FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00/BG/LSC/2023/0100**
Property	:	**Endeavour House and Mayflower House, 47 Cuba Street London E14**
Applicant	:	**Various tenants of Mayflower House and Endeavour House**
Representative	:	**Mr Robert Bowker**
Respondent	:	**Notting Hill Genesis Housing Association**
Representative	:	**Ms Tina Conlan**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge O'Brien, Mr Dowty MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**19 April 2024**

DECISION

Decision

(i) Permission is granted to add Rahina Bibi (Flat 14 Endeavour House), Suheli Begum (Flat 16 Endeavour House), Shamsun Nehar (Flat 52 Endeavour

House) and Siatra Begum (Flat 2 Mayflower House) as applicants in the place of the previously named applicants for those properties.

(ii) Permission is not granted to add Sofina Khatun (Flat 31 Mayflower House) or Rahem Hoque (Flat 43 Endeavour House) as applicants.

(iii) The sums variously described as managing agent fees, third party recoverable service charges and/or s106 service charges are not recoverable as a service charge under the terms of any of the tenancies relevant to this application.

(iv) The service charges claimed from all applicants in respect of cleaning costs for the years 2016/2017 and 2017/2018 were payable to Genesis Housing Association, and were reasonably incurred and reasonable in amount.

(v) The service charges claimed from all applicants in respect of cleaning costs for the years 2018/2019 to 2022/2023 are payable to the respondent. The sums were reasonably incurred and are reasonable in amount.

(vi) The service charges claimed from all applicants as management costs in relation to the landlord's own costs of management for the years 2016/2017 and 2017/2018 were payable to Genesis Housing Association and were reasonably incurred and reasonable in amount.

(vii) The service charges claimed from all applicants as management costs in relation to the landlord's own costs of management for the years 2018/2019 to 2022/2023 are payable to the respondent. The sums were reasonably incurred and are reasonable in amount.

(viii) The service charges claimed in respect of lift maintenance and servicing are not recoverable in relation to the tenancies which include a print-out service charge list; namely Flats 14, 56, 62 Endeavour House and Flats 2, 4, 6, 9, 11, 12, 14, 16, 19, 21 24, and 33 Mayflower House.

(ix) The service charges claimed from the remaining applicants in relation to lift maintenance and servicing were payable to Genesis Housing Association for the years 2016-2017 and 2017-2018. The sums sought were reasonably incurred and were reasonable in amount.

(x) The service charges claimed from the remaining applicants for lift maintenance and servicing are payable to the respondent for the years 2018/2019 to 2022/2023. The sums sought were reasonably incurred and were reasonable in amount.

(xi) Gardening fees are not recoverable as a service charge under the terms of any of the tenancies relevant to this application.

(xii) The tribunal has no jurisdiction in relation to the disputed heating/hot water charges.

The Application

1. The 32 applicants seek a determination pursuant to s27A of the Landlord and Tenant Act ("LTA 1985") as to the amount of service charges payable in respect of the service charge years 2016/2017 to 2022/2023.

The Hearing

2. The application was initially listed for a one-day final hearing on 9th November 2023. The applicants were represented by counsel Mr Robert Bowker and the respondent was represented counsel Ms Tina Conlan. On the morning of the hearing the tribunal acceded to the respondent's application for an adjournment for the following reasons;

    (i) The bundle did not contain all available versions of the relevant tenancy agreements;
    (ii) The bundle did not contain all demands or relevant service charge accounts. Both sides contended that the other was at fault for this omission;
    (iii) The applicants had, with the permission of the tribunal, amended their statement of case less than 3 weeks before the final hearing. However the amended statement of case asserted for the first time that no service charges of any kind were recoverable under the applicants' leases. The respondent submitted that it had not had sufficient time to deal with this new assertion;
    (iv) A one-day time estimate was not sufficient to deal with the number of issues raised in the application.

