FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LSC/2020/0006**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**7 Fairlight Court, Oldfield Lane, South Greenford, Middlesex UB6 9JR**
Applicant	**:**	**Mr M Rashid**
Representative	**:**	**-**
Respondent	**:**	**Fairlight Court (Greenford 1999) Limited**
Representative	**:**	**Hillgate Management Ltd (Mr Rodney Belgrave)**
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 D Brandler** **Mrs S Phillips, MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**15th February 2021**
Date of decision	**:**	**4th March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle produced by the Respondent of 351 pages, and various documents provided by the Applicant, the majority of which were included in the Respondent's bundle. Those that were not included were 3 photographs of the communal garden. The contents of all of the documents have been noted. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The service charge provisions in the Applicant's lease entitle the Respondent to claim service charges on account of costs, provided the demand complies with the lease.

(2) In relation to un-itemised brought forward amounts on service charge demands in 2018 and 2019, the tribunal determines that these are not payable.

(3) In relation to the disputed service charge items, the tribunal makes the determinations as set out under the various headings in this Decision and summarised in the table set out as Annex 1.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.

(5) The Tribunal orders that the Respondent pay the Applicant £300 in respect of a refund of the fees paid to the tribunal, to be paid within 28 days of this decision.

(6) The Applicant's application for an order for legal costs to be paid by the Respondent is refused.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2016/17, 2017/18, 2018/19. In addition, he seeks a determination in relation to "brought forward balances" of £1624.61 and £1119.41.

2. The Tribunal issued Directions on 9th January 2020. The dates in those directions were subsequently amended on 15th February 2020. Following that, the Covid-19 Pandemic occurred, and the case did not proceed to a hearing as envisaged in those original Directions.

3. A further case management hearing took place by telephone conferencing on 29th October 2020 attended by the Applicant in person and Mr J Wragg of Counsel, instructed by PDC Law Solicitors, who at that time were representing the Respondent.

The hearing

4. The Applicant appeared in person by telephone.

5. The Respondent did not attend. Nor did their legal representatives, PDC Law. By an email sent on Friday 12th February 2021 at 18:56, PDC Law wrote to the Tribunal removing themselves from the record, and stating "*The Respondent has informed us that they will be representing themselves at the hearing.*"

6. Mr Alok Soni attended the hearing by video conferencing. Mr Soni is the leaseholder of flat 14 Fairlight Court. He sought to represent the Respondent. This was opposed by the Applicant.

7. The start of the hearing was delayed while the tribunal considered two applications. The first application was made by Mr Soni, seeking to be permitted to represent the Respondent. The second application was made by the Applicant to exclude Mr Soni from the hearing.

Mr Soni's application to be permitted to represent the Respondent

8. In his oral application to be permitted to represent the Respondent, Mr Soni stated that he was a director of the management company Fairlight Court (Greenford) Ltd, that he is a leaseholder of flat 14 Fairlight Court, but that he does not hold a freehold interest in the building. The Tribunal had received no written notification from the Respondent appointing Mr Soni as their representative. Instead, Mr Soni sought to rely on an application that he says was made to the Tribunal in the recent days prior to this hearing, in which Mr Soni sought an adjournment of this hearing, and sought permission to adduce further evidence. Mr Soni told the Tribunal that this application had been refused. The Tribunal panel hearing this application did not have sight of this application. The Tribunal did not consider that they needed to have sight of this, as it had already been considered by another judge and had been refused.

9. The Applicant's position is that Mr Soni has no right to represent the Respondent because he does not have the benefit of a freehold interest

in the block. In addition, he disputes Mr Soni's description of Fairlight Court (Greenford) Ltd as the management company. In any event, he says, this application is against Fairlight Court (Greenford 1999) Ltd in which Mr Soni has no interest.

10. Having considered the oral submissions, the Tribunal concluded that whilst Mr Soni may be an interested party as a leaseholder of the building, he does not hold a freehold interest and cannot therefore hold himself out to be a member of the Respondent company. His position as representative is therefore subject to Rule 14(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 "14(2) *If a party appoints a representative, that party must send or deliver to the Tribunal and to each other party written notice of the representative's name and address".*

11. The Respondent has remained silent. With no written notice of the representative's name and address, the Tribunal find that Mr Soni does not have the authority or standing to act as the respondent's representative.

