10449

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BJ/LSC/2014/0256**
Property	:	**Flat 106 Voltaire Buidlings, 330 Garratt Lane, London SW18 4FR**
Applicant	:	**Notting Hill Home Ownership Ltd**
Representative	:	**Mr B Britton of counsel**
Respondent	:	**(1) Mr S Charles** **(2) Ms N L Onyiukah**
Representative	:	**Mr Charles, in person**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Tribunal Judge R Percival** **Mr M Cartwright FRICS** **Mrs J Hawkins**
Date and venue of hearing	:	**6 October 2014** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**2 December 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the following sums were payable and reasonably incurred in respect of the service charges:

2009	£1,900.81
2010	£1,695.95
2011	£1,981.24
2012	£2,221.45
2013	£2,082.29
2014	£2,297.94

and are payable by the respondents to the extent they remain unpaid.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent in respect of the service charge years 2009 to 2014.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr B Bratton of counsel. The respondents were represented by Mr Charles, the first respondent, who appeared in person.

The background

4. The property which is the subject of this application is one of a number of affordable homes in an otherwise private development of purpose built flats. There are thirty such properties in the block in which flat 106 is situated, and a total of 122 in the development as a whole. The respondents are in the process of selling their flat.

5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The respondents hold a long lease in the form of a "shared ownership" agreement. The lease allows for the landlord to provide services and the tenants to contribute towards their costs by way of a variable service

charge. The specific provisions of the lease will be referred to below, where appropriate.

7. The applicant landlord seeks a determination that the service charge is reasonably payable in respect of each year from 1 January 2009 to 31 December 2014.

Striking out

Submissions

8. The applicant, by a notice/skeleton argument received by the tribunal on 3 October 2014, applied to strike out the respondents' statement of case, and/or to dismiss their case.

9. The parties, including Mr Charles for the respondents, had attended a case management conference on 10 June 2014. On that occasion, Tribunal Judge Mohabir had directed that, by 1 July 2014, the respondents serve a statement of case, setting out (but not limited to) the following:

> "(a) by reference to schedules 1, 2E, 4B and 5 [a categorisation used by the accountants to distinguish between various items covered by the service charge], identify which items of expenditure are disputed.
>
> (b) set out the reasons why they do not consider that the disputed costs are reasonable.
>
> (c) if relevant, provide reasonable alternative figures for the costs in dispute.
>
> (d) if relevant, any legal submissions (supported by copies of any relevant authorities relied on)."

10. Further provision was made for the service of the applicant's case by 22 July, and a respondent's reply by 5 August.

11. On 3 July, the respondent served his statement of case. This consisted of five pages, one for each year since 2009. On each, under the schedules referred to in the directions ("accounts' schedules"), there was a simple heading, mirroring an item of expenditure. In respect of some items, the first appearance of the heading included an indication that it applied to all years (maintenance of landscaped areas, insurance, management fees, and aerial system maintenance). Others were specific to each year. In some years, most or all of the items in a schedule were listed. In others, a selection had been made. Some items

were not objected to at all, for instance, professional fees (not management fees) and bank charges.

12. At the hearing, Mr Britton for the applicants submitted that the respondent had substantially failed to adhere to the directions, and as a result the applicant had not known what substantive challenges it would face.

13. He argued that each of the bases for striking out in rule 9(3) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Procedure Rules") were made out. Specifically, he argued that:

    (i) the respondent had failed to adhere to a direction, a basis for striking out under rule 9(3)(a);

    (ii) the respondent had failed to co-operate with the tribunal such that the tribunal could not deal with the proceedings fairly and justly (rule 9(3)(b));

    (iii) that it was an abuse of process for the respondent to appear before the tribunal to oppose the application when he had failed to comply with directions (rule 9(3)(d); and

    (iv) in the absence of any evidence to support his submissions, there was no prospect that the respondent would be successful (rule 9(3)(e).

14. In response, Mr Charles said that he had not received a copy of the directions in the post from the tribunal office. He produced an envelope containing two versions of the letter from the tribunal's administration which covered the directions, saying that the document containing the directions itself had not been included.

