



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00MS/LSC/2023/0047

Property : Walton Court, 30 Archers Road,
Southampton, SO15 2TE

Applicant : Mrs Norma Lee Flat 2
Mrs Shirley Claringbold Flat 4
Mrs Valerie J Gradiclge Flat 5
Mr Gerald Aiterman Flat 6
Ms Alida Griffiths Flat 7
Mr Bruce Henderson Flat 8
Mr David J Hacking Flat 9
Mrs Ruth Peters Flat 10
Mr Geoffrey Ashby Flat 11
Mrs Hazel D Bonner Flat 12
Mr George Fitzgerald Flat 14
Mrs Liubov Pavliuc Flat 16
Mrs Karen Terrell Flat 18
Mrs Vivienne Anthony Flat 19
Ms Miriam Gasho Flat 20
Mr Peter Bacon Flat 21

Representative : Mr David J Hacking, Mr Peter Bacon, Mrs
Shirley Claringbould

Respondent : Sovereign Housing Association

Representative :

Type of Application : Service Charge section 27A of Landlord
and Tenant Act 1985

Tribunal Member(s) : D Banfield FRICS, Regional Surveyor

Date of Decision : 13 December 2023

DECISION

The Tribunal determines that the budget for 2023/24 is as set out in paragraph 19 of this decision subject to a reduction of £3,116.87.

Preliminary

1. On 27 July 2023 Judge Tildesley expressed the preliminary view that the Application gave a provisional determination that the application had no reasonable prospect of success. Further representations were received and on 4 September 2023 Judge Tildesley invited representations from the Respondent on four specific questions and ordered the Respondent to prepare a hearing bundle.
2. Following Judge Tildesley's retirement I examined the hearing bundle and considered that certain documents were not included and on 18 October 2023 ordered their submission.
3. These have now been received and whilst there still appears to be some omissions and irregularities in the documents the Tribunal has sufficient information to make its' determination.
4. I do not intend to replace Judge Tildesley's detailed analysis of the issues which are set out below but restrict myself to making a determination of the application on all of the information now provided by either party.

Background

5. The Applicants seek a determination of liability to pay service charges for the year 2023/24 under section 27A of the Landlord and Tenant Act 1985.
6. The Applicants have also applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the landlord from recovering the costs of the proceedings either through the service charge or against the tenant direct.
7. The dispute concerned a 70-80 per cent increase in the personal heating charge. The Applicants did not attach a tenancy agreement to the application, so the Tribunal at the time was unable to ascertain whether the heating charge fell within the definition of service charge as contained in section 18 of the 1985 Act. Also, it appeared that the ground for the application was affordability which is not a matter that the Tribunal can consider when determining service charges.

8. The Tribunal held a case management hearing on 26 July 2023 at 12 midday to decide whether the Application had a reasonable prospect of success. Mr Hacking attended for the Applicants by phone after various unsuccessful attempts to appear on video. Mrs Phillips Head of Financial Services, and Mrs Lewis, Services Charge Manager attended for the Respondent. Mrs Phillips supplied a witness statement and documents bundle. Mr Hacking supplied a detailed statement which explained the hardship experienced by the residents at Walton Court by the sudden and massive increase in the heating and hot water and lighting charge.
9. The property is a block of 22 flats and one guest room with shower-room. The property is designated as Housing for Older Persons and are let on assured social rent tenancies.
10. Each flat is self-contained with its own kitchen and bathroom. Each flat has its own electricity supply. Heating and hot water is provided by a communal boiler which then feeds through to each property. There are no heat meters or heat cost allocators monitoring the level of heating or hot water being used by each individual flat.
11. Services provided to communal areas are charged to residents via a service charge. The cost of utility supplies to the individual homes are also charged as private service charges.
12. There are two types of tenancy agreements in place at the property. Type 1 concerns tenancies commenced before October 2020, and type 2 relates to tenancies commenced on and after October 2020.
13. In type 1 all service charges are variable. In type 2 communal service charges are fixed whilst service charges for the individual flats are variable.
14. The tenancy agreements do not specify how service charges will be apportioned between the individual tenants but that it will be “fair.” The Respondent had decided that the service charges will be shared equally between the 22 flats.
15. The utility charges for the property are based on meter readings for the whole property. The flats do not have their own individual meters. The Respondent has decided that a fair proportion between communal and individual use is 20 per cent: 80 per cent. There is one exception to this, Flat 12. This property does not have a hot water supply from the hot water cylinder to the kitchen, only to the bathroom. Instead, the hot water in the kitchen is supplied by an individual heater powered by the individual flat’s electricity supply. Therefore, the estimated private heating and hot water charge to this property is reduced by 40 per cent.
16. The tenancy agreements permit the Respondent to collect service charges on account and a balancing charge at the end of the service charge year which corresponds to the financial year 1 April to 31 March.

