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FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00HN/LSC/2014/0003**
Property	:	**Flat 5 Wollaston Heights, Wollaston Road, Bournemouth, Dorset, BH6 4AR**
Applicant	:	**Ms Kerry Sawyer**
Representative	:	**Desmond Hutchinson Solicitor of Burkill Govier Solicitors**
Respondent	:	**Wollaston Heights Management Ltd**
Representative	:	**Mr Chris Jinks and Mr Neil Gormley**
Type of Application	:	**Sections 20C and 27A Landlord & Tenant Act 1985**
Tribunal Members	:	**Judge N Jutton and Mr S Hodges BSc FRICS**
Date and Venue of Hearing	:	**23 April 2014, Court 8, Bournemouth County Court, Deansleigh Road, Bournemouth, Dorset, BH7 7DS**
Date of Decision	:	**29 April 2014**

DECISION

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1 **INTRODUCTION**

2 The Applicant Ms Kerry Sawyer is the lessee of Flat 5, Wollaston Heights, Wollaston Road, Bournemouth, Dorset. The Applicant's lease is dated 5 July 2006 and made between JMG Homes (Wollaston) Ltd and the Applicant (the lease).

3 The Respondent is a successor in title to JMG Homes (Wollaston) Ltd having been registered as the proprietor in the freehold interest of the Property on 14 June 2012.

4 On 6 August 2013, the Respondent instituted proceedings in the County Court (claim number 3YQ11299) against the Applicant seeking to recover alleged arrears of ground rent, service charges and legal costs.

5 By an Order made by the County Court on 2 December 2013, permission was granted to transfer the matter to this Tribunal. The Court Order provided that following a determination by this Tribunal, that the matter be re-listed in the County Court to address issues of interest and costs.

6 The Applicant submitted an application to this Tribunal dated 13 September 2013 seeking determinations pursuant to sections 20C and 27A of the Landlord & Tenant Act 1985.

7 An Order for directions was made by this Tribunal on 16 January 2014 providing for the serving of statements of case and preparation of a hearing bundle.

8 **Documents**

9 The documents before the Tribunal were a bundle of documents of 286 pages containing the County Court pleadings and orders, the parties' statements of case and other documents including a copy of the lease. References to page numbers in this Decision are references to pages in the Bundle.

10 A skeleton argument handed up to the Tribunal by Mr Hutchinson on behalf of the Applicant, a copy of which was given to the Respondent.

11 **The Inspection**

12 The Tribunal attended at the Property on the morning of 23 April 2014. Present were the Applicant Kerry Sawyer and Mr Jinks and Mr Gormley of the Respondent company.

13 The Property is a first floor residential flat within a detached purpose built block of 9 flats understood to have been built in 2005. The block is of 2 storey construction and provides accommodation over three floors including the mansard roof. It has brick and blockwork elevations, part rendered, with a tiled pitched roof incorporating dormer windows. At the front of the property are paved pathways and parking areas together with planted borders and hedging. To the left of the Property, to the south, is a garden area, part of which the Applicant says has been cordoned off by the lessees of ground floor flats. Similarly to the

north of the Property is an area which appears to be paved which the Applicant says was formerly grassed which has also been, she says, cordoned off by lessees of ground floor flats.

14 There is a communal hallway and staircase in reasonable decorative order. Mr Jinks said that he understood that it had not been decorated since construction in 2005. He pointed out a fire vent control system to the ground floor which operates a Velux window in the roof. He understood that the emergency fire lighting had been replaced in 2013 as had the fire extinguishers although possibly in 2014. There is a lift serving the flats on the upper floors.

15 **The Law**

16 The statutory provisions relevant to applications of this nature are to be found in sections 18, 19, 20C and 27A of the Landlord & Tenant Act 1985 (the 1985 Act). They provide as follows:

The 1985 Act

18 (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19 (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

27A (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

20C (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the First-Tier Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made –.....

(b)(a) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

17 The Lease

18 Clause 3 of the lease contains the lessee's covenants. They provide that the lessee will observe and perform the obligations on the part of the lessee set out in parts I and II of the 8th schedule to the lease.

