incurred and where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard and that the amount payable shall be limited accordingly. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides the meaning of 'administration charge'. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

2. The applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985. Some leases allow a landlord to include costs incurred in connection with proceedings in the service charge. This provision gives the tribunal power on the application of the tenant, to make an order that such costs are not to be included in the service charge payable by the tenant or any other persons specified in the section 20c application.

3. The applicants also sought an application limiting payment of the landlord's costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) which provides that a tenant my apply to the tribunal for an order that a court or tribunal which reduces or extinguishes that tenant's liability to pay an 'administration charge in respect of litigation costs' i.e. contractual costs in a lease.

4. In the application it was stated that the service charge years for which a determination is sought was the service charge years 2015/2016 and 2016/2017. The service charge years run from 1st April in each year until 31st March in the following year. The future years were stated to be 2017/2018 and 2018/2019.

5. Details of the service charges challenged in question for the years 2015/2016 and 2016/2017 were set out in the application. For both years the applicants questioned whether items marked 'Depreciation' could be charged. The charges for flat 201 were:

	2015/2016	2016/2017
Depreciation – Lift	£61.58	£212.12
Depreciation – Carpets	£25.25	£86.96
Depreciation – Fire Alarms	£12.62	£43.48
Depreciation- Door Entry System	£ 8.84	£30.43
Depreciation – Underground Refuse System	£ 5.53	£19.05
Depreciation – TV Aerial	£ 4.61	£15.87
Depreciation – Playground Equipment	£ 3.38	£11.64
Depreciation – CCTV	£ 3.07	£10.58

The leaseholders of flats 301 and 401 have some slightly different figures as the relevant periods for calculating the charge differed according to the period between the lease start dates and the end of the service charge year 2015/2016.

The charges for 'Depreciation' in respect of 2017/2018 (and 2018/2019) were not set out in the application which predated the service charge accounts /demands.

6. The applicants also challenged the following charges for 2016/2017 (figures in respect of flat 201):

Administration	£302.23
Lift servicing and maintenance contract/insurance	£177.88
Communal Cleaning (block)	£802.74
Repair/Maintenance (Block Communal)	£ 51.87
Communal Lighting (Block Communal)	£332.75
Door entry maintenance	£ 26

7. An oral case management hearing took place. Mr Young represented the applicants. Ms Gibbons of Counsel represented the respondent

landlord. Mr Hussain and Mr Uddin both of the respondents, attended. The tribunal issued Directions dated 4th September 2018.

The Hearing

8. A hearing was held on 13th December 2018. At the hearing the applicants were represented by Mr Young, who provided a witness statement and also gave oral evidence. The respondent was represented by Ms Elodie Gibbons of Counsel. Mr Haque, Head of Maintenance, and Mr F Uddin, Head of Housing, provided witness statements, attended the hearing and gave oral evidence. A letter was sent by named residents of Sol Frankel House (SFH) supporting aspects of the application.

Background to the dispute

9. The site of the Pedley Street Estate ('The Estate') (also previously called Saffron Court Development) was subject to a Lease (superior Lease) dated 22nd March 2012 and made between Network Rail Infrastructure Limited as landlord and Tower Hamlets Community Housing Limited as tenant. The term of the headlease was 150 years ending on 21st March 2162. A copy is included in the hearing bundle together with a plan showing that area subject to the lease coloured blue.

10. In his evidence Mr Haque stated that CAH formed part of what was marketed as Saffron Court Development but is also known as Pedley Street Estate. The Estate was developed and project managed by social housing development partner Tower Hamlets Community Housing on land owned by SHA. The Estate was handed over to SHA on completion in November 2015 and units were occupied immediately with the first tenants / shared owners arriving in November/December 2015.

11. It was stated in the respondent's statement of claim that the Estate comprises 63 residential units, which are a mixture of self-contained street level properties and flats within self-contained areas. The Tribunal did not inspect the property. However, we were provided with various plans and photographs. These included a plan described as Pedley Street and Fakruddin Street dated 24/6/12 showing a layout of the properties on the Estate. Other plans of the Estate were provided. Also, a Land Registry plan and photographs showing CAH and SFH were provided.