The balancing charge is staggered. Thus the balancing charge for the year ending 31 March 2023 will be included in the estimate for the charge commencing 1 April 2024.

The Issue

- 17. The dispute concerns the estimated service charge for utility costs for 2023/24. More specifically the estimated service charge for private utilities. The Respondent stated that all the Applicants listed in the application were considered to have a variable service charge.
- 18. The costs for utilities have increased significantly from the previous contract negotiated by the Respondents. Thus the increase in rates from the previous contract was 272 per cent for electricity for October 2022 to September 2023, and 232 per cent for gas for October 2022 to March 2023. The increase has now reduced to 44 per cent for gas for April 2023 to September 2023.
- 19. The estimated service charge for 2023/24 for utility costs are as follows:

	The Property	The Flat
Communal lighting	£1,719.72	£78.17
Communal heating and hot water	£13,817.96	£628.09
Personal heating and hot water	£61,020.68	£2,825.03
Balancing Charge for 21/22	£4,301.68	£244.41

- 20. The total estimated service charge for utilities for 2023/24 is £76,558.36.
- 21. The Tribunal established that the Respondent procures the costs of utilities through a competitive tendering exercise managed by a specialist third party agency. Mrs Phillips explained that during 2022 there was significant market volatility in utility supplies, coupled with a reduction in the number of suppliers bidding for new contracts (only one to two per pricing round). As a result, four pricing rounds were undertaken for electricity, and five rounds for gas, between June and September 2022 to secure the best possible rates. Mrs Phillips said that the Respondent decided that the best option was to procure the electricity contract for 12 months, and the gas contract for six months, with an option to extend for a further six months due to the expectation that wholesale gas rates would fall.

22. The Tribunal found that the estimated service charge is calculated by multiplying the unit rates for gas and electricity as procured through the competitive tendering exercise by the consumption as measured by the meters for the 12 month period ending 1 November 2022.
23. The Applicants were rightly concerned about the enormous financial burden placed upon them and that they would suffer serve hardship from the imposition of those charges. The Tribunal has no authority in law to reduce service charges on grounds of affordability and or hardship. The Tribunal's powers are limited to deciding whether the charges are reasonable. The Tribunal assesses reasonableness in this case by considering whether the landlord has undergone a competitive tendering exercise to achieve a good price and has not charged more than what is likely to be used.
24. On what had been presented at the case management hearing the Tribunal's provisional view was that the charges for private utilities were reasonable and the Applicant had no effective challenge against the reasonableness of the costs as understood by the legislation.
25. At the case management hearing the Tribunal explained to Mr Hacking that there was no point in going to a hearing if the Applicants have no realistic prospect of success with their application.
26. Mr Hacking contended that the Respondent had not complied with a "Rule" which the Tribunal understands was agreed in 2011. According to Mr Hacking, this Rule required the Respondent to phase the increases in service charges. Unfortunately, Mr Hacking was unable to produce a copy of the "Rule." Judge Tildesley decided to defer his decision on striking out the application for 14 days to enable Mr Hacking to supply a copy of the Rule.
27. At the end of the case management hearing Judge Tildesley asked Mrs Phillips to explain what the Respondent is intending to do to mitigate this significant increase in utility costs for the residents at Walton Court. Mrs Phillips explained that the Respondent had been successful in obtaining various discounts under Government backed schemes which should reduce the estimated charge significantly for the individual residents. The Tribunal understands that the discounts would be backdated to April 2023. Mrs Phillips also said that the Respondent was looking actively at ways of reducing energy consumption at their respective properties. Finally Mrs Phillips said the Respondent offered a range of support to tenants who were experiencing difficulties in meeting their bills which included the setting up a new £3 million customer support fund.
28. Following the case management hearing the Tribunal published its reasons on 27 July 2023 and stated the following:

“The Tribunal's provisional view is that the Application under section 27A of the 1985 Act has no reasonable prospect of success. The

Tribunal, however, permits the Applicants to supply a copy of the Rule relied on to the Tribunal and to the Respondent by 10 August 2023. If the Rule is provided Judge Tildesley would then consider whether it has a bearing on his provisional view and he would either issue directions for a full hearing or strike out the Application. If the Rule was not supplied by 10 August 2023, the Application will be struck out without further notice.

Applicants' Further Representations

29. Mr Hacking complied with the direction and sent a black folder with the following documents:
 - A statement signed by David J Hacking, Shirley Claringbould and Peter Bacon.
 - Six signed tenancy agreements
 - Spectrum Western Challenge Residents Handbook Dated 2011 Version 10.
 - Western Challenge Residents Handbook Undated
 - Letter dated 29 July 2023 from Shirley Claringbould
 - Response to Complaint 18 dated May 2023 Service Charge Increases at Walton Court signed by Mrs Ellie Phillips
 - Letters from Mrs H Bonner (Flat 12), Karen Terrell (Flat 18), Valerie J Gradicge (Flat 5), Ruth Peters (Flat 10), and Norma Lee (Flat 2).
30. The Tribunal is uncertain whether the documents have been served on the Respondent. The Tribunal took the view that the Respondent would not be prejudiced if the Tribunal proceeded to deal with the Applicant's representations because the Tribunal's decision would be restricted to striking out the application or issuing further directions.
31. Mr Hacking asserted that the substantial increases in the gas and electricity charges were due to the Respondents 1) failing to discharge their duties as landlord under their own terms and conditions of Tenancy; 2) failing to take accurate readings in a timely manner in response to the energy crises; 3) failing to discuss and inform residents of the implications of previous underpayments based on estimates and 4) failing to utilise the option of an interim cost review which would have alleviated the impact of significant increases in utility payments at the next annual review as it would have been obvious to any diligent landlord that there was likely to be a significant underpayment.
32. Mr Hacking disagreed with Mrs Phillips' view that Sovereign could not take the option of mid-term review. Mr Hacking was adamant that the terms and conditions of the agreements allowed this.
33. Mr Hacking referred to the letter of Mrs Claringbould who stated that she had been informed by a contact in Respondents Accounts Department that actual readings of the electricity and gas meters had only be taken every two years. Mr Hacking also referred to Mrs Phillips' response to his complaint in which she apologised for Respondent not taking at least one electricity reading during the period April 2022 to March 2023.
34. The resident's letters explained the severe hardship caused to them by the sudden hike in the utility charges, and their intense disappointment

with the manner in which the Respondent had handled the situation. One resident was very distressed by the receipt of a demand for rent arrears which had warnings about further action that could be taken against her.

35. Mrs Claringbould expressed her frustration of not being able to speak at the case management hearing because of technical problems with the video connection. Mrs Claringbould felt that the hearing appeared a little loaded in Sovereign's favour.

The Tribunal's Response

36. The Tribunal's powers are restricted to deciding whether the estimated service charge for 2023/24 in respect of utility costs is no greater amount than is reasonable.
37. The Tribunal has no authority over how the Respondent manages its responsibilities to its tenants. The Housing Ombudsman Service is the appropriate forum for dealing with tenant's complaints about the quality of services provided by a social landlord. Before a tenant can complain to the Ombudsman s/he must go through the internal complaints procedure. The Tribunal understands that Mr Hacking has already completed the stage 1 of the internal complaints procedure.
38. After hearing from the parties at the case management hearing the Tribunal found that that the estimated service charge is calculated by multiplying the unit rates for gas and electricity as procured through the competitive tendering exercise by the consumption as measured by the meters for the 12 month period ending 1 November 2022. The Tribunal formed the provisional view that the charges for private utilities are reasonable and that the Applicants had no effective challenge against the reasonableness of the costs as understood by the legislation.
39. Mr Hacking insisted at the case management hearing that the Respondent had not followed the Rules which accompanied the tenancy agreements which had been granted by the Western Challenge Housing Association (WCHA), the previous landlord.
40. The Applicants were relying on the Rule to substantiate their case that the Respondent should have anticipated the increase in energy costs and spread the costs over two years starting in the period April 2022 to March 2023. The Applicants did not dispute their liability to pay the charges or it would seem the actual amount of the costs. What they were saying is that the impact of the increase should have been managed better by the Respondent.
41. Mr Hacking supplied a copy of the Rule which is relied upon by the Applicants. The Rule is an extract from the WCHA Residents'