The Applicant's application bar Mr Soni from the hearing

12. The Applicant objected to Mr Soni being present at the hearing because he says that is a breach of his rights under the Data Protection Act 1980. The Tribunal discussed this further with the Applicant, because there did not appear to be any personal information about the Applicant before the Tribunal, that would not have been readily available to all the other leaseholders. The Applicant agreed but was concerned that Mr Soni should not be allowed to interrupt the hearing.

13. The Tribunal referred the Applicant to Rule 33(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013: "(1) Subject to the following paragraphs, all hearings must be held in public", and read out the remainder of that Rule for the Applicant's consideration.

14. Having considered the Applicant's submissions, the Tribunal could find no reason why this hearing should not be held in public and determined that this was a public hearing that Mr Soni could observe.

The background

15. The property which is the subject of this application is a three bedroom flat in a purpose-built block of fifteen flats with communal gardens and garages. 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.

16. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate. The Respondent, a leasehold management company, is the owner of the block and the Applicant is a member of that company.

17. The Applicant acquired the leasehold interest of flat 7 Fairlight Court, Oldfield Lane South, Greenford UB6 9JR ("The Property"), as well as a freehold interest in Fairlight Court ("The Block"). The Applicant's lease dates back to 1963 between Fairlight Court (Greenford) Limited (The lessor) of the first part and A.E. Lewis & Son Limited (The developer) of the second part and Mary Winifred Thompson (The lessee) of the third part. That lease dated 27th June 1963 was for a period of 99 years less ten days from 29th September 1962. On 8th April 2015 that lease was varied by deed, the only term of variation was to extend the original lease for a new term of 999 years. The landlord on the deed is stated to be Fairlight Court (Greenford 1999) Limited. [113]

18. There have been previous proceedings in the First-tier Tribunal between the parties, as follows:

19. In 2011 under case ref: LON/00AJ/LSC/2011/0524, that case dealt with the service charge years 2005/06 to 2010/11 for the period when the block was managed by Drayton Properties Ltd. From 01/01/2012 Ringleys were the managing agents.

20. In 2016 under case ref: LON/00AJ/LSC/2016/0071, that case dealt with the service charge years 2011/12 through to 2015/16. A copy of that decision having been included in the appeal bundle.

The issues

21. At the start of the hearing the Applicant identified the relevant issues for determination as follows:

    (i) The validity and payability of brought forward amounts of on service charge demands.

    (ii) The validity of service charge demands

    (iii) The payability and/or reasonableness of service charges for 2016/17; 2017/18; 2018/19 and 2019/20

    (iv) Costs. The applicant made an application under section 20C of the Landlord and Tenant Act 1985, as well as refund of the Tribunal fees. Each party made an application for an order for

costs against the other party pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

22. Having heard evidence and submissions from the Applicant and considered all of the documents provided by both parties, the Tribunal has made determinations on the various issues as follows.

Whether the service charge demands have been legally demanded

23. The Applicant argues that he should not be liable for any service charge demand that has come from Fairlight Court (Greenford) Ltd because his landlord is Fairlight Court (Greenford 1999) Ltd. From the April 2015 deed it is clear that Fairlight Court (Greenford 1999) Ltd is his landlord but the question for the Tribunal is whether the service charge demands were compliant with sections 47 and 48 of the Landlord and Tenant Act 1987.

The tribunal's decision

24. The tribunal determines that the service charge demands issued by Subara in 2018 are valid.

25. However, some of the service charge demands issued by Hillgate Management are not. The invalid demands from Hillgate Management state that the landlord is Fairlight Court (Greenford) Ltd, and are detailed below:

    (i) Invoice no. 6953 dated 3.6.2019 [150]

    (ii) Invoice no. 8020 dated 23.8.2019 [154]

Reasons for the tribunal's decision

26. The demands issued by Subara comply with s.47 and s.48 of the Landlord and Tenant Act 1987 and display the landlord's name as Fairlight Court (Greenford 1999) Ltd c/o SBML, 4 Weald Lane, Harrow, HA3 5ES.

27. The demands issued by Hillgate Management vary. Those displaying the landlord as Fairlight Court (Greenford) Ltd, who is not the landlord, are not valid. Those displaying the landlord as Fairlight Court (Greenford 1999) Ltd are valid.