19 Clause 4 of the lease sets out the lessor's covenants. They provide that the lessor will observe and perform the obligations set out in the 6th schedule to the lease and in the 9th schedule.

20 Clause 2 of part I of the 8th schedule to the lease provides that the lessee will pay the *"lessee's proportion"* in accordance with the provisions of the 7th schedule. The *"lessee's proportion"* is defined as 1/9th of the *"maintenance expenses"* payable by the lessee in accordance with the provisions of the 7th schedule. The maintenance expenses are defined to mean the costs incurred by the lessor in complying with its obligations in relation to repairing and maintaining, renewing etc of common parts, the main structure and of insuring as are set out in the 6th schedule to the lease.

21 The 7th schedule to the lease provides as follows:

"1. The Lessee shall pay to the Lessor (or any person performing the obligations of the Sixth Schedule in place of the Lessor) the Lessee's Proportion in the manner following that is to say:

1.1 In advance on the First day of January and the First day of July in every year throughout the said term one half of the Lessee's Proportion of the amount estimated by the Lessor or its managing agents as the Maintenance Expenses for the year in question ...

1.2 Within 14 days next following after the service by the Lessor on the Lessee of a certificate in accordance with Clause 2 of this Schedule for the period in question the Lessee shall pay to the Lessor the amount by which the monies received by the Lessor from the Lessee pursuant to paragraph 1.1 fall short of the Lessee's Proportion payable to the Lessor pursuant to the certificate prepared in accordance with Clause 2 for the said period and any over-payment by the Lessee shall be credited against future payments due from the Lessee to the Lessor under this Schedule.

2. An account of the Maintenance Expenses (distinguishing between actual expenditure and a reserve for future expenditure) for the period ending on the Thirtieth day of June and for each subsequent year ending on the Thirty first day of December during the said term shall be prepared by the Lessor and audited by an independent accountant as soon as is practicable and the Lessor shall serve a copy of such account and of the accountant's certificate on the Lessee".

22 The costs incurred by the lessor as set out in the 6th schedule and which constitute the *"maintenance expenses"* include at paragraph 19, the costs of *"enforcing or attempting to enforce the observance of the covenants on the part of the Lessee or owner of any of the Properties in the Building".*

23 Further, clause 25 of the same schedule provides for *"... any legal or other costs bona fide incurred by the Lessor and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease of any part of the Building or any claim by or against any lessee or tenant thereof or by any third party against the lessor as owner lessee or occupier of any part of the Building".*

24 **The Issues**

25 At the start of the hearing the Tribunal indicated to the parties that it understood that following were the issues that fell to be determined by the Tribunal:

i. Were estimated service charges demanded in advance by the Respondent from the Applicant for the period 1 October 2012 to 31 December 2012 payable and if so, were the sums claimed reasonable.

ii. Were estimated service charges demanded by the Respondent from the Applicant in advance for the period 1 January 2013 to 31 December 2013 payable and if so, were the sums claimed reasonable.

iii. Whether or not an Order should be made pursuant to section 20C of the 1985 Act that all or any of the costs incurred by the Respondent in connection with the proceedings before the Tribunal were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

26 The parties agreed that these were the issues before the Tribunal and which the Tribunal was to determine.

27 The Tribunal asked the parties whether in addition they would both wish the Tribunal to make a determination in relation to certain administration charges pursuant to schedule 11 part I of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). Those charges are part of the claim before the County Court in that the Respondent is seeking to recover from the Applicant alleged legal costs incurred of £720. The Tribunal made the point that the Order made by the County Court dated 2 December 2013 transferring the matter to the Tribunal provided for the matter to be re-listed in the County Court following the Tribunal's determination to address issues in relation to interest and costs. However, pursuant to the provisions of the 2002 Act, the Tribunal did have jurisdiction to determine those costs upon the basis that they amounted to administration charges. The Tribunal stated that it was mindful however that those charges did not form part of the application made to the Tribunal by the Applicant nor were they addressed in any detail by the Respondent in its statement of case. Further, there was no breakdown of the sum of £720 before the Tribunal. The Tribunal indicated nonetheless that to assist the parties, if both wished, it would be prepared to address the claim for administration charges. The Tribunal adjourned for a short period of time to allow the parties to consider what they wished to do.