3. The tribunal re-listed the application with a revised time estimate of 2 days to include a site visit. At the adjourned hearing, held on 19-20 March 2024, the applicants were again represented by Mr Bowker and the respondent was again represented by Ms Conlan. Immediately prior to the hearing the tribunal

conducted a site visit to both Endeavour House and Mayflower House in the presence of both counsel, a number of the applicants and a number of employees of the respondent. The tribunal had the opportunity to inspect the interior common parts, including the basements, of both blocks. Additionally we were shown the interior, and in particular the heating system, in Flat 35 Endeavour House. We were shown the roof terrace of Endeavour House and the bicycle storage area. It was evident, and common ground, that the tenants of Endeavour House and Mayflower House have no access to the roof terraces. Additionally, the applicants present at the site visit asserted that they were not permitted to use the bike storage area in Endeavour House. The respondent's employees disagreed. It became clear in the course of the visit that all applicants had the benefit of communal heating and hot water in their properties, and that the assertion contained in the application that the flats had individual boilers was not correct, although the tribunal accepts that the apparatus in Flat 35 for the delivery of heating and hot water does resemble a boiler.

4. In the course of the hearing we heard oral evidence from Mr Julian Cleaver of 35 Endeavour House on behalf of the applicants and from Mr Christopher Milsom, who is the head of rents and service charges for the respondent.

The Background

5. The applicants are all assured tenants of the respondent who is a registered provider of social housing. All the properties which form the subject matter of this dispute are flats located in either Endeavour House or Mayflower House 47 Cuba Street London E14 8GZ. A list of applicants is included as Appendix 1 to this decision. Both blocks form part of a larger Landmark Estate in Canary Wharf, London. The Landmark Estate is a mixed tenure development containing privately owned residential properties, commercial properties, residential properties leased under a shared ownership scheme and residential flats let under periodic assured tenancies. The freehold of both Endeavour House and Mayflower House is currently held by Adriatic Land 5 Limited. This company holds the freehold for the entire Landmark Estate. The respondent currently holds the leasehold interest of both Endeavour House and Mayflower House and has done so since 4 May 2018. The tribunal understands that all properties in these specific blocks are let to its tenants pursuant to assured tenancies.

6. The leasehold interest in both Mayflower House and Endeavour House was previously held by Paddington Churches Housing Association Limited pursuant to a headlease dated 6th July 2009. A copy of the headlease relating to Endeavour House is included in the bundle at page 509. At some point after the commencement of the headlease, but in any event before 2016, Paddington Churches Housing Association merged with Genesis Housing Association. That

housing association in turn merged with Notting Hill Housing Association in or about 2018. The respondent to this application is the result of the amalgamation of a number of housing associations. The tribunal has only this very generalised description of the no doubt complex legal process by which Paddington Churches Housing Association's interest in Mayflower House and Endeavour House came to be owned by the current respondent.

The Tenancy Agreements

7. All applicants hold one of at least 5 different versions of an assured tenancy agreement, all of which require the tenant to pay a variable service charge in respect of services provided by the landlord, save that in relation Flats 26 and 61 Endeavour House no copy of the original tenancy agreement can be found. The respondent has prepared a bundle containing a copy of every tenancy agreement that it holds that is of relevance to this application.

8. It is a common feature of the available tenancy agreements that they require the tenant to pay a variable service charge. The initial service charge payable is handwritten on the front of most of the available tenancy agreements. The wording of the relevant clauses varies, but not in any way that is material to this application. It is also a common feature of the service charge clauses that they all refer to an appended list of services in respect of which a service charge is payable.

9. It is common ground that a number of the available tenancy agreements, namely for Flats 1, 19, 27, 28, 35, 37, 47 Endeavour House and Flat 1, 17, 20 Mayflower House, either have a blank schedule or have no schedule at all appended to them. The available tenancy agreements for Flats 16, 17, 30 and 60 Endeavour House and Flat 18 Mayflower House have attached a screenshot of a computer screen showing a list of 13 items on a tab entitled 'Service Charges'. The remaining tenancy agreements of relevance to this application include a print-out list of 16 items entitled 'Service Charge Schedule'.