28. The Tribunal had regard to Tedla v Caneret Court [2015] UKUT 221 (LC). In contrast, however, in this case, while two company names appear on the demands issued by Subara, Fairlight Court (Greenford 1999) Ltd is clearly identified as the landlord and is specifically stated

as such for the purposes of sections 47 and 48 of the Landlord and Tenant Act 1987. The Tribunal was confused by the organisation managing the property and the Respondent did not assist in explaining this, however the issue for the Tribunal was the validity of the service charge demand. Reading the demands the tenant would not have been confused or have to guess as to who was being identified as the landlord such that the demands are validly made.

29. In contrast, demands issued by Hillgate Management vary in their validity. Those stating incorrectly that the landlord is Fairlight Court (Greenford) Ltd are invalid. This is largely academic because the majority of the invalid demands contain brought forward demands which are dealt with below. In relation to the remainder of the invalid invoice no. 8020 [154] the demand for £292.92 is invalidly demanded and not payable. That invoice states clearly that pursuant to s.47 & 48 of the Landlord and Tenant Act 1987 "*your landlord is Fairlight Court (Greenford) Ltd*" which is incorrect.

30. Having determined which demands before the Tribunal are valid, the Tribunal went on to consider the individual items of dispute raised by the Applicant for service charge periods 2016/17, 2017/18, 2018/19 and 2019/20.

The un-itemised 'brought forward' amounts included in Service charge demands in the sums of £1625.61 and £1119.41

31. There are various 'brought forward' amounts included in the 2018 and 2019 service charge demands before the Tribunal. These include a demand issued on 24.09.2018 by Subara which refers to a 'balance brought forward' of £29.04 [39]; a demand issued on 03.11.2018 which refers to a 'balance brought forward' of £58.08 [37]; a demand issued on 21.6.2018 which refers to a balance brought forward of £1647.36 [35]. Hillgate Management in their only valid demand also refer to a brought forward balance of £1624.61 [157].

32. The Applicant's position is that there has been no explanation in those demands, or anywhere else, as to how or why those sums have been incurred. The different amounts 'brought forward' make no sense, and he has asked the Respondent for clarification, but has been told by them that he just has to pay it. He also told the Tribunal that the matter has been passed to a debt collection agency and yet still he has received no explanation as to what these figures relate to. He refers to the 2016 First-tier Tribunal decision in which there is no mention of brought forward amounts, and he suggests that this is a way for the Respondent to try to recoup amounts that the 2016 Tribunal determined were not payable by him.

33. The Respondent did not attend the hearing although the Tribunal had the benefit of their written evidence contained in their statement of

case dated 22nd December 2020 [107] and the witness statement of Rodney Belgrave, a Property Manager at Hillgate Management (the current managing agents) [161] dated 22nd December 2020.

34. In response to the Applicant's case on this issue, the Respondent says at paragraph 10 of their statement of case "*The Respondent avers that all charges demanded are reasonable and payable by the Applicant pursuant to clause 2(b)(ii) of the original lease*" [108] .

35. At paragraph 10 of Mr Belgrave's witness statement [162] he states that "*The demand for £1624.61 includes the outstanding arrears brought forward from the previous managing agent [41-42]*". The reference to pages 41-42 does not appear to correspond to pages in the appeal bundle. Pages 41-42 in the appeal bundle being a service charge demand issued on 24/09/2018 showing a 'balance brought forward' of £43.56.

36. Mr Belgrave goes on to say in his paragraph 13 that the matter has been referred to an external debt collection agency but that is on hold until the outcome of this application. No further explanation or documentation is provided to assist the Tribunal as to how and why these amounts have been included in a service charge demand. Unfortunately, none of the Respondent's evidence clarifies why there are differing sums 'brought forward', nor do they give any explanation of when the various amounts were incurred, or how.

The tribunal's decision

37. The tribunal determines that the amount payable in respect of any of the brought forward sums for service charge years 2018 and 2019 claimed is £0.

Reasons for the tribunal's decision

38. The Respondent has had every opportunity to provide information in relation to these disputed brought forward balances. Their bundle of documents provides only service charge demands from 1/4/2018, although they appear to rely on arrears accruing prior to that date, without providing any documentation to support this assertion.

39. Neither their statement of case nor the witness statement of Rodney Belfield assisted the Tribunal in clarifying these issues. Nor did the Respondent feel it was necessary to attend the hearing to provide clarification on these issues.

40. The Respondent's explanation in relation to the lack of documentary evidence for service charge demands from 2016-2018 was unacceptable. They seek to rely on the fact that they have only been the

managing agents since 2018, and that they do not have access to previous demands or documentation. The managing agents act for the Respondent, who should have all the relevant previous documentation.