12. CAH contains three flats and SFH contains 10 flats. They have separate entrances, but are physically closely connected as shown on the photograph where CAH is outlined in red and SFH is outlined in green. Hannan Court and Kushiyara House are also closely physically connected and have ten flats each. Mr Young's submission was that

CAH, SFH, Kushiyara House and Haddon Court are in effect parts of the same Building.

13. The building contains 33 flats and is divided into 'Houses' (referred to in the respondent's evidence as 'Blocks'). CAH has 3 flats, SFH has 10 flats, Kushiyara House has 10 flats, and Hannan Court has 10 flats. Mr Young said he understood that the residents of CAH and SFH purchased their flats under the shared ownership scheme. The other flats are occupied by social housing tenants.

14. In December 2015 he purchased a share of flat 201 from the respondent under the shared ownership affordable housing scheme. He has lived in flat 201 since December 2015 as the respondent's tenant and continues to do so. He owns a proportion of the equity in the leasehold interest in flat 201, and pays rent to the respondent determined by the size of the remaining equity. He also pays service charges to the respondent in respect of the maintenance and management.

15. In about 2015 Mr Young made enquiries with the respondent's estate agents about viewing a flat on the estate, with a view to purchasing via the shared ownership affordable housing scheme. He was invited by the estate agents by email to attend a viewing. This email attached a document with the price list, a brochure and application form. The price list gave details of the flats that were still available in what would become CAH and SFH. The purchase price differed depending on which floor the flat was situated on, but the flats on the same floor were priced the same, irrespective of which 'House' they were in. All the flats on the price list had the same estimated service charge of £171 per month. The price list stated: *The service charge includes: Ground Maintenance and Buildings insurance. Please note this figure is estimated and may change. Please note the service charge does not include provisions. Provisions will be added to the service charge in year 3.*

16. Mr Young attended a viewing of the show flat that would later become part of SFH. He was informed by the agents that he would have to specify which plot he would like to apply for. He was told by the agents that there was virtually no difference between CAH and SFH flats which were 'mirror images. However, he was told that the washing machine was in the kitchen in CAH rather than in the storage cupboard. He was told that there was no difference between the service charge between CAH and SFH. He expressed a preference for CAH because of the position of the washing machine, but told the agent that he would be happy with a flat in SFH.

17. On 12th August 2015 Mr Young sent an email to the respondent's agent asking for further information. The agent responded that: *Maintenance charges – the service charge for a two-bedroom property at saffron court is £171.00 and would include the maintenance of all internal and external communal areas along with building insurances.* Mr Young

submitted that by referring to saffron court (i.e. the whole estate) and all internal and external communal areas, the agent did not differentiate between the different parts of the building or Houses. Shortly after he moved in the respondent circulated a service charge estimate to residents (the 2015/2016 estimate) which showed that there were two elements to the service charge (a) service charge divided between the entire estate (b) service charge divided between the 33 flats in the building. This was consistent with what he had been told i.e. that all the flats were to be charged at the same level of service charges.

18. From moving into their flats in around December 2015/2016 until March 2016 all the residents of CAH and SFH were charged £171 per month towards the service charge. In respect of the financial year 2016/2017, the respondent did not provide the tenants with an estimate indicating that the service charge had been increased, and the tenants continued to pay the service charge at the rate of £171.00 per month. The 2017/2018 estimate gave two elements for the service charge being (a) the service charge divided between the whole estate (b) the service charge divided between the 33 flats in the appellants' building. On 2nd March 2017 the respondent wrote to the tenants that the service charge would increase to £853.80 per annum from April 2017 onwards. Mr Young said he had been provided with no satisfactory explanation why the service charge was not divided in the manner which had been described to him when purchasing the flat, that the costs would be divided equally between all the residents of the flats in the building. Following a meeting in September 2017 the respondent provided tenants with revised service charge summaries for 2015/2016 and 2016/2017. Mr Young has received copies of service charge summaries for flats in SFH, showing that lesser charges were made for effectively the same flats as in CAH. He submitted that this was not in accordance with the charging mechanism of the Lease or the information he was provided with prior to entering the Lease. He submitted that the respondent was incurring the same level of charges for each 'House' but in the case of CAH was dividing this by 3 for CAH and 10 for SFH. Mr Young submitted that this was contrary to the representations and to the respondent's own estimate.