The charges in dispute.

10. The applicants initially sought to challenge 8 specific items on their service charge bills for the years 2016-2023. In the amended statement of case served on 27 October 2023 they additionally asserted that no service charges of any kind were payable under any of the leases. In the Scott schedule served in accordance with the directions of 9 November 2023 the applicants indicated that they were challenging service charges levied for all management fees, heating charges, concierge and barrier costs, window cleaning costs, waking watch costs, gardening costs, lift servicing and internal cleaning. In its response the respondent indicated that the applicants were not being charged for a waking watch and that the service

charge for window cleaning in the 2022/2023 bills had been included in error and would be recredited. It contended, correctly, that no separate charge was levied for the concierge or barrier maintenance but that this formed part of the third party management charge. The applicants did not set out the amount of costs in dispute in their schedule for any year other than 2016-2017. They did not state how much they would be willing to pay for each item for any year.

11. The bundle does not therefore contain any summary of the costs in dispute for the years 2017/2018 -2022/2023. At the request of the tribunal both counsel prepared a schedule of total costs for each block which are recharged to residents by way of service charges. The schedule was forwarded to the tribunal on the second day of the hearing and the tribunal thanks both counsel for preparing it so quickly. The block costs for the year 2017-2018 are not available or agreed for either block and counsel for the respondent suggests, pragmatically, that we proceed on the assumption that they were the same as the costs for 2016-2017. We should record that the figures for 2021-2022 were not formally agreed as counsel for the applicants had not seen the final accounts however they were not challenged and we have accepted them as accurate for the purposes of this application. The figures for 2022-2023 are estimated. The schedule does not include the costs charged to individual residents for heating or hot water as the respondent does not regard these costs as service charges. It does not itself directly supply either heating or hot water to the flats in either block.

12. In the course of proceedings the charges in dispute for the relevant years have been narrowed to;
    (i) S.106 fees, also described as Third-Party Management fees (including concierge and barrier costs);
    (ii) The Respondent's own management fees;
    (iii) Gardening;
    (iv) Internal cleaning;
    (v) Lift maintenance;
    (vi) Planned Lift servicing
    (vii) Charges for the communal heating scheme management paid to Communal Energy Partners.

Mayflower House- Disputed Costs

Item	2017	2018	2019	2020	2021	2022	2023 (est.)
S.106 fee	£34,406.30	£34,406.30	£23,626.19	£79,453.09	£41,742.63	£76,111.17	£81,877.60
Management Fees	£1270	£1270	£1709.67	£1798.65	£1627.99	££1305	£1467
Gardening	0	0	£2,380.40	£3,426.40	£2,596.98	£2,596.80	£2430.96

Lift Maintenance	£143.30	£1403.30	£792	1235	£1968.16	£0	0
Lift servicing	£1406.30	£1406.30	£10,175		£5818	£1208	£2700
Cleaning	£13,864.92	£13,864.92	£10,967.55	£27,065.55	£15,246.62	£14,592	£15,200

Endeavour House- Disputed Costs

	2017	2018	2019	2020	2021	2022	2023 (est)
S.106 fees	£42,752.47	£42,752.47	£105,620.51	£58,201	£53,232.82	£98,921.10	£97,377.82
Management fees	£1382	£1382	£1791.62	£2354.26	£2038.70	£1764.92	£2,258
Gardening	0	0	£3575.84	£4884	£3663.12	£3663.12	£3479.92
Lift maintenance	£1,196.96	£1,196.96	£884.16	0	0	£1858.20	£2,700
Lift servicing	£1,406	£4,06	0	£1,235.14	£3562.52		
Cleaning	£18,614.35	£18,614	£18097.76	£39,492.07	£23,553.90	£24,277.20	£26,108

13. The above schedules are based on the figures contained schedule of costs supplied to the tribunal by counsel and do not include item (vii). No figures are available for the total charges levied for scheme management by Communal Energy Partners for the years in question.