28 On re-convening, Mr Hutchinson for the Applicant said that he understood that the Deputy District Judge who made the Order on 2 December 2013 had been explicit in indicating to the parties that whichever party was "unsuccessful" before the Tribunal would in all probability have to bear the costs when the matter was referred back to the County Court. Mr Hutchinson felt that as specific indication had been made by the Court, he did not think it would be appropriate to in effect prejudice the parties position by agreeing that the Tribunal address the issue. That on balance, although he appreciated the offer made by the Tribunal, he felt it would be inappropriate for the issue to be

determined by the Tribunal. As such he wished to reserve his position as regards administration charges/ costs to the County Court.

29 The Tribunal stated that in the circumstances as the Applicant did not wish the Tribunal to address the issue of administration charges, then it would not do so. That was a matter which would fall to be considered by the County Court, in the absence of a settlement, on referral back to it.

30 **The Applicant's Case**

31 As a preliminary point, Mr Hutchinson said that under the terms of the lease the Respondent should produce an annual account certified by an accountant setting out actual expenditure incurred by the Respondent. That had not been produced. That was disappointing because it would have been helpful in addressing the issues before the Tribunal. Further, he pointed out that the Directions Order made by the Tribunal on 16 January 2014 specifically provided for the Respondent to send to the Applicant copies of all relevant invoices relating to matters disputed. That had not happened.

32 Mr Hutchinson referred the Tribunal to a letter (page 71 in the bundle) from the Applicant's Solicitors Burkill Govier to the Respondent's then Solicitors Ellis Jones dated 24 July 2013. That letter he said in essence set out the Applicant's argument.

33 Mr Hutchinson said no response had been received to the letter. Indeed the next action taken by the Respondent had been to institute the proceedings in the County Court. When the Respondent's solicitors had been asked to explain, they simply said they were no longer instructed. Mr Hutchinson said that had there been a response to the letter of 24 July 2013 and possibly thereafter some form of consultation, it may well have been the case that these proceedings would not have been necessary.

34 Mr Hutchinson took the Tribunal through the contents of the letter. He referred to a form of service charge demand dated 13 October 2012 addressed to the Applicant (pages 24 and 25). The demand made reference to the Respondent being the newly appointed landlords for the premises. It went on to refer to the establishment of a 'maintenance company'. That Mr Hutchinson said was confusing for the Applicant. The fact is the Respondent is the freeholder/lessor. It is not a maintenance company as such. That there was no provision in the lease for a management or maintenance company to be party to the lease.

35 Further he said that confusingly the demand sought to recover an advance service charge payment of £600 for the year starting 1 October 2012. That he said was not the service charge year as provided for in the lease. Properly the service charge year ran from 1 January to 31 December. That by reference to clause 1 of the 7th schedule to the lease, service charge payments were to be made by the Applicant in advance by equal instalments on 1 January and 1 July each year. That as such, the demand dated 13 October 2012 at page 24 was not a valid service charge demand.

36 Mr Hutchinson referred to Pages 26-30 inclusive of the bundle. At page 26 was a form of demand addressed to the Applicant dated 5 November 2012 which purported to seek a service charge payment in advance on a pro rata basis for the period 1 October 2012 to 31 December 2012. Based upon an annual estimated service charge of £600, the demand sought a payment from the Applicant of £150. That demand was Mr Hutchinson said not received by the Applicant until it was enclosed with a form of letter before action from the Respondent's Solicitors Ellis Jones to the Applicant dated 21 March 2013 (page 53). It was not he said a valid demand. It was not a demand made in accordance with the provisions of the lease. The lease did not allow the Respondent to recover from the Applicant advance service charge payments for a period other than the maintenance year of 1 January to 31 December and other than by equal instalments on 1 January and 1 July in each year.