Handbooks supplied with his submissions. The Rule explains how the Service Charge is calculated and is set out below in full.

Service Charges

In many cases it is likely that in addition to the basic rent a charge for services will be payable. This charge will be added to the basic rent which will form the total amount of rent payable and will account for any services provided by the Association including services such as gardening, caretaking, lighting, window cleaning etc. In all cases these charges will only apply where the service is received. **Details of any services provided to you by the Association will be set out in a schedule and attached to your tenancy agreement at the time of signing.** (the Tribunal's highlighting)

Service charges for both secure and assured tenants will be based on the costs which arose during the financial year prior to the service charge review date. In instances where there has been no service charge history i.e. in the first year of a new development; costs will be estimated and amended accordingly on the 12 month review date.

In instances where a service charge overpayment has been made, the amount overpaid will be credited to the service charge account accordingly. Where there has been an underpayment, the amount underpaid will be added to the service charge payable for the following year.

Service charge alterations

The Association may change the service charge at any time upon written notification to those tenants concerned. When it is necessary to change the service charge, all applicable tenants will be consulted at least one month in advance to the change. In all cases the Association will not change the amount payable more than once in any period of 26 weeks.

In cases where the Association believes that a service is no longer required or where it becomes impossible to provide a service, that service will stop and the applicable amount deducted from the tenants service charge accordingly. The Association may also decide to provide extra services where it is believed it is necessary to do so.

Where a change has been made, access to any extra service charge information will be available from the Association, as long as it is requested within six months after notice of the service charge change being made.

42. The Rule differs from the Assured Tenancy Conditions for WCHA exhibited by the Respondent in its document bundle for the case management hearing which read as follows:

1.3 The service charge

We will provide the services set out in the attached schedule for which you will pay the service charge. The cost of providing services will be divided on a fair and reasonable basis.

We will work out the cost of services using the costs which arose during the 12 months up to the service charge review date. If in the first year of a new development the service charge review date is less than 12 months, we will use estimated costs. We may also consider:

- any reasonably expected costs;
- any increase in costs we know about; and
- costs for future spending, such as renewing the equipment listed in the schedule of service charges attached to this tenancy agreement.

We may also consider any costs we know about or expected cost for the next 12 months as long as those costs are reasonable.

If the actual cost or services provided in any one year is higher or lower than the income received in services for that year, the following will apply.

If you have not paid enough service charges, the amount needed will be shared out between the tenants and added to the service charge payable for the following year.

If we agree that you have paid too much for the service charge, any extra amount will be credited to your service charge account.

1.4 Changing the service charge

The service charge can vary under the conditions of the Landlord and Tenant Act 1985 (as amended). We may change the service charge and we will consult all tenants who receive those services before we make any alterations. We agree to give you access to any extra service charge information as long as you ask us within six months after you have received notice that there is to be a change to the service charge.

We will give you at least a month's notice of any change in the amount of rent you must pay. We will not change the amount of rent you must pay more than once in any period of 26 weeks.

We may stop providing any service if we reasonably believe it is no longer possible to provide that service. We may also decide to provide extra services if we think it is worthwhile to do so.