Preliminary Matters

14. In her skeleton argument Ms Conlan invited the tribunal to consider the following matters at the start of the hearing:
    (i) Whether the tribunal had jurisdiction to adjudicate on the service charges levied prior to the transfer of the leasehold interest in both blocks to the respondent in 2018;
    (ii) Whether the applicants had failed to comply with the direction for the filing of a detailed Scott schedule;
    (iii) Whether some of the named applicants were in fact tenants.

15. As regards the first point we asked counsel for the applicant to clarify whether it sought an adjudication in relation to service charges paid to the previous landlord. Mr Bowker confirmed that he did and requested that the matter be dealt with in final submissions. The applicants accepted that some of the named applicants were in fact the partners of the relevant tenants and requested permission to join the correct tenants. They also requested that 2 further applicants be joined to the application. The respondent did not object to the substitution of tenants in the place of their partners, but did object to the inclusion of 'new' tenants on the basis that it was unfairly prejudiced as it had not searched for their tenancy agreements which were not included in the bundle of tenancy agreements prepared for the hearing. The tribunal considered that the respondent would be unfairly prejudiced

by the addition of new tenants and that permission should not be granted to join them. Their tenancy agreements were not before the tribunal and the terms of the tenancy agreements were central to the dispute. No reason was given for the failure to seek permission to add the new tenants prior to the hearing. In the circumstances it would not be in keeping with the overriding objective to permit those new tenants to be added to the proceedings at this late stage.

16. The applicants demonstrably failed to comply with the direction that they serve a detailed schedule of costs in dispute in that they have not specified the amount of costs they dispute for the years 2017-2023 despite the fact that the respondent had supplied them with an estimated costs summary and actual costs summary for both blocks for each year. However this has been remedied by the schedule of annual costs supplied by counsel showing the block totals for each year in dispute. As the percentage contribution for each tenant varies, the tribunal has considered the total costs for each year for both blocks as set out in the above schedules.

The Tribunal's Jurisdiction to determine costs charged in the years 2016 to 2018

17. It appears from the documentation before the tribunal, and in particular the tenancy agreements, that the landlord for the years 2016/2017 and2017/2018 was Genesis Housing Association. The respondent submits that it did not become the landlord until April 2018, and that generally a transferee of a leasehold interest dos not 'inherit' its predecessor's liabilities for the purpose of any restitutionary claim. Ms Conlan referred us to paragraph 29.12 of *Service Charges and Management* (5th Ed). Mr Bowker submitted that irrespective of the availability of any restitutionary claim, the remedy of set-off would still be available to the tenants in respect of any reduction in the sums payable for those years.

18. The tribunal was initially concerned that it was being asked to determine an issue which is entirely academic. Any claim for restitution will now be statute-barred by virtue of s.5 of the Limitation Act 1981. Set-off will not be barred by operation of the Limitation Act but the remedy is not usually available for overpayments made to a previous landlord in relation to leases which came into existence after 1996 (*Service Charges and Management- Tanfield Chambers* (5th Ed) para 29-02). However the issue is not clear cut. The transfer of the interest was not an arm's length disposal but part of wider process by which 2 housing associations, Genesis Housing Association and Notting Hill Housing Association merged to form a new entity. We have no information as to what the terms of the transfer might have been and what arrangements might have been made in relation to pre-existing rights and liabilities of both parties to the merger. In response to questions put to

him by Mr Bowker, Mr Milsom stated that it was his understanding that the right to recover rent arrears owed to Genesis Housing at the time of the merger was transferred to the respondent. In the circumstances the question of set-off may not be academic. If the respondent also reserved the right to recover pre-merger arrears of service charges as well as rent it would fall under the definition of landlord set out in s.30 LTA 1985. The tribunal can in principal determine claims for set-off in straightforward cases however the availability of set-off for the years 2016-2018 in this case is not something that the Tribunal can determine on the information before it. The tribunal will proceed on the basis that the charges for the years in question were payable to Genesis Housing Association.