15. He had, he said, telephoned the applicant to make enquiries about the proceedings, and it was only then that he had become aware that he should have served his case statement on 1 July. In fact, it was served on 3 July. He had also telephoned the tribunal office, but had not received a hard copy of the directions. It may be, he said, that it had been emailed and he had not received it.

16. The tribunal asked both parties what their submissions would be if the tribunal were to allow Mr Charles to continue to take part in the proceedings, but not to adduce any new evidence. Mr Britton accepted that that would meet a substantial part of his argument, but he would persist in his application. He referred to the difficulty for Mr Charles of maintaining the distinction between evidence and submissions. Mr

Charles said he would be happy to proceed largely on the basis of the applicant's evidence, although there were two additional documents he would seek to have considered.

Ruling

17. Following an adjournment for consideration, the tribunal ruled against the applicant's submission.

18. As far as factual issues were concerned, the tribunal could not rule out the possibility that Mr Charles had not received a copy of the directions. However, he had (as Mr Britton had argued) been present in person at the case management conference, when Judge Mohabir would have explained the effect of the directions. He had also contacted both the applicant and the tribunal office, and should therefore have understood the effect of the directions.

19. The respondents' case statement, as described in paragraph 11 above, may have satisfied sub-paragraph (a) of the directions, but it did not satisfy sub-paragraphs (b) and (c) (and (d), had it been relevant).

20. However, Rule 9 of the Procedure Rules applies to a respondent as if references to "striking out" were references to barring the respondent from taking further part in the proceedings (or part of them): rule 9(7)(a). The applicant had brought these proceedings, and it would still fall to them to prove their case had the respondents taken no part at all in the proceedings, and been absent at the hearing. To bar Mr Charles from taking *any* further part in the proceedings would not significantly reduce the burden on the applicant. Contrariwise, to hear Mr Charles' submissions on the positive case put forward by the applicant might assist the tribunal in coming to conclusions on the payability and reasonableness of the service charges for which the applicant contended. The tribunal therefore declined to bar Mr Charles from further participation in the proceedings.

21. On the other hand, Mr Charles had had the opportunity to submit evidence to support what was otherwise broadly a general challenge, and had failed to do so. It would be unfair to the applicant to allow him to introduce evidence at this late stage, and the tribunal declined to allow him to do so.

22. Mr Charles had brought a number of invoices to the tribunal. On examination during the course of the day, it transpired that all were already in the applicant's bundle.

23. The two further documents that Mr Charles sought to have considered were a copy of the completion statement provided to him at the time the respondents bought the leasehold, and a letter from a local

councillor in response to a complaint made by Mr Charles. Mr Britton, who had seen the documents that morning, did not object to us seeing them, on the basis that their contents added nothing relevant to the proceedings. We accordingly accepted them. Neither assisted the tribunal. The completion statement merely set out what the service charge had been in the past. The letter from the local councillor repeated various concerns that Mr Charles himself put to us in his submissions.

The service charge

The lease

24. The lease provided for the service charges in issue to be paid by clause 3(2)(c) and clause 7, albeit, in the case of that part relating to the wider estate, by the obscure route of inclusion by reference to the lease particulars (clause 7(1)(b) and the particulars). The landlord may fix the proportion of the service charge to be paid by each leaseholder (clause 3(2)(d)), subject to reasonableness.

Evidence and issues

25. The applicant sought to demonstrate the reasonableness of the service charges by reference to the witness statement of Ms Power-Haynes, a property management officer employed by the applicant, augmented as necessary by oral evidence from Ms Power-Haynes. Ms Power-Haynes statement exhibited, in addition to the lease and HM Land Registry titles, service charge account summaries from 15 May 2008 to 2 May 2014; audited accounts for each year from 2009 to 2012; and, for 2013 and 2014, statements of the anticipated service charge and associated documents (reproducing documents also copied as attachments to the tribunal's section 27A, Landlord and Tenant Act 1985 application form). In addition, the tribunal was provided with a second level-arch file containing invoices in support of the individual items of expenditure. The tribunal did not require the applicant to have recourse to the individual invoices (although Mr Charles relied on some of them in his submissions). With the leave of the tribunal, to which Mr Charles did not object, Mr Britton largely explained the documentation exhibited to the witness statement by way of submissions.