43. The Applicant's further submissions raise four issues which fall within the Tribunal's jurisdiction:

- a) Whether the “Rule” as set out in paragraph 37 above has been replaced by the Terms and Conditions for Tenancies Granted by the previous Landlord produced by the Respondent and replicated at paragraph 38?
 - b) If the “Rule” remains in force: (1) what is the effect of the requirement that Service charges for both secure and assured tenants will be based on the **costs which arose during the financial year prior to the service charge review date**, and (2) which tenancies at Walton Court are affected by this Rule?
 - c) Is phasing of the costs for the utility charges permitted under the terms of the tenancy agreements?
 - d) What is the effect if any on the question of reasonableness of the estimated service charge for 2023/24 by the use of estimated costs of electricity rather actual costs. The Tribunal notes that the Respondent took meter readings in November 2022 in order to calculate the gas consumption (see paragraph 18 above).
44. The Tribunal emphasises that questions about how the Respondent managed the relationship with the tenants at Walton Court should be addressed through the complaints procedures.
45. Judge Tildesley directed the Respondent to address the matters identified in paragraphs 43(a) to (d) and to prepare a hearing bundle.
46. Following my directions of 18 October 2023 in a bundle entitled EP4 were further copies of six agreements together with a copy of a lettings checklist signed by Mr Hacking at the commencement of his tenancy. Also submitted was a witness statement from Ellie Phillips of the Respondent to which Mr Hacking replied on behalf of the Applicants.
47. Ms Phillips confirmed that it was not the Respondent’s practice to save a paper copy of the accompanying terms and condition for every tenancy, only one version of assured tenancy terms and conditions were in place at any one time, it was not deemed a requirement to keep an individual paper copy for every tenancy held.
48. In answer to the Tribunal’s questions referred to at paragraph 43 above Ms Phillips said that The Terms and Conditions for Tenancies (para 42 above) would have been provided with the tenancy agreement and are the overriding legal rights and obligations relating to tenancies. They have not been replaced by the “Rule” referred to in para 41 above which is not a legal term of the tenancy. In support Ms Phillips said that;

5.1 The ‘Rule’ is taken from a Resident’s Handbook, provided by the landlord in place at that time. The handbook is not intended

as a mechanism to vary tenancy terms, or to create legal rights, obligations or rules.

5.2 The intention of the Resident's Handbook is provided on page 1 of the handbook. It says it '...has been produced to give you information about the policies and services provided...' as an '...up-to-date guide....' It goes on to say that the format allows residents to '...insert additional and updated information sheets which can be found on our Website..' It hopes residents will '...find this handbook a useful and practical part of our services..' The handbook was generally provided to new residents at the point they moved into their home.

5.3 At no point in the handbook does it say that the contents replace existing legal terms and conditions.

5.4 On page 13 of the handbook, in the section titled 'Customer Service Charter' there is a disclaimer that states, 'Legal obligations are not created by this document.'

5.5 The handbook appears to be based on operating policies, procedures, processes and service standards that were in place at the time it was produced. It is inferred through the information on page 1 that the information will become outdated in time and would need to be updated. Much of the information contained within the handbook is out of date and does not accurately describe services provided now or how to access them.

5.6 For these reasons I believe it is correct to use the terms of the tenancy agreement as the legal basis for how service charges are applied, and not the information contained within the handbook.

Further to this, as shown in paragraph 5.2 above, the handbook refers to '...information about the policies and services....' If it is understood that the handbook recognises that such information may change in the future, then it is reasonable to look at current policies and services

49. It is not possible to base the estimated costs on the actual costs for the preceding financial year as it would not be available at the time the budget needed to be prepared. It follows that on this basis the budget for 2024-25 being based on the preceding year's actual costs would be excessive given that fuel prices are falling.
50. In answer to the Tribunal's question the tenancies which commenced in or prior to 2011 are 1,2,4,5,6,7,9,10,11,14,17,18,21 and 22.
51. In both the tenancy terms and conditions and handbook 2011 it says that we "may change the service charge" but does not provide a mechanism to do so. Reference to not changing the amount of rent more than once every 26 weeks it is considered this refers to gross rent including service charge.
52. "Although it may be permissible to change the charges once every 26 weeks, due to the manner in which variable service charges work and how the balancing charge are applied, I do not believe that any phasing

in of the utility charges would have had the effect on the estimate charges for 2023-24 that the residents in Walton Court believe it would have. The earliest charges could have increased was October 2022 (to allow for 26 weeks after the service charge change in April 2022). Any surplus paid in 2022-23 would then carry forward to the estimated service charges for 2024-25 as a service charge credit adjustment. The estimated charges for 2023-24 would have been the same.