Third Party Service Charges / S.106 Recoverable Charges

19. By far the largest item in the service charge demands sent to the tenants is the charge that has been variously described as 'managing agent communal cost', 'managing agent cost', 'third party service charge-tenants' and 'third party service charge–leaseholders' in the demands sent to the tenants. It is described as 's.106 recoverable charge' in the annual accounts. For clarity the charge will be referred to as the s.106 charge in the remainder of this decision.

20. Mr Milsom describes the s.106 charge in the following terms in the document entitled "NHG statement – Description of Cost heading in Service Charge Schedules" which appears at page 262 of the bundle;

> *'NHG is not the owner of Mayflower and Endeavour Houses as such or the wider Landmark estate. The freeholder instructs their own managing agents who is (sic) currently Rendall & Ritter to provide some of the services received by the tenants (for a full list of services provided by Rendall and Ritter see Appendix 1) NHG is billed for the service charges from the managing agent for services provided. These costs for the services provided and are then passed on to residents where we are eligible to do so. We are bound by the terms of the headlease which sets out that the costs incurred in Rendall and Ritter in managing the estate can in turn be recharged to us and in certain circumstances passed on to you. We regularly query any discrepancies within the service charges and check that the costs being passed on to residents are reasonable. This particular heading is no longer in use for posting these kinds of external costs, because it gave the impression that only leaseholders are eligible for passing on managing agents costs. NHG reviews the third party managing agents invoices, and apportions the costs between leaseholders and renting tenants on the estate according to the apportionment provisions within the lease/tenancy agreement and with reference to what we are able to*

recharge. Not all costs incurred managing and maintaining the block/ estate are recovered from tenants. For example, NHG will pass costs onto leaseholders for costs we ourselves incur for insurance and repairs, but these will not be recharged to tenants.'

21. Mr Milsom has attached to his statement a breakdown of budgeted Rendall and Rittner costs for both Endeavour House and Mayflower House which the respondent is liable to pay for the year 2023-2024. The breakdown has a column marked 'recoverable' and Mr Milson confirmed in his evidence that this column shows which costs are, in the view of the respondent, recoverable from its tenants. Unfortunately no such breakdown of the s.106 charge has been supplied for the years which are under consideration. The budgeted Rendall and Rtitner costs in this breakdown include costs of maintenance and provision of services such as boiler repairs, CCTV maintenance and electricity supply to communal areas. It also includes a separate fee for management.

22. As set out above some of the tenancy agreements have no schedule or a blank schedule. Some agreements are missing. Some have attached the print-out list and some have the computer screenshot. The print-out list includes 'management fee' in addition to 'admin fee'. The screenshot list includes provision for a management fee (PSCMANFEE). This is the fee payable to NHG for their management costs. It appears that this is same charge as the 'admin fee 10%' on the printout list. There is a service charge on the screenshot list with the heading 'PSCTP' which Mr Milson says stands for Third Party Service Charges and relates to those Rendall and Rittner costs which the respondent is entitled to recover from its tenants. This is not clear from the face of the agreement. It is not possible to discern from any version of the screenshot appendix, or those leases to which it is attached, what 'PSCTP' stands for or what it includes.

23. Ms Conlan submits that this case is 'on all fours' with the decision of the Upper Tribunal in *Cardiff Community Housing Association Limited v Kahar [2016] UKUT 0279*. In that case Martin Roger QC, deputy president of the Upper Tribunal (Lands Chamber), determined an appeal in a case where the tenancy agreement provided a total amount be paid in respect of service charge. That was followed by a clause stating: "the association shall provide the following services in connection with the premises for which the tenants shall pay a service charge…". The space had been provided for a list of services to be inserted that had been left blank. It was held that the service charge provision was nonetheless effective. The absence of a list of services was not said to have created any practical difficulty as services have been costed, delivered and paid for since the commencement of the tenancy.

In any event the tenant could have request a list of services at any time. Any initial ambiguity had been filled by a clear course of dealings over the years (para 24).