The Lease

19. A copy of the lease of Flat 201, made between the respondent as landlord and Mr Joseph Young (Mr Young) as tenant dated 17th October 2015 ('the Lease') was provided. The Tribunal was not provided with leases for the other applicant's flats but was told that these were in similar form. Also provided was a copy of the superior Lease. Flat 201 is on the second floor of CAH

20. The Lease includes the following covenant by the tenant:

7.1 Covenant to pay

The Leaseholder covenants with the Landlord to pay the Service Charge during the Term by equal payments in advance at the same time and in the same manner in which the Specified Rent is payable under this Lease.

7.2 When calculated

The Service Provision in respect of any Account Year shall be calculated before the beginning of the Account Year and shall be calculated in accordance with Clause 7.3 (How calculated).

7.3 How calculated

The Service Provision shall consist of a sum comprising the expenditure estimated by the Authorised Person as likely to be incurred in the Account Year by the Landlord for the matters specified in Clause 7.4 (Service Provision) together with:

(a) an appropriate amount as a reserve for or towards the matters specified in Clause 7.4 (Service Provision) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year including (without limitation) such matters as the decoration of the exterior of the Building (the said amount to be calculated in a manner which will ensure as far as reasonably possible that the Service Provision shall not fluctuate unduly from year to year); but

(b) reduced, at the Landlord's discretion, by any unexpected reserve already made pursuant to Clause 7.3(a).

7.4 'Service Provision'

The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair, management, maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing….

The 'Service Charge' is defined in Schedule 9 to the Lease as:

The Specified Proportion of the Service Provision

The Particulars provide that the 'Specified Proportion' is

A fair and reasonable proportion

'Building' is defined in Schedule 9 to the Lease as:

The building defined in the Superior Lease

'Building' in the Superior Lease is defined as:

The building from time to time constructed or to be constructed by the Tenant upon the Property

21. A dispute has arisen in respect of the appropriate division of the liability under the service charge provisions. This relates to both:

- The basis of calculation of service charge costs (in accordance with the meaning of Service Provision in Clause 7.4 of the Lease and the definition of 'Building' in Schedule 9 to the Superior Lease as adopted in the Lease).

- The proportion of those costs payable by each of the applicants. In respect of some of the charges it is also challenged whether the costs were reasonable / reasonably incurred.

22. The application sets out the particular items in dispute for 2015/16 and 2016/17. A Scott Schedule was also provided.

2015/2016 - 'Depreciation' items

23. The Lease includes provision for charging amounts for the reserve in particular under Clause 7.3(a) referred to above. The Tribunal does not consider that calling these items 'Depreciation' rather than identifying them as contributions under 7.3(a) affects the payability of such items in principle.

24. It was noted that there was no difference between the estimated and actual charges for 'Depreciation' (reserve/sinking fund) items. It was also noted that in the appellant's reply and statement of case dated 25th November 2018 it was stated that '....Since filing the statement of case the respondent has clarified to the applicants that the charges for 'depreciation' are not in fact charges for 'depreciation' as described in the RICS Guidance, but rather charges for a sinking fund and that the funds paid under these items are being held in reserve for future expenditure.' It went on to state that it had always been accepted that where reasonable, sinking funds for future expenditure are chargeable under the Lease.

25. The respondent submitted in respect of basis calculation of the 'Depreciation' items that: All items for 2015/16 (and 2017/2018) fall within Clause 7.4. Expenditure on these items is likely to give rise to

expenditure at intervals of more than one year – consequently SHA is entitled under Clause 7.3 to include within the Service Provision and therefore the Service Charge, an appropriate amount as a reserve towards the replacement of the matters listed and that is what these charges represent. It was submitted that these charges are reasonable amounts.