37 At page 60 was a form of demand from the Respondent addressed to the Applicant dated 5 February 2013 which Mr Hutchinson said was also enclosed with the said letter before action sent by the Respondent's Solicitors on 21 March 2013 (page 53). That demand correctly he said made reference to the service charge period 1 January 2013 to 31 December 2013. It sought a payment in advance of £600 per annum. That it had attached to it a summary of the lessee's rights and obligations. However that it wrongly required the Applicant to make a single payment of £600 by 12 February 2013. It did not as Mr Hutchinson said it should have done, provide that the payment requested was to be made by the Applicant in accordance with the terms of the lease in two tranches of equal payments of £300 each on 1 January and 1 July 2013. That as such, it was an invalid demand. The lease did not allow the Respondent to recover from the Applicant a single payment in advance for the financial year. It only allowed the Respondent to recover from the Applicant payment of such sum in equal payments on 1 January and 1 July of each year.

38 Turning back to the letter dated 24 July 2013 from the Applicant's Solicitors Burkill Govier to the Respondent's then Solicitors Ellis Jones (pages 71-74), Mr Hutchinson made reference to the numbered sections in that letter.

2. Management

   Mr Hutchinson explained that the Applicant was an absentee landlord. However, on visiting the property during the year she could see no evidence that management, maintenance, repair or cleaning had been carried out.

3. Mr Neil Gormley

   Mr Hutchinson said it was understood that Mr Gormley, a fellow lessee, had been granted a period of grace by the Respondent to reflect the contributions and payments made by him historically. That was of concern to the Applicant. It was not clear how this had been addressed in the service charge demand. If Mr Gormley was not to pay a share of the service charge, was the Applicant in effect being asked to pay part (a 1/9th part) of Mr Gormley's share?

4. Garden and Common Parts

It seemed Mr Hutchinson said that a unilateral decision had been made by certain lessees to take over part of the garden which was a common area. The query raised by the Applicant was, what effect would that have on the service charge? Would the Applicant be expected to pay a service charge contribution for maintaining a garden area which had in effect been enclosed by other lessees? Mr Hutchinson said since these proceedings had started, the Applicant had heard that the maintenance of the enclosed garden area would not form part of the service charge. It was not something though which had been known by the Applicant at the time of the letter of 24 July 2013.

5. Legal Costs

It had not been clear Mr Hutchinson said to the Applicant to what extent legal costs which purportedly were contained in the service charge budget were applicable to the Applicant. In any event, her case was that to the extent that legal charges had purportedly been incurred by the Respondent in relation to the Applicant, that demands were in appropriate and unreasonable. The letter of 24 July 2013 sought clarification. Clarification which was not forthcoming.

6. Insurance

The Applicant Mr Hutchinson said accepted that she was liable to pay a contribution to the costs of insurance as part of her service charge. However the letter of 24 July 2013 sought clarification as to the amount claimed. Clarification which had not been forthcoming.

7. Ground Rent

Although this was not a matter for the Tribunal, and although Mr Hutchinson said the Applicant accepted that she was liable to pay ground rent, there was some confusion as to how ground rent was being dealt with in the service charge accounts. On the face of it ground rent received from the Applicant and another lessee (understood to be the two lessees who had not taken part in the enfranchisement process which had led to the Respondent company acquiring the freehold interest) had been incorporated into the service charge account. Although that might ultimately be of some benefit to the Applicant, the matter required clarification. Clarification which again he said had not been forthcoming.

8. Accounts

Mr Hutchinson made the point that the lease required the production of properly audited accounts at the end of the service charge year. Such accounts to be separate from the company accounts of the Respondent. Firstly he said, certified service charge accounts as required by the lease had not been produced. Secondly, that the Applicant was concerned that the Respondent might be confused as to the difference between service charge accounts and the company's own accounts. That expenditure

incurred by the Respondent in producing its own company accounts was a matter entirely for the Respondent and should not form part of the service charge. Again, a matter upon which the Applicant had sought clarification which was not forthcoming.

9. Proposal

The Applicant set out a proposal to settle matters in the letter. A proposal which had not been responded to. Instead of responding, the Respondent had simply pressed on and issued the proceedings in the County Court.