24. The tribunal does not consider that this case is on all fours with *Kahar* in relation to the s.106 charge. The majority of agreements which we are considering *do* have a list of services attached. The print-out list includes 'management fee' however the s.106 fee being levied is not a management fee properly described. The s.106 fee is a proportion of the costs of all the services provided by Randall and Rittner in relation to the whole estate. The mere fact that it is a managing agent who is seeking to recover a cost does not make that cost a management fee. It may well be that part of the s.106 charges do indeed include management fees but it is not possible to discern what that might be from the documentation provided by the respondent for the years under consideration. The screenshot list reference to 'PSCTP' would be unintelligible to a reasonable reader unless that reader knew or could infer that it referred to the fees charged by the freeholder's managing agent. When interpreting a contractual provision, the court can only take account of facts or circumstances which existed at the time the contract was made which were known or reasonably available to both parties. Given that a contract is a bilateral arrangement involving both parties, the court cannot construe a contractual provision to take into account a fact or circumstance known only to one of them (see Arnold v Brittain [2015] UKSC 36; [2015] A.C. 1619 at para 21).

25. In *Kahar* the tenant had taken no issue with the recoverability of the service charges in her application, merely their reasonableness. The point was taken by the tribunal itself. In that case the service charges and the nature of the services were capable of being easily ascertained. Furthermore in that case they had been clearly and consistently set out in the demands that were sent to the tenant from the commencement of the tenancy. The tenant had the means of knowing what services were being provided by a simple inquiry had she wished to make one. The Upper Tribunal considered in those particular circumstances that the initial ambiguity caused by a complete lack of a list of service charges had been filled by the parties' course of dealings over the years.

26. There is no ambiguity in the print-out list. There is nothing on it which would be understood by the reasonable reader to include the s.106 charge as it is described above. While there is ambiguity as to what 'PSCTP' might mean in the screenshot list there is no consistency of dealing to fill it. The s.106 charge has appeared under several different headings in the service charge demands being sent out to the tenants. It is the tenant's case that this charge first appeared in their service charge demands in or about 2015 when Paddington Churches Housing Association merged with Genesis Housing Association, although the respondent does not

accept this. It is also the tenant's case that they have asked on numerous occasions for information on how this charge is calculated, and what it includes, without success.

27. There is no evidence of a consistent course of dealings between the parties from the commencement of each tenancy which would entitle the tribunal to infer that both parties must have agreed that the s.106 charge would form part of the recoverable services charges in the absence of a clear provision in any of the tenancy agreements that it would. Further the payablity of this charge has been at the front and centre of this application since it was issued.

28. The result is that the s106 charge is not recoverable under the terms of the any of the applicants' tenancies. This is the result for all versions of the tenancy agreements; those with a print-out list, those with a screenshot list, those with a blank list, those with no list at all and those tenancy agreements which have been lost.

29. Furthermore it is simply impossible to say whether the charges are reasonably incurred or reasonable in amount as we have no information as to what services the charge relates to for any of the years in question, nor any information as to what has been charged for any given service in any given year. While there is a burden on the applicants to raise at least a *primae facie* case, we consider that the size of the charges levied, and the significant annual variation in the annual cost, is sufficient to pass the burden back to the respondent to supply some evidence to show that the s.106 charges consisted of costs that were reasonably incurred and reasonable in amount, particularly as all of the relevant information is within their control. They have not met this burden.

Lift Maintenance and servicing

30. Only four of the tenancy agreements, those with a screenshot list of services, contain an express reference to lift maintenance. It is not included in the print-out list. The print-out list includes 'daily building fabric' and the respondent maintains that this could include the cost of maintaining the lifts. It does not appear to the tribunal that this phrase would be understood by the reasonable reader to include the maintenance and/or repair of items of plant/machinery such as a lift and would generally be understood to refer to the structure of the building and perhaps its decorative surfaces and floor coverings.