26. In his evidence Mr Haque said that SHA was aware of the need to build a reserve fund to meet the future replacement of the Estate's assets. He referred in his witness statement to the component replacement schedule (the schedule) which would require replacement at intervals of more than one year. The anticipated costs are set out. The replacement unit costs were provided by Hills, the construction firm appointed by Tower Hamlets who built the Estate. Based on its own experience in maintenance and management, the respondent considered that these costs were reasonable.

27. The costs upon which the respondent's figures for 'Depreciation' for the service charges years 2015/2016 (and 2016/2017) were set out in the schedule in Mr Haque's witness statement as follows:

Item	Units	Life	Replacement cost	contribution per unit pa
Lift (4)	33	30	210000	212.12
TV Aerial(3)	63	20	20000	15.87
Fire Alarms(8)	46	20	40000	43.48
Door Entry System (8)	46	20	28000	30.43
CCTV	63	15	10000	10.58
Communal carpets(4)	46	10	40000	86.96
Underground Refuse system	63	15	18000	19.05
Playground Equipment	63	15	11000	11.64

It was noted in the witness statement of Mr Haque that the useful life of each of the components was extracted from the National Housing Federation (NHF) service charge guide, except for CCTV, underground refuse systems and playground equipment which are not included in the NHF's guide. It was stated in the service charge summary that the Estate Total was 63. Mr Haque stated that the schedule was compiled by dividing the total replacement cost by all the units on the estate.

28. Having concluded that the Lease provides for contributions of an appropriate amount towards such anticipated expenditure, the Tribunal accepts the figures put forward by the builders of the Estate and set out in the schedule in the witness statement of Mr Haque.

29. Mr Young submitted that it had been represented in the pre-sale information that there would be no 'provisions' in the first 3 years. The Tribunal does not consider that this constitutes a clear representation relied on by the applicants. A formal Lease was entered into subsequently, clearly providing for contributions to the reserves.

30. The evidence of Mr Haque was that the charges for 'Depreciation' items were calculated by dividing the total replacement cots by all the number of all the units on the estate (63) and accordingly there was no apportionment issue in respect of 'Depreciation' charges.

31. The Tribunal considers that the charges set out in the application for 2015/2016 under 'Depreciation' were reasonable.

2016/2017 - 'Depreciation' items

32. The above findings in respect of 2015/2016 'Depreciation items' as shown on the service charge summaries and reflected in the application form, is repeated in respect of 2016/2017 'Depreciation items'.

33. The Tribunal considers that the charges set out in the application for 2016/2017 under 'Depreciation' were reasonable.

General – 'Depreciation' items

34. The Tribunal noted that in his witness statement Mr Haque stated that the schedule was 'due to be revised when more accurate information is available'. He stated that *In particular, the schedule was originally complied by dividing the total replacement cost by all units on the Estate. For example, the cost of replacing the four lifts has been divided by the 33 units which benefit from a lift. However, SHA believe it would be fairer and more accurate to divide the unit cost of each component by the number of units which benefit from each individual component. In other words, as there are three units in Caroline Adams House which benefit from one lift, a more accurate calculation of the*

annual cost of replacing the lift in the future would be to divide the cost of replacing that lift by its estimated useful life and by three. So far as the Tribunal is aware this has not occurred in respect of 2015/2016 and 2016/2017.

35. Although the service charge for 2017/2018 was not specifically the subject of this application, service charge summaries for that period for Mr Young's flat in CAH and a flat in SFH were provided for the hearing.