Further to this I do not believe that we could have evidenced that charging additional costs for utilities in 2022-23, in the effort to reduce anticipated increased charges in 2023-24, was reasonable. My understanding of reasonableness of service charges is that it must be based on costs that have either been incurred or are reasonably expected to be incurred in that service charge period. This would not appear to allow inflating costs in one service charge period purposefully to reduce costs in future service charge periods.”

53. I believe it is reasonable to use information provided by utility companies on estimated consumption, for estimating service charges. My belief is based on the following:
- 23.1. Whilst our aim is to read meters (where access is possible) as a minimum of once per year, there is no requirement on Sovereign to do this annually.
 - 23.2. There is a requirement on utility companies to ensure an accurate meter reading is taken once every two years. In instances where this does not happen, the supplier is prevented from back-billing for consumption that occurred more than 12 months previously.
 - 23.3. It would seem unreasonable to have a greater expectation for Sovereign to read meters than there is on utility companies. However, we have changed our processes this year, in order to improve the taking and submitting of meter readings, to improve the estimation of service charges and to ensure invoices received are correct. However, this will take some time to be fully implemented and to be receiving the benefits from this.
 - 23.4. One of the core purposes of utility companies is to bill for energy used. Estimated readings are based on current and historical data available to the companies regarding consumption at a particular scheme, and calculated using complex and well-developed algorithms. This would appear to be a sound basis for the utility companies to estimate consumption, and therefore for service charges to be estimated on in the absence of actual consumption information.
 - 23.5. Further to this, due to the service charge being variable, the year-end actual reconciliation (along with the protection regarding utility companies not being able to back-bill) will allow for any under or over estimation of usage and the associated costs to be passed on.

54. The Respondent says that following receipt of the revised invoice which includes the additional units previously underestimated £3,116.87 will be removed from the 2023-2024 year-end actual charge.
55. In a reply from the Applicants it is repeated that the rules and regulations dated 2011 remained in force and that Ms Phillips' assumption that the word "rent" included the Service Charge in the 1998 rule is ambiguous.
56. A paper copy should be kept for each tenancy and;
- (a) They were wrong not to take at least one meter reading in the period 2022/2023 which would have made them aware of the huge costs that would be incurred by all tenants in Sovereign's estimated charges for the period 2023/2024 and by doing so neglected the rule in question of increasing the service charges in 2022 so that it would have gone some ways to alleviate the monetary pressures on the elderly residents in Walton Court.
 - (b) By Sovereigns complete U-turn within its finance department to award a back dated £40 per week credit on our total rent charges as from 3rd April 2023 to the end of March 2024 and to give me and other residents the opportunity to have a total of in excess of £1000 to be credited in our bank accounts.
 - (c) As regards to myself I have never ever been in that position since residing at Walton Court in 13years, any credits or debits have always been dealt with at the end of the financial year.
By doing this now shows the contradiction in all of Sovereign's correspondence that we have received throughout this tribunal period as to W to the question of using those 2011 legal rules to meet any criteria.
 - (d) We also believe that had we not gone through all the procedures, coupled with the time consumed as regards to this Tribunal, The Sovereign Housing Association would never ever have changed their financial procedures on calculation as they have done so now, which now makes a mockery of this tribunal.

On recollection, if the Sovereign finance department had changed their procedures in 2022 as they have now done so, to counteract the astronomical energy increases and used that 2011 rule in question, that legally allowed them to raise the service charges by a reasonable amount, the amount of back dated credit as outlined in this correspondence would have been greater than it is now for the 2023/2024 period couple with an even lower service charge.

Discussion and Determination

57. The Tribunal is surprised by the sparsity of documentation in respect of the tenancies in this case. Where much of the substance of the terms and conditions relating to the tenancy are left to supplementary documents it is difficult to understand why copies of the documents relevant to the individual tenancy agreements were not kept as a permanent record thus avoiding the uncertainty that has rendered this application necessary.