31. The tribunal considers that the case of *Kahar* cannot be of any assistance in cases where a list of service charges is attached to the tenancy but it omits the service in question. It was central to the Upper Tribunal decision that there was an 'ambiguity' which could be filled by consistent course of dealings between the

parties. If there is a list of service charges attached to the tenancy agreement which clearly does not include the charge in question, no ambiguity exists.

32. However in relation to those remaining tenancies which either cannot be found, or which contain a blank schedule or contain no schedule at all the tribunal accepts that there is both ambiguity as regards the terms of the lease and evidence of a consistent course of dealing between the parties. In this case every demand for service charges included a sum for either lift repair or lift maintenance . The sums was easily ascertainable and understandable.

33. The applicants accept that the charge was in principle reasonably incurred but assert that it should be reduced due to the frequency with which one or other of the two lifts in Endeavour House broke down, prior to their replacement in 2023. Mr Bowker suggested that the planned maintenance charge should be capped at £1250 per block but no alternative quotes have been provided by the tenants to challenge the figures claimed by the respondent which are supported by invoices. The respondent states that the applicants have not provided any cogent evidence of frequent breakdowns. It has previously accepted that there were periods when the lifts were not in use (see its letter dated 1 September 2023) but points out that lifts do in the normal course of events require repair.

34. We have no detailed evidence of how often one or other of the lifts in Endeavour House was out of service, just a generalised assertion. There is no evidence to suggest that the respondent was responsible for the frequency with which they broke down and it appears that the only way to remedy the issue permanently was to replace both lifts. We have no comparable evidence from the tenants. The sums claimed are relatively low and in the view of the tribunal were reasonably incurred and reasonable in amount.

Cleaning Fees and Management Fees

35. The cleaning costs and the landlord's own management costs are recoverable in respect of all tenancies concerned in this application. Cleaning is included as 'PSCCLEAN' on the screenshot list and 'Internal Cleaning' on the print-out list. The screenshot list refers contains an item entitled 'MANFEE', and 'Admin fee' is one of the items on the print-out list. Both versions are sufficiently clear to enable the respondent to recover both charges. As regards those tenancies which have no schedule at all, or have a blank schedule or which have been lost, the tribunal considers again that there has been a consistent course of dealings over the years which fills any ambiguity. Each service charge demand for the years in dispute has included a separate charge for internal cleaning and for management costs and there can have been no doubt in the mind of any tenant what those charges related to.

36. It did not appear to the tribunal that there was any particular issue with standards of cleanliness in either block. Further the sums claimed seemed reasonable. Mr Bowker submitted that a reasonable cost would be £50 per day, and invited the Tribunal to consider how much would be charged by a cleaner on the national minimum wage for 5 hours per day. We do not agree. In our view it was reasonable for the landlord to engage a third party, in this case Mears, in order to ensure that the blocks were being cleaned consistently and by professional, and presumably vetted, staff. Apparently in the alternative, Mr Bowker also suggested that, by reference to the figures charged in the various years in dispute and the variations in those amounts, a maximum yearly figure of £18,000 per annum in total for Endeavour House and £15,000 per annum in total for Mayflower House might be appropriate. However, the sums charged do not appear to the tribunal to be unreasonable and the applicants have not provided any alternative quotation to support either contention. We were initially concerned by the spike in cleaning costs in 2020 and 2021 however it was not unusual to see cleaning costs for public or communal areas to substantially increase during the COVID 19 pandemic due to the need for increased sanitation.

37. The applicants submit that the sums recoverable as a management fee should be reduced due to the poor standard of management. We are not satisfied that the applicants have established that the standard of management was so poor as to merit a reduction in the sums claimed. The sums claimed are modest given the number of properties in each block. The sums claimed were reasonably incurred and reasonable in amount.

Gardening

38. Neither version of the list of services attached to the tenancy agreements includes gardening as a service in respect of which a service charge is payable. The tribunal does not consider that this omission can be filled in in relation to any tenancy by reference to a consistent course of dealing as this charge only appeared on the service charge demands sent to the tenants from 2020 onwards. In addition , as explained above, a consistent course of dealing will only assist a landlord where there is ambiguity, and in those cases with a list of recoverable services, no such ambiguity exists.