26. During the course of the applicant's general explanation, the following specific issues were ventilated, by the tribunal and/or by Mr Charles:

    (i) the reasonableness of the proportion of the overall "service provision" paid by the respondents in respect of one of the accounts schedules (schedule 2E);

(ii) the calculation of the charge for communal heating;

(iii) whether the expenditure on insurance and cleaning could be recovered by the landlord;

(iv) the requirement for a consultation exercise under section 20 of the Act in respect of work relating to fire precaution maintenance;

(v) the sum recovered for cleaning, particularly the charges for changing light bulbs by the contractors;

(vi) the maintenance of the boiler;

(vii) the charge for electricity in respect of the common parts; and

(viii) the quality generally of the management of the property.

We deal with each of these issues below in turn.

The reasonableness of the proportion in accounts schedule 2E

27. The lease in effect allows the landlord to fix a "fair and reasonable" proportion of the overall expenditure by the landlord recoverable as service charge to be paid by the tenant (clause 3(2)(d)). In practice, a proportion is set by reference to a series of schedules set out in the accounts (the accounts schedules), relating to distinct heads of recoverable expenditure.

28. There are differences in the percentages set for each accounts schedule. In respect of some schedules, each flat in the entire development pays the same proportion. In others, the percentages vary according to the size of the flat. Different schedules apply to different blocks. Schedule 2E relates to the block within which the property is situated. The items covered by the schedule in 2009 were:

Insurance
Electricity
Water and sewerage supply
Window cleaning
Communal area cleaning
Refuse bin costs
Life maintenance and repair
Fire equipment maintenance
Door entry system maintenance

Aerial system maintenance
General repairs

29. In 2010, light bulb replacement, plant and machinery maintenance and health and safety costs were added, and remained part of the schedule thereafter.

30. Mr Charles argued that the elements covered by the schedule were in their nature general to the block, rather than being affected by the size of each flat and so should have been divided equally between them. The result would have been a lower service charge payable by him.

31. Mr Britton argued that some of the elements of the schedule could be characterised as being appropriately attributed variably to each flat, such as buildings insurance, electricity and window cleaning, and some could not. Setting a reasonable percentage was a matter for the landlord, and in balancing the considerations it was entitled to conclude that the schedule should be subject to a size-based percentage.

Decision

32. The tribunal accepts that it is reasonable for the landlord to fix a variable proportion in respect of schedule 2E. In the first instance, we accept that some flats may have made more call on some of the elements therein. We did not have detailed evidence in relation to this aspect, and in the light of the pre-hearing proceedings, it was not reasonable to require the applicant to provide such evidence without notice of this issue.

33. But in any event, it is not inevitable that the fact that the size of a flat does not influence the usage of a resource – the lighting of communal areas, say – means that the only reasonable course for a landlord to take is to divide the related service charge equally between all flats. A landlord might reasonably conclude that larger flats should nonetheless pay a greater contribution than smaller flats, depending on the circumstances.

34. The tribunal accordingly finds that the amounts charged under accounts schedule 2E are reasonably payable.

The charge for communal heating

35. The flats in the block are heated by a communal heating system. The cost of the gas used to power the system is charged as part of the service charge. It became apparent that, from some time before the relevant period, the identity of the gas provider was unknown. Accordingly, the gas used was not billed, but remained payable in due course when the identity of the supplier was discovered. The service charge component

attributable to the gas supply was therefore estimated for each of the relevant service charge years. Ms Power-Haynes said that the applicant had now managed to identify the provider, or at least was about to identify it. She did not know why it had taken so long to do so.

36. Mr Charles expressed his suspicion of the claims made in the accounts that the estimates were based on actual meter readings made by the applicant's property managers. In particular, he relied on the fact that the figure for 2013 (also derived, it was said, from a meter reading) was £12,027 to criticise earlier figures, in particular those for 2009 (£14,796), 2010 (£14,501) and 2011 (£15,036). Mr Charles also asked, given that the sums were being held against a future bill, how the interest was to be treated.

37. Mr Britton argued that the accountants were unable to obtain figures for actual billed use, so relied on meter readings rather than relying on figures plucked out of the air. If there had been any overpayment, then it would be returned on reconciliation once the true bill was established. Ms Power-Haynes said that any interest earned would be credited to the tenants.