36. The Tribunal noted the figures in the schedule payable in respect of Mr Young's flat and the flat in SHF remained effectively the same except the charge for Depreciation – Lift was increased to £606.06. Secondly, it was noted that in addition to the 'Depreciation' items in 2015/2016 and 2016/2017, three further items were added to Mr Young's account for 2017/2018 (but not to the SFH account). These were 'Depreciation – Boundary walls and Fencing', 'Depreciation – Path, Road and Court Yard Paving' and 'Depreciation – 'Lamp Posts'. The Tribunal was not provided with an explanation for these additions for CAH or how they were calculated. In the circumstances, the Tribunal makes no findings in respect of the service charge year 2017/2018.

Other Service Charge items challenged

37. In respect of the service charge items challenged for 2016/2017 these included the following:

- Lift Servicing and maintenance contract / Insurance
- Communal Cleaning (Block)
- Repair/Maintenance (Block Communal)
- Communal Lighting (Block Communal)
- Door entry maintenance
- Administration

38. In his evidence Mr Uddin explained that the respondent had procured a basic lift maintenance contract from the suppliers of lifts in the development. This was a three-year agreement and the first year was under warranty. Consequently, no costs were incurred in 2015/2016 and costs were only incurred in part of the service charge year 2016/2017. He stated that the maintenance contract was procured on a block by block basis. Communal Cleaning (Block) related to cleaning communal areas including cleaning of windows (quarterly), carpet cleaning (bi-annually), graffiti removal (ad hoc basis) and any

additional cleaning required in the communal areas of the block. In respect of Repair/Maintenance (Block Communal) Mr Uddin said that these were ad hoc repair costs for CAH only. For Communal Lighting (Block Communal), Mr Uddin said that communal lighting is metered and recharged to each individual block. For Door Entry Maintenance Mr Uddin said that the charge related to repair cost for the main door of CAH and that the cost of repair was charged to the leaseholders of CAH only. He stated that this is in accordance with the respondent's recharging policy for other blocks. The cleaning services had been subject of a tendering process which Mr Uddin referred to. At the hearing a 'Job Specification' for cleaning, setting out work items and prices for CAH, was provided.

39. The respondent's position in its statement of case was that the service charge items listed related to services which were 'delivered on a block to block basis'. Further that delivery of these services to any individual block did not benefit leaseholders of any of the other blocks. It was submitted that consequently it is fair and reasonable and therefore in accordance with the terms of the Lease to divide the cost of services delivered to any block by the number of units within that block.

40. Mr Young's submissions included the following: Clause 7.4 of the Lease states that 'The Service Provision shall comprise all expenditure reasonably incurred… in connection with the repair… for the Building. 'The Building' has a wide definition. The Lease and the Lease plan make no distinction between different blocks. The respondent notionally divided into blocks, but the building in which the applicants' flats are located is in fact one block of flats with separate entrances. There is nothing in the Lease which determines that the services will be divided on a block by block basis or that the tenants of a particular block will be responsible for service charges associated with that particular block. It would be impossible for a potential leaseholder to determine from the Lease alone that the service charges would be divided to different parts of the Building.

41. Mr Young submitted that whilst the respondent claims that the services were 'delivered' on a block to block basis in 2016/2017:

- The respondent did not tender for services or engage contractors on a per block basis but on an Estate wide basis,

- The respondent provided service charge estimates for 2015/2016 and 2017/2018 which divided costs equally between flats in the Building showing that at least at some point it was envisaged costs would be divided in that way (the respondent did not provide the residents with an estimate for 2016/2017 and allowed the 2015/2016 estimate to stand in its place).

- The respondent was not required under the Lease to procure or deliver the services on a per block basis but on the basis of services required by the Building.

42. In respect of the respondent's submission that the delivery of these services to any individual block does not benefit the leaseholders of the other blocks, Mr Young submitted that the services provided do benefit the other areas of building and the Estate more generally. In the reply to the respondent's statement of case Mr Young gave examples. In respect of fire alarms maintenance (Block) he submitted that given that the residents all live in the same physical building it is clearly beneficial to all residents that the fire alarms are maintained in all parts of that building. It is to all the residents' benefit that the lifts are maintained adequately as to ensure against risk of fire/power outages etc. which could damage the whole building. Another example was Communal Cleaning (Block) and Communal Lighting (Block) in respect of which it was submitted that it is to the benefit of all parts of the building that CAH is kept clean and well lit. Further examples were provided. In summary it was submitted that the residents in the other parts of the building directly benefit from the services provided to CAH and the applicants directly benefit from services provided to other parts of the building. Mr Young submitted that in any event there was no requirement that other leaseholders benefit from services in order to be charged for them as under the Lease the charges relate to the Building as a whole.