58. To assist in making its determination the Tribunal has had sight of the following;
- A typical pre 2020 agreement [154] comprising 2 pages and with reference to the separate Support Agreement, a net rent, Service charge and Total together with a note that “These amounts can change” There is nothing further in respect of what services are provided or how charges are to be levied.
 - A blank Assured Tenancy Agreement with the date October 2020 in the bottom right hand corner [67] paragraph 3.12 of which under the heading Service Charges refers to “a sum comprising the expenditure which we estimate we are likely to incur in that year in providing the Services, details of which are set out in an appendix to this agreement” Payments to be made are categorized as; Net Rent, Service Charge, Support Charge, Heating Charges, Water Charges and Other Charges.
 - A Support Agreement [161] which appears irrelevant to these proceedings.
 - A Sheltered Housing Resident’s Handbook last updated March 2004[174] page 17 of which contains the service charge wording set out in paragraph 41 above.
 - Spectrum Western Challenge Residents Handbook Dated 2011 Version 10 [178] page 30 of which also contains the service charge wording set out in paragraph 41 above.
 - Western Challenge Housing Association Limited Assured tenancy conditions version 10/98 [51] Paragraph 1.3 of which contains the service charge wording set out in paragraph 42 above.
 - A checklist signed by Mr Hacking completed at the commencement of his tenancy in which he acknowledges receipt of a Tenants Charter, Tenancy Conditions and Tenancy Handbook.
59. To summarise therefore; the pre 2020 tenancy agreement permits changes in service charges but is silent on what services are to be provided and how the costs are to be estimated and apportioned. Reference is made to a schedule but none has been provided. There are differences between the “Handbook” and Assured Tenancy conditions in the manner in which service charges are to be estimated. The Applicants contend that only the Handbook has been received and its contents should remain paramount.
60. Evidence contrary to that contention is the checklist signed by Mr Hacking which acknowledges receipt of both Tenancy Conditions and Tenancy handbook which if received were likely to be those current at the time copies of which are at pages 51 and 78 referred to above.
61. The difficulty in accepting that both documents were received is that the service charge provisions are not compatible with each other. In the former the service charges are fixed in that there is no balancing charge

at the end of the year whereas in the latter the service is variable there being provisions to credit or recover any over/under payments.

62. **On the balance of probabilities therefore the Tribunal determines that the service charge terms are those contained in the 2011 Handbook.**

63. Looking now at how these service charge terms operate I remind myself of the wording;

“Service charges for both secure and assured tenants will be based on the costs which arose during the financial year prior to the service charge review date. In instances where there has been no service charge history i.e. in the first year of a new development; costs will be estimated and amended accordingly on the 12 month review date.”

64. The Applicants contend that this restricts the estimate for the coming year to be limited by the actual costs incurred in the preceding year. There is a practical difficulty however in construing this in such a restrictive manner and I accept the Respondent’s assertion as contained in paragraph 49 that such a mechanism would be inoperable. Firstly the necessary information on the previous year’s costs would not be available in time and perhaps more significantly in these current circumstances where it is likely that the actual costs for 2023/24 are likely to be disproportionately high the estimate for 2024/25 would necessarily be similarly inflated.

65. The wording is that the costs will be “based on” rather than anything more prescriptive and as such the Tribunal determines that it is permissible to also include an estimate of the likely costs for the forthcoming year.

66. The Respondents have explained that the estimate was based on information received from the suppliers and as such the Tribunal is prepared to accept that it is reasonable to include such an amount in the budget for 2023/24 subject to the reduction of £3,116.87 referred to in paragraph 54 above.

67. **The Tribunal determines that the budget for 2023/24 is as set out in paragraph 19 of this decision subject to a reduction of £3,116.87.**

Costs

68. The Respondent says that there have been no proceedings costs that they wish to pass on to residents as part of their service charge.

69. The Applicants made their application to the Tribunal at an early stage before sufficient opportunity had been given to them to reach

agreement. As such the Respondent resists reimbursing the Tribunal fee.

70. **The Applicants made no comment on costs and in view of the Respondent's undertaking that there is nothing to pass on the Tribunal makes no Order either for S.20 costs or reimbursement of Tribunal fees.**

D Banfield FRICS
13 December 2023

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.