39 Mr Hutchinson contended that there was a failure by the Respondent to address reasonable questions and concerns raised by the Applicant. That the Applicant was not seeking to avoid paying her service charge contribution. She simply sought clarification as to the amount being claimed. That it was reasonable for her to do so. That instead of responding to her request for clarification as more particularly set out in the said letter of 24 July 2013, the Respondent had simply gone ahead and arranged to issue proceedings in the County Court. It was patently Mr Hutchinson said unreasonable for it to do so.

40 As regards to the form of budgets produced by the Respondent, these it was submitted were not particularly helpful. Firstly, they wrongly made reference to a budget period of October 2012 to October 2013. Secondly, it was noted that against individual items of anticipated expenditure was either the word 'quotation' or 'estimate'. However, neither copy quotations nor estimates had been produced. Further Mr Hutchinson suggested, it was not clear to the Applicant whether certain items of proposed expenditure were forms of expenditure in the form of qualifying long term agreements which should properly be subject to consultation pursuant to the provisions of section 20 of the 1985 Act.

41 In summary, Mr Hutchinson said that the Applicant's case was that the demands for service charges made by the Respondents were inappropriate and invalid. They made reference to the wrong service charge year. There was a complete failure to provide clarification of the monies demanded. That there was apparent confusion on the part of the Respondent company as to its role as lessor and its legal obligations to produce and file returns and accounts as a company. That there had been a complete failure by the Respondent to respond to requests made by the Applicant for it to clarify the amounts that it was claiming from the Applicant as service charges.

42 Mr Hutchinson accepted that the service charge demands which were the subject of these proceedings were demands for payments on account. That once accounts were produced at the end of the financial year showing actual expenditure incurred as required by the lease there would no doubt be a payment due from the Applicant that would take into account payments, if any, made by her in advance during the year. The Applicant did not necessarily say that an estimated service charge for the year of £600 was unreasonable. She simply did not know if that sum was reasonable or unreasonable. It would have been helpful if quotations or estimates relied upon by the Respondent had been produced. The Applicant accepts that service charges can vary significantly

from property to property. She was not trying to avoid payment of her service charge contributions, she simply sought clarification to support the demands being made to show that they were reasonable.

43 **The Respondent's Case**

44 Mr Jinks explained that he and his fellow members of the Respondent company were new to property management. They were trying to find their way. They had instructed Solicitors Ellis Jones to advise but had to terminate the Solicitors' retainer through lack of funds.

45 Mr Jinks accepted that the service charge demand dated 13 October 2012 (page 24) was invalid. However, he said that had later been put right by the provision of the demand dated 5 February 2013 (page 60).

46 Mr Jinks accepted the demand of 5 February 2013 wrongly sought payment of £600 in one go rather than by 2 equal tranches on 1 January and 1 July. However that did not he said make the demand invalid. The demand was simply providing that the Respondent sought from the Applicant the total sum of £600 in advance as service charge payment for the year 1 January 2013 to 31 December 2013. He accepted the lease provided that such payment should be made in two equal tranches on 1 January and 1 July. There was no reason why, having received the demand, the Applicant could not have made payments accordingly. To have paid £300 on receipt of the demand and then a further £300 the following 1 July.

47 Mr Jinks said that if the Applicant sought clarification, all she had to do was make contact. The contact details were on the demand. That however the Applicant had not made contact.

48 As to the period of grace which had been agreed with Mr Gormley, Mr Jinks said that made no difference to the amount that would be payable by the Applicant. That the estimated figure of £600 was based upon total estimated expense of £5400. It did not take into account the 'year's grace' which had been offered to Mr Gormley. The effect was that by allowing Mr Gormley a year's grace, there would have be a shortfall on the total amount of service charges collected. However that did not mean that the Applicant was being asked to pay more than she otherwise would do. She was not contributing to Mr Gormley's share.

49 Mr Jinks explained that the monies demanded were in the main just based upon estimates. Although for some items quotations had been obtained, and the budget item based upon those quotations, in the main the figures produced were estimates put together by members of the Respondent company. Estimates put together following a meeting of those members which he accepted the Applicant had not been a party to. At the meeting, those attending had offered various opinions as to anticipated expenses based upon experience, for example one lessee had experience of owning another flat. That after the budget had been produced, he had approached a couple of contractors by email including a cleaning contractor and a gardener as a form of check. The figures produced had been consistent with the budget.