43. Mr Young in his witness statement and in the applicants' reply and statement of case, gave detailed reasons and examples in respect individual items of charge and the basis of charge. In respect of the charge for Administration he submitted that the respondent had calculated an 'Administration' charge by adding 15% to the cost of service charge items A percentage method was not specified in the Lease and he submitted it was not clear upon what basis a 15% charge is calculated and that such a charge was unreasonable. Amongst other matters in his evidence Mr Young commented on the tendering process for cleaning and gardening contract services for 2016/2017.

The Tribunal's decision

44. The applicants rely on the terms on the Lease and submit that the manner in which some of the service charge are calculated are not in accordance with this.

45. As part of his submissions, Mr Young relied on the pre purchase information regarding the level of the service charge and apportionment between the flats in CAH and SFH. The Tribunal noted that an information sheet was provided before sale. This provided prices and other information that it described as 'a guide only' and stated that details were correct at the time of going to print in July

2015. Floor 2 plot 22 (which later became Mr Young's flat) was described as having an 'Estimated monthly Service Charge***' of £171 as were some other flats where were all described as 2-bedroom flats with the same area although the monthly outgoing and the full market rent varied. Under note *** it was stated 'The service charge includes: Ground Maintenance and Buildings Insurance. Please note this figure is estimated and may change….'. The Tribunal does not consider that this (or the other communications referred to by Mr Young) constitute represent representations which were relied on limiting the service charges. Mr Young and the other leaseholders subsequently entered into the Lease which provided for the payment of the service charges.

46. The Lease includes for provision by the respondent landlord of various services to be recharged to the leaseholders. As previously described, the Pedley Estate was the subject of a superior Lease which identified in the Lease plan the land subject to that demise. The Estate has been developed providing 63 residential units some of which are the subject of shared ownership leases and also social housing.

47. Amongst the plans provided was a layout plan prepared by Ingleton Wood LLP in 2012 for planning, showing amongst other things, the layout of the building in which CAH and SFH are located. Photographs were provided showing the building indicating the adjoining areas of CAH and SFH. These have separate entrances but are effectively part of the same building in physical terms, together with the other adjoining properties.

48. The Lease provides for payment of a 'Service Provision' consisting of an estimated sum by the Authorised Person as likely to be incurred in the Account Year by the matters specified in Clause 7.4 together with amongst other matters, a contribution to the reserve fund as referred to in Clause 7.3(a). The 'Authorised person is the person nominated by the landlord to estimated expenditure according to the Service Provision. There are provisions for adjustment of service charges to actual expenditure in Clause 7.6.

49. As previously referred to the service charge provisions included the following: *7.4 'Service Provision' The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair, management, maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing…..* The 'Service Charge' is defined in Schedule 9 to the Lease as: *The Specified Proportion of the Service Provision*. The Particulars provide that the 'Specified Proportion' is: *A fair and reasonable proportion.* 'Building' is defined in Schedule 9 to the Lease as: *The building defined in the Superior Lease.* 'Building' in the Superior Lease is defined as: *The building from time to time constructed or to be constructed by the Tenant upon the Property*

50. The applicants consider that the respondent has calculated the service charge in a manner which is not in accordance with the Lease. For example, for Communal Cleaning (Block) for 2016/2017, the respondent has charged Mr Young £802.74 on the basis of costs for communal cleaning of CAH divided by the number of flats in CAH (3). In comparison, the service charge summary for 2016/2017 for SFH shows that the cost for that service to SFH, based on services to SHF was £212.94. This was despite the fact that the estimated charge for that item for both properties was the same figure.