38. The tribunal asked Mr Britton if, as Mr Charles contended, the figures in the earlier years had been inflated, that was unfair to tenants who were selling their interest, such as to render the approach in general unreasonable. Mr Britton responded that if a tenant thought that it was necessary, appropriate arrangements could be made in the conveyance.

39. Mr Charles observed that once the limitation period of six years had elapsed, the payments made earlier would no longer be needed to meet obligations to the gas supplier. Mr Britton said that again, any resulting historic overpayment would be credited to the tenants.

Decision

40. Mr Britton was, understandably, unable to provide further details of the exact calculation made to arrive at the figures said to have been based on meter readings. Mr Charles was not in a position to advance any evidence to support his supposition that the earlier apparently meter-derived figures were doubtful. The tribunal sees no reason to question the clear statement in the accounts that the figures were based on readings, and will not speculate as to what might have caused the difference in figures between the earlier and the later years. On the face of it, the applicant's accountants have taken the most appropriate course in assessing the likely cost of the gas, and there was nothing to persuade the tribunal not to accept that that is what they had done.

41. The tribunal accordingly finds that the amounts charged for communal heating are reasonably payable.

Liability for insurance and cleaning

42. Mr Charles questioned whether the service charge was recoverable in respect of the landlord's obligations to insure the building and to clean the common parts.

Decision

43. The relevant landlord's covenants are at clause 5(2) and (4) of the lease. Clause 7(5)(a) allows the landlord to recover the cost of undertaking these obligations as service charge. Mr Charles appears to have misread the statement in parenthesis that the covenant to maintain and repair various parts of the building was "subject to payment of the rent and service charge ..." as being operative to impose the service charge. He therefore concluded that the absence of these words in relation to the insurance and cleaning covenants meant the expenditure on them was not recoverable.

44. The tribunal accordingly finds that the service charge was correctly calculated to include the landlord's expenditure on insurance and cleaning.

Consultation on fire equipment maintenance

45. Mr Charles drew the tribunal's attention to the sequence of approximately quarterly invoices for fire equipment maintenance in the bundle of invoices provided for the hearing by the respondents. One invoice, dated 20 December 2012, was, at £12,064.67, substantially more than the general run. Mr Charles submitted that this must have been for some more substantial work than routine maintenance, and should have been the subject of consultation under section 20 of the 1985 Act.

46. Mr Britton's response was that the tribunal should not be prepared to take the point. The applicant was not in a position to meet it, given the failure of advance disclosure that the point would be pursued. Ms Power-Haynes gave evidence that there had been section 20 consultations relating to the development, but she could not say if this work had been subject to consultation.

Decision

47. The tribunal accepts the applicant's submission that it would be unfair to ask it to meet the point in the light of the failure of Mr Charles to give advance notice. The tribunal will look to an applicant landlord to prove that service charges are payable under the lease, and that they are reasonable, even without specific challenge by the respondent. That could, in principle, in an appropriate case include demonstrating that a

statutory consultation exercise has been undertaken in respect of major works.

48. However, in this case, Mr Charles did not give advance notice of the point when he was given the opportunity to do so. It is not clear what the invoice related to, and so it is not clear how many of the flats should be taken into account in calculating whether the threshold required for a section 20 consultation had been reached. While it appears likely that it related only to the block within which the property is situated (and so the threshold would have been reached), we have no evidence to confirm that.

49. Further, even if it were established both that a consultation had been required, and that one had not been conducted, the tribunal would have given the applicant retrospective dispensation from the consultation requirement under section 20ZA unless Mr Charles had been able to persuade us that the tenants had been prejudiced by a failure to consult. While the tribunal would look sympathetically on a tenant's argument in respect of prejudice (*Daejan Investment Limited v Benson et al* [2013] UKSC 14), Mr Charles was not and could not be in a position to make any such argument.

50. The tribunal accordingly finds that the service charge properly included the landlord's expenditure on fire equipment maintenance, including that reflected by the invoice of 20 December 2012.

Light bulbs

51. Mr Charles argued that the number of light bulbs replaced by the cleaners was excessive. He referred us to invoices in the second bundle, which indicated that the cleaners were claiming for about 20 light bulbs a month. If one assumes, he said, there were about 250 light bulbs in the common areas in the development, that was about 10% being replaced every month.