50 Mr Gormley said that he understood that average service charge contributions in the Bournemouth area were around £1000 per year, sometimes as high as £2000 per year. That in producing the estimated figures, regard had been had to service charges for other properties.

51 Mr Jinks said that the letter from the Applicant's Solicitors of 24 July 2013 (page 71) had not been responded to because the instructions to the Respondent's Solicitors had been discontinued. Because the matter had become protracted and because of a failure by the Applicant to make the payments that were due, it was felt that the Respondent had no choice but to institute the County Court proceedings.

52 Mr Gormley referred to an alleged historic refusal on the part of the Applicant to pay service charges.

53 That in summary the Respondent's case was that the service charge demands made to the Applicant were payable and the sums demanded were reasonable based as they were upon in the main estimated figures.

54 **The Tribunal's Decision**

55 The Tribunal must first determine whether or not the service charges demanded by the Respondent from the Applicant are payable. Secondly if they are payable, whether the sums sought are reasonable.

56 The provisions of the lease are clear. The 7th schedule provides that the lessee applicant will make service charge payments in advance on 1 January and 1 July in every year. That the payments will be on each occasion one half of the estimated maintenance expenses which the lessor believed it would incur in that same financial year.

57 Upon completion of the service charge financial year, pursuant to clause 1.2 and clause 2 of the 7th schedule to the lease, the Respondent must produce audited service charge accounts with an accountant's certificate which should be served on the lessees. A lessee would in the event that there was a shortfall by reference to payments made on account pay the balance to the Respondent and in the event there was a surplus, if the payments made on account exceeded actual expenditure, enjoy a credit against future payments.

58 The Respondent accepts that the service charge demand for £600 dated 13 October 2013 (page 24) is invalid, The Tribunal agrees. Similarly in the view of the Tribunal, the service charge demand in the sum of £150 for the period 1 October 2012 to 31 December 2012 (pages 26 and 27) is not payable. It is a demand that seeks a payment of monies which are not payable by the Applicant under the terms of the lease. That because there is no provision in the lease which allows the Respondent to recover from the Applicant service charge payments in advance for periods other than 1 January to 31 December in each year and otherwise than by equal payments for such period on 1 January and 1 July in each year.

59 It is also the Tribunal's view that the service charge demand for £600 dated 5 February 2013 (page 60) is not payable. Although that demand seeks payment

for the correct period of 1 January 2013 to 31 December 2013, it seeks payment of a single sum of £600 for that entire period by 12 February 2013. Indeed it is put in clear terms *"action required by you: pay £600 service charge. We would be grateful to receive payment by 12 February 2013"*.

60 The Tribunal understands Mr Jinks' submission that the service charge demanded of £600 was for the full year, and that if the Applicant referred to her lease, she would understand that that meant she should make payment of that sum in two equal tranches on 1 January and 1 July. However, that is not what the demand says. The demand seeks a single payment of £600 by 12 February 2013. The lease does not allow the Respondent to recover a single payment in that way. It is a demand upon which the Applicant relies in support of the proceedings instituted by it in the County Court and now addressed by this Tribunal. That as such, the sum of £600 demanded is not payable by the Applicant.

61 **Section 20C Application**

62 **The Applicant's Case**

63 Mr Hutchinson submitted that in effect he had already put his case. That in short, it was perfectly fair and reasonable for the Applicant not to make the payments demanded, not just because firstly the payments were wrongly claimed and not due but secondly, because of a lack of clarification and explanation made by the Respondent. Not least as demonstrated by the failure of the Respondent or it's solicitors to respond to his letter of 24 July 2013 (page 71). The Applicant did not seek to avoid the payment. She did however he submitted quite understandably and properly seeks an explanation as to the sums being demanded. She did not know whether the sums being demanded were reasonable or not. On being questioned by the Tribunal, Ms Sawyer was not able to say whether the sums being demanded were reasonable. She quite fairly said she did not know. However it was not reasonable to expect her simply to accept the figures put forward without explanation.