39. In any event the tribunal does not consider that any charge was reasonably incurred given that none of the tenants in either block had access to the roof gardens for the years in dispute.

Heating/Hot water

40. The heating and hot water supply to all flats is via a communal system which serves not just Mayflower House and Endeavour House but the entire Landmark Estate. The respondent does not run or maintain the communal heating system; it is run by Rendall and Ritter on behalf of the freeholder. Mr Milsom explained both in his statement and in his evidence that a company called Communal Energy Partners bills the respondent's tenants on behalf of the respondent and also bills the respondent on behalf of the freeholder. He was not clear if any of the money collected by CEP from the respondent's tenants is paid to the respondent or if it is paid directly to the freeholder. A number of bills from CEP appear in the bundle and they appear to be based on either estimate or actual meter readings presumably based on individual usage.

41. The applicants' case in relation to heating and hot water charges has changed significantly over the course of these proceedings. At first the applicants contended that as there was no provision in their leases for payment for the heating and hot water charges, they were not liable to pay for the energy they used. In the alternative they contended that the sums paid for their individual usage was too high or that they were being double charged for non-existent communal heating and for the costs of running their own individual boilers. However in his closing submissions Mr Bowker confirmed that his clients only intended to take issue with a charge which appears on the CEP bills sent to each tenant as 'Scheme Management- Genesis HA standard'.

42. We are not satisfied that the applicants have established that this is service charge within the meaning of s.18 of the LTA 1985. It is not clear that this is a charge payable in respect of a cost incurred by the respondent or by the head lessee. It appears to be a charge levied by CEP and we have no evidence showing that it has being levied on behalf of either the respondent or the superior landlord and so cannot conclude that it relates to a relevant cost or that it varied according to a relevant cost. Consequently the tribunal has no jurisdiction to determine it.

Costs

43. The tenants indicated in their application that they sought orders under s20C LTA 1985 and under s5A of Schedule 11 to the CLRA 2002 however in the course of submissions the respondent indicated through counsel that it would not seek to recover any of its costs of these proceedings through either a service charge demand or an administration charge. Consequently counsel for the applicants indicated that no determination was necessary.

Name : Judge N O'Brien Date 19 April 2024

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).

Appendix 1

LIST OF APPLICANTS

Endeavour House		
1.	Helal Uddin	Flat 1

2.	Mohammed Rahman	Flat 9
3.	Rahena Bibi	Flat 14
4.	Suheli Begum	Flat 16
5.	Jasmin Begum	Flat 17
6.	Mohammed Ilyas	Flat 19
7.	Shaifur Rahman	Flat 26
8.	Amina Ibrahim	Flat 27
9.	Muhammad Harun Miah	Flat 28
10.	Khadija Mezzi	Flat 30
11.	Julian Cleaver	Flat 35
12.	Ayan Hussien	Flat 37
13.	Shamsun Nehar	Flat 52
14.	Abdul Basith	Flat 53
15.	Fathama Begum	Flat 56
16.	Noora Jama	Flat 60
17.	Fatima Bencheikh	Flat 61
18.	Rui Diogo	Flat 62
Mayflower House		
19.	Nalone Diakiese	Flat 1
20.	Sitara Begum	Flat 2
21.	Abdul Motin	Flat 4
22.	Hafida Jama	Flat 6
23.	Nurra Mohammed	Flat 9
24.	Moshaid Khan	Flat 12

25.	Nicola Hewlett-Golding	Flat 14
26.	Tota Miah	Flat 17
27.	Hafa Abokar	Flat 18
28.	Shamima Akhtar	Flat 19
29.	Deoranee Bhagwan	Flat 20
30.	Sultan Ali	Flat 21
31.	Faisa Munye	Flat 24
32	Rachid Azarkhan	Flat 33