52. Mr Britton's response was that, while the number did seem excessive on the face of it, there might well be some explanation that would have been forthcoming if the applicant had been given advance warning of the point and had been able to make appropriate investigations.

Decision

53. We agree with Mr Charles (and indeed Mr Britton) that the number of light bulbs claimed by the cleaners does seem excessive. On balance, however, we do not think that it is a point that the applicant should have seen in advance and been in a position to rebut without advance warning. Accordingly we decline to find against the applicant. We note that the sums involved would, in any event, have been very small.

Boiler maintenance

54. Mr Charles said that the cost of boiler maintenance was excessive. A new boiler had been installed, he said, in 2007. After the warranty elapsed in 2008, he argued, the landlord should have entered into an annual contract.

Decision

55. Mr Charles did not seek to introduce any evidence of the cost of an annual contract, and had he sought to do so, we would not have permitted it. In these circumstances, it is impossible to say that the course taken by the landlord was unreasonable, and the tribunal accordingly finds that the service charge relating to this item was not unreasonable.

Electricity for common parts

56. Mr Charles referred to what he said were significant variations in the cost of electricity for the common parts. In doing so, he referred to the notes to the accounts for 2011 and 2012 (pages 396, paragraph 8 and 430, paragraph 9). Mr Charles did not press this submission with vigour, but rather expressed himself as seeking to understand the position.

57. Mr Britton asserted, first, that the accountants had given an explanation in the notes referred to by Mr Charles, and, second, that in the absence of advance warning, no inquiries had been made.

Decision

58. On examination, only one entry in the notes appears to relate to the block in which the property is situated. The note explains the variation in terms of a credit relating to over-payment in a previous year. There is no possible basis for a finding that the service charge in relation to this item was unreasonable.

Concluding remarks on general management standards

59. Mr Charles concluded with some general remarks to the effect that the standard of management by the applicant had been inadequate through-out the relevant period. This included the fact that he had not been clear until 2013 about the relative roles in terms of ownership and management of the applicant, the freeholder of the commercially sold flats in the development and a previous management company that had, he thought, some responsibility for the "shared-ownership"

properties. Mr Britton made no submissions. Mr Charles' remarks did not amount to a challenge to any specific element of the service charge.

Costs

Application

60. By an application dated 3 October, the applicant claimed costs against the respondent, pursuant to rule 13 of the Procedure Rules. The application was accompanied by a statement of costs. The total costs claimed therein was £8,357.20. Mr Britton noted that his brief fee had assumed a two day hearing, as originally provided for in the directions. The time estimate had subsequently been amended to one day, and no second day was in the event required. Accordingly, the total costs claimed should be reduced by £850, representing Mr Britton's refresher for the second day.

61. The applicant had sought to serve the application and bill of costs on the respondent on 2 October. It transpired at the hearing that Mr Charles had not seen it until this point in the proceedings.

62. Mr Britton relied on the submissions he had made in respect of the application to strike out to justify the costs application.

63. In answer to questions from the tribunal, Mr Britton said that the amount of preparation undertaken by the applicant had been reasonable. The hearing bundle consisted of two lever arch files. One included the application, the directions, the applicant's and respondent's case statements, the freehold title, leasehold title and lease, a statement of account, various service charge accounts, and Ms Power-Haynes witness statement and exhibits thereto (including some repeated material). The second consisted of copies of original invoices to support the material submitted in the first file. Mr Britton submitted that, while it might have been possible to have proceeded on the basis of the first file alone, it was a reasonable and proportionate decision, in the face of the non-particularised challenge from Mr Charles, to include the invoices, but not to go through the time consuming and expensive process of cross-referencing them with Ms Power-Hynes' witness statement and exhibits.

64. Mr Charles was not in a position to make informed and considered submissions in respect of costs. We accordingly gave both parties leave to submit further written possessions within 14 days of the hearing.

65. Mr Charles submitted a document of 22 pages on 20 November. In part, the document rehearses arguments on the substance of the application. It relates some discussion of costs at the case management conference, at which (Mr Charles asserts) Judge Mohabir sought to

persuade the applicant to restrain the costs, which were then about £1,500, and were expected to amount to between £3,000 and £5,000.