41. The Respondent's argument at paragraph 12 of the witness statement made by Mr Belgrave is that "*The Respondent is unable to provide a statement of account prior to its management of the Property, however has provided a statement of account from 1 October 2018 to the Respondent[]* (sic). *The sums that Respondent is unable to provide documentation for are the subject of a previous First-tier Tribunal decision []"* [162]. That appeared to the Tribunal to be wrong. The last determination by the First-tier tribunal in relation to this property and this Applicant was made on 8th July 2016 and revised on 18th August 2016. The period from July 2016 to 1st October 2018 remains undocumented by the Respondent for the purposes of this hearing. That period post-dates the previous Tribunal determination and cannot therefore have been considered at that time.

42. The Tribunal accepted the Applicant's assertion that these sums are likely to have been introduced since the last hearing in 2016, there being no mention of any b/f sums in that decision.

43. On balance, with nothing to explain these brought forward amounts, the Tribunal found that they were not payable.

Service charge period 2016/17: Lift maintenance: sum claimed £1030.00

44. The Applicant's evidence is that there has been no maintenance on the lift because it has been out of order for some years. In any event, he says, no evidence of claimed expenditure has been provided.

45. The Respondent makes no refence in their appeal bundle to this item. There is no evidence either of sums paid, or an explanation of what works were carried out. Their only comment appears under 'Landlord's comments' on the schedule for the disputed service charges for 2016 [207] where they write "*Already determined at FTT"*

46. The Applicant referred the Tribunal to the previous FTT decision dated 8th July 2016 (revised on 18th August 2016) [335]. In that decision, the only reference to the lift appears at paragraph 48 where it states "*This is particularly the case for 2016 as additional amounts have been claimed for lift compliance works and painting and decorating. In the circumstances the tribunal agrees with the Applicant that the budget of £2000 for repairs and maintenance should include any drainage works for 2015/16*". In Annexe 1: the Summary of the Service/Administration Charge Decisions, there is no specific mention of the lift.

47. The Applicant states that it would have been impossible in any event for the previous Tribunal to have considered the lift issue for service charge year ending 2016, as the accounts for 2015/16 were produced only on 27/09/2017, some 13 months after the hearing.

The tribunal's decision

48. The tribunal determines that the amount payable in respect of lift maintenance for service charge year 2016/17 is £0

Reasons for the decision

49. Whist the Third Schedule of the lease [136-137] permits a demand for a contribution from the Applicant "*4. Repairing servicing maintaining and renewing the lift and all machinery and fittings thereof*", the Respondent has failed to provide details as required by Clause 2(b)(ii) "*…..(the Lessor supplying to the Lessee such particulars thereof as shall be reasonably adequate to satisfy the Lessee as to the correctness of the demand)".* [123]

50. There is no evidence from the Respondent of the claimed expenditure. Nor was a demand for this sum provided in the bundle of evidence produced by the Respondent's legal team. They seek instead to rely on the lack of documentation prior to the time they became managing agents, a per paragraph 12 of the witness statement of Mr Belgrave [162]. The Tribunal found this an unacceptable reason for not providing evidence for the relevant period disputed by the Applicant and based on the lack of any evidence to support the sum claimed for lift maintenance this sum is denied.

Service charge period 2017/18: various service charge items as detailed below

51. **The service charge account fees of £780**. In oral evidence the Applicant confirmed he had considered the paperwork and now accepts this amount as payable.

52. **Emergency lighting in the sum of £3434.** In oral evidence the Applicant accepts this amount is payable.

53. **Electricity charges for the communal area £1102.** The Applicant says the charges are excessive. He told the Tribunal that the previous provider 'SSE' was charging quarterly amounts of £124 and £132. An example of a bill from that provider in the sum of £132.01 appears to relate to "*quarter 4 2017 18*" [232] but does not clarify whether a meter reading was obtained. Another bill from 'SSE' for tax point date 7 March 2018 states that both this bill and the previous bill were based on estimated readings [234].

54. The bills from the new provider 'e-on' refer to the same meter number, but the charges have increased substantially and the Applicant says that is unreasonable. He referred the tribunal to a bill dated 6th July 2018 for £1054.82, with evidence that the meter had been read. That bill covers the period from 6th May 2018 to 5th July 2018 [231]. He questions why the charges could be so high when they service only 12 lights in the communal area of the block together with the intercom. When asked about the electricity supply to the lift, the Applicant replied that the lift had not been working, and still was not working. He says even if lift was working, £132 per quarter would be acceptable, not the new inflated charge. He questions why the Respondent would have changed the supplier, when the charges were so much lower previously, and he questioned whether the tariff was higher.