64 In the circumstances, it was reasonable for her not to make the payments and to seek clarification. That as such, it would not be reasonable Mr Hutchinson submitted for the costs of the proceedings before the Tribunal to be recovered subsequently by the Respondent as part of the service charge.

65 **The Respondent's Case**

66 Mr Jinks said there had been historic problems in recovering payments from the Applicant. That the Applicant's failure to make payments had incurred the Respondent in significant time and costs in taking advice from a solicitor. That the Respondent had supplied budgets and minutes of meetings. That it had supplied information to the Applicant. That it was felt that the Respondent had gone as far as it could before being left with no choice but to take action.

67 **The Tribunal's Decision**

68 The Applicant has been successful. The Tribunal has decided that the service charges claimed by the Respondent from the Applicant are not payable. The Tribunal is also concerned in particular at the apparent failure by the Respondent or its representatives to respond to the Applicant's Solicitor's letter of 24 July 2013 (page 71). That letter sought clarification and contained a proposal to settle. That it would have been constructive and possibly may have served to avoid these proceedings and the County Court proceedings had the Respondent or its representatives responded and attempted to enter into some form of dialogue. The Tribunal notes that the Applicant does not seek to avoid payment of her service charge. Nor does she contend that the monies claimed were necessarily unreasonable. What she sought was clarification of the sums demanded. Such clarification might have been provided amongst other ways by allowing her to attend company meetings when the budget was discussed, by the production of any quotations obtained and to allow her the opportunity to consider estimated figures.

69 In the circumstances, the Tribunal determines that an Order should be made pursuant to section 20C of the 1985 Act. That accordingly, any costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

70 **The Tribunal's Observations**

71 The Tribunal has some sympathy with the Respondent, in particular with Mr Jinks and Mr Gormley who appeared before it. The Respondent has taken on the mantle as lessor of managing the Property. That undoubtedly can at times be a somewhat onerous task. As Mr Hutchinson very fairly said, there was no suggestion of misbehaviour on the part of the Respondent. There simply appeared to be a failure by the Respondent to understand and apply the terms of the lease.

72 The Respondent will no doubt wish to properly consider the terms of the lease in the future and to act accordingly. It is a matter for the Respondent as to whether or not in the circumstances it feels it would be prudent to take advice.

73 It also appeared to the Tribunal as is not uncommon in such cases, that there was a lack of or a breakdown in communication between the parties. That is something which the parties moving forward might wish to address. For example, although it was entirely a matter for the Respondent, the Respondent may wish to consider involving non-company member lessees in its decision making process when preparing an annual service charge budget. It should also ensure that it complies with the provisions of the lease in instructing accountants to prepare properly audited accounts and the accountant's certificate at the end of each service charge financial year, and by serving copies on the lessees.

74 Both parties will no doubt bear in mind that the service charge demands which are the subject of these proceedings are demands for payments on

account. Payments of estimated future service charge expenses. That on completion of the service charge year, when actual expenditure is known and accounts produced, there will in accordance with the terms of the lease either be monies due from the lessee to the lessor (where payments made on account, if any, fall short of actual expenditure) or a credit made to the account of the lessee (where payments made on account exceed actual expenditure). The Tribunal noted that Mr Hutchinson had quite properly accepted that to be the position. That in short it was the Applicant's case that she just wished the service charge to be managed properly and with clarity in accordance with the terms of the lease.

75 **Summary of Tribunal's Findings**

76 The advance estimated service charge demands made by the Respondent to the Applicant for £150 in respect of the period 1 October 2012 to 31 December 2012 and for £600 for the period 1 January 2013 to 31 December 2013 are not payable.

77 It follows that the Tribunal does not need to make a determination as to whether the said demands were reasonable. That notwithstanding, in case it may assist the parties, the Tribunal notes that there was no evidence before it to suggest that the amounts demanded were not reasonable.

78 That pursuant to section 20C of the 1985 Act, the Tribunal orders that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

79 The outstanding issues in relation to payment of ground rent, interest and costs/administration charges are in the absence of a settlement by the parties referred back to the County Court in accordance with the County Court Order dated 2 December 2013.

Dated this 29th day of April 2014

Judge N Jutton (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.