66. Mr Charles repeated his claim, made at the tribunal hearing, that he had not received the directions by post. In respect of the applicant's statement of case, he was only made aware on 22 August that it had been sent to him 22 July but returned to the applicant. Mr Charles had not been expecting communications from the solicitors, Glazer Delmar, as previously all communications had come directly from the applicant. He had not been notified of the appointment of the solicitors. Previously, the applicant had notified him by email when they had posted a letter for him, and the same approach should have been taken for service of the case statement. At the same time, he notes that, since he had not been notified of the solicitor's identity, emails from them could have been overlooked.

67. In respect of the adequacy or otherwise of his statement of case, Mr Charles contended that the "statements" of the elements of the service charge where themselves merely general statements or headings to which a sum was attached. Thus he was, he said, necessarily confined to a general challenge.

Decision

68. The tribunal declines to order costs against the respondents.

69. Mr Charles attempted to satisfy the direction that he serve a case statement. The fact that he did so on 3 July rather than 1 July is unfortunate, but not significant (and Mr Britton did not rely on it in his submissions). As we said in the context of the application to strike out, we cannot exclude the possibility that the tribunal failed to send Mr Charles the directions in writing.

70. However, Mr Charles was present at the directions hearing, when the requirements would have been explained to him, and contacted both the applicant and the tribunal at or around 1 July, when he clearly received further information on the content of the directions.

71. We do not consider Mr Charles' criticism of the service of applicant's bundle to be relevant. Even were the criticism valid, it would not have affected his failures in respect of his case statement. In any event, he does not contest that the case statement was served at the appropriate address by post, merely that additional steps were not taken to ensure that he had, in fact, received it. It was up to Mr Charles to ensure that normal service by post was possible.

72. We do not accept his argument that he could not have done more to secure compliance with the directions. He had available to him the

applicant's application with attachments, which included a substantial proportion of the accounts subsequently available to the tribunal. He could have asked for further details (whether under the Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007, or otherwise). Tenants routinely provide detailed case statements to the tribunal.

73. The default rule for the tribunal is not to shift costs. Rule 13 of the Procedure Rules confers on the tribunal a broader discretion to award costs than was previously the case. However, costs are still only to be awarded on effectively a penal basis. Rule 13 provides:

"(1) The Tribunal may make an order in respect of costs only–

(a) ...

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in–

(i) ...

(ii) a residential property case, ..."

74. A person acts "unreasonably" in this context not merely if their conduct is inefficient or thoughtless, but, in the words of Sir Thomas Bingham MR, as he then was, in *Ridehalgh v Horsfield* [1994] 3 All ER 848, if it is "conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case." Similarly, in *Halliard Property Company Ltd v Belmonth Hall and Elm Court RTM Company Ltd*, the Lands Tribunal considered Commonhold and Leasehold Reform Act 2002, schedule 12, paragraph 10, where a similar costs jurisdiction is conditional on a party having "acted frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably". The Tribunal found that the first five adverbs describe modes of being "unreasonable"; and "otherwise unreasonably" was to be construed as describing conduct of the same kind.

75. There is nothing to suggest that Mr Charles' conduct properly fell into the characterisations set out above; nor that it was caused by an improper motive or by an excess of zeal in promoting his case. We are sure that he would have preferred to have served a more thoroughly researched and detailed statement of case. What prevented him was the inability to do so, or perhaps his own inefficiency or lack of understanding of what he should be doing. The service of such a skeletal statement of case by a solicitor could no doubt only be explained as abusive, or one of the other conventional characterisations. The same does not follow as a matter of necessity for a litigant in person.

76. At this point we should record our impression of Mr Charles' presentation of his case. In person, he was reasonably articulate and clear. In writing, however, the same was not true. Accordingly, it is not a surprise that Mr Charles would have found it somewhat challenging to produce a more substantive statement of case.

77. In coming to this conclusion, we do not have any doubt that Mr Charles could and should have adhered to the directions of Judge Mohabir. His failure, however, is a failure of capacity, not an ill-motivated failing. It is not, therefore, properly to be characterised as him acting "unreasonably".

78. Mr Charles made no application under section 20C of the 1985 Act.

Name: Tribunal Judge Richard Percival **Date:** 1 December 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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.

Section 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 provisions 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.

Section 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

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

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).