51. Having considered the evidence and submissions, the Tribunal considers that the 'Building' as defined in the superior Lease, which definition was incorporated in the Lease, should be interpreted as the whole building in which CAH and SFH are located. The Service Provision is therefore based on the costs of providing the services for that building. The Tribunal considers that calculating the service charge costs based on the 'Houses' of 'Blocks' being part only of the Building in which CAH and SFH are contained, was not in accordance with the Lease terms.

52. There was a dispute in respect of what is the 'fair and reasonable proportion' for the charging of service charges under the Lease. Both parties made submissions and referred to cases *Lord Mayor and Citizens of Westminster v Fleury [2010] UKUT 136 (LC) at [10]* and *PAS Property Services Ltd v Hayes [2014] UKUT 0026 (LC] at [52].* The respondent submitted that even if there was another way of apportioning the charge that does not render the method adopted unreasonable.

53. The Tribunal considers that in order to assess a fair and reasonable proportion of a potential charge, the costs to be apportioned ought to be determined in accordance with the Lease. Therefore, the costs either for the building or (in the case of Estate wide costs) the wider Estate, should be identified and then a fair and reasonable proportion calculated in order the crystallise the service charge payable in respect of each flat. As Mr Young submitted, the building contains 33 flats and therefore dividing the costs for CAH alone by the number of flats in CAH does not produce a fair and reasonable proportion under the Lease.

54. The respondent submitted, amongst other matters, that affordability, or financial impact are not to be taken into account on a determination under section 27A. In this case the figures on the service charge summaries for CAH and SFH for example 2016/2017, rather than relating to affordability or financial impact on the leaseholders as such, can be regarded as illustrative of the result adopting the respondent's basis of charge and interpretation of a fair and reasonable proportion. The figures shown in the service charge summaries indicate that the methodology adopted by the respondent resulted in higher figures for

the two-bedroom flats in the same building. The Tribunal considers that those charges based on costs for CAH only and divided by the number of flats in CAH only, are not calculated in accordance with the Lease terms and that the proportion charged is not fair and reasonable.

55. In respect of the 'Depreciation' items, the Tribunal was informed that these are Estate wide charges and the proportion charged is divided by the total number of units (63). As previously noted, there is no challenge that the apportionment of those charges is otherwise than on a fair and reasonable basis.

56. The Tribunal was provided with a letter signed in November 2018 by leaseholders of seven of the flats in SFH. In this letter, it was stated amongst other matters that the service charges should be calculated on an equal apportionment of costs incurred across the Estate such that no residents shall pay a larger share of costs incurred by the Estate as a whole based on the number of flats in an individual 'House'. It was stated that the most fair and reasonable apportionment was one which spread these costs equally among all flats on the Estate who benefit from them. It was stated that equal apportionment was the basis on which the flats were sold and that it is unreasonable for residents of CAH to be charged a higher service charge on a per flat basis than residents in SFH, Kushiyara House and Hannan Court.

Summary of Decision

The Tribunal finds that:

57. In respect of the service charge items set out as in dispute in the application:

- The service charges for 'Depreciation' listed in the application for 2015/2016 are reasonable and payable by the applicants to the respondent.

- The service charges for 'Depreciation' listed in the application for 2016/2017 are reasonable and payable by the applicants to the respondent.

- In the light of the Tribunal's conclusions in respect of the basis of the area in respect of which the costs should be calculated in accordance with the Lease and the fair and reasonable proportion to be charged; the Tribunal finds that the charges listed in the application in respect of 2016/2017 for (1) Administration (2) Lift servicing and maintenance contract / insurance (3) Communal Cleaning (Block) (4) Repair / Maintenance (Block Communal) (5) Communal Lighting (5) Door Entry Maintenance are not payable or reasonable. These may be the subject of future recalculation by the respondent landlord.

- Any submissions by either party in respect of section 20C Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to be made within 14 days of the date of this decision.

Name: First-tier Tribunal Judge Seifert

Date: 11th May 2019

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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