55. The Tribunal asked the Applicant if he had contacted anyone, including the supplier, to ask about these charges. He had not. He had only asked for invoices.

56. **The Tribunal's decision:** Whilst it was clear that the bills from the current supplier are much higher than previously, it was not clear why. The previous supplier had relied on estimated readings. The usage at the time of switching suppliers would have to have been reconciled. That may account for the larger bills. There was no further evidence before the Tribunal to clarify the issue. The Tribunal took the view that the Applicant holds a freehold interest and could have made enquiries as to the position with the supplier and the tariff, but had not done so. On the basis that these amounts have been incurred, on balance they are reasonable and payable.

57. **Gardening £1630 claimed**. The Applicant referred back to the previous FTT decision in 2016 at which it was determined that £1080 per annum would be reasonable for a communal garden of this size with ordinary shrubs to maintain. In any event, he could only locate invoices amounting to £1480 in the bundle [218-229]. Some visits were charged at £100, some at £110, one at £350 for two men in May 2018 [224] and one at £200 in November 2017 [229].

58. Although initially the Applicant did accept an increased figure of £1150 per annum, he changed his mind and said he did not accept more than £1080 per annum. When asked whether he did not think that gardeners were subject to rising costs and were entitled to increase their fees over time, his response was that he did not think they were. He said this was a long-term contractor who should make an effort to maintain the same piece of ground for the same amount, that he should be more accommodating in charging less to keep the contract.

59. **The Tribunal's decision:** The Tribunal decided that based on an increase in the cost of living since 2016, that an increase in the fees claimed for gardening would be reasonable. The increase in charges

per visit for between £100 and £110 was not unreasonable. The amount charged for May 2018 for the services of two men working on site all day *"ground flowers beds clean around front building*" for £350 was accepted by the tribunal as reasonable for the work for two men, in the springtime when more work would be required. Also accepted was the sum of £200 charged in November 2017 [229] on the basis that tidying up work would be required before the winter and was reasonable. £1480 is allowed.

60. **Repairs and maintenance. £4471.00 claimed.** The Applicant could locate invoices totalling only £2140. The Tribunal identified invoices totalling from Pinner Electrical for £72 [211] which is allowed, £1880 from London Refurb Services [216] which is allowed. The Applicant thought this should have been covered by an insurance claim. The Tribunal considered that the amount was not worth an insurance claim. The London Property invoices [212-213] are not allowed as they relate to works to Flat 1. Also included in this section are invoices from Future lighting for £1936.80 [214] and £264 [215]. The invoice for £1936.80 is duplicated so as to appear to be charged in the 2018/19 service year but was paid within the 2017/18 year. The Applicant asserts that these works were not necessary, there having been major electrical works carried out by Pinner Electrics earlier in the year which have been agreed by the Applicant. The Tribunal considered the contents of these invoices and concluded that these appeared to be improvements rather than maintenance and are not reasonable. Amount allowed £1952.

61. **Lift insurance. £397**. This certificate is for the previous service charge year. The Applicant's evidence is that there was no insurance for the current year as the lift was not working. No evidence has been provided for this sum. Not allowed.

Service charge period 2018/19: various service charge items as detailed below:

62. **Cleaning. £1500**. Accepted by Applicant

63. **Emergency lighting £3534**. Various sums appear to have been included in this heading, although only £270 [310] relates to emergency lighting test. The Tribunal considered £270 to be reasonable.

64. **Fire Risk assessment £350**. The applicant found evidence of £234 which he accepts.

65. **Gardening £1800**. Invoices available in the appeal bundle amount to £2400. The Applicant's views on gardening fees are detailed above. The Tribunal allow £1480 in line with the allowance for 2017/18.

66. **Repairs and maintenance £2000**. Various invoices for works were located in the Respondents bundle of documents. Those include an invoice for mending a door closer for £607.78 [313] which the Applicant considered excessive and offered £300. The Tribunal considered that the sum charged was reasonable and allowed £607.78.

67. An invoice for £925 [311] for making good a ceiling in flat 14 is disputed by the Applicant. This is allowed by the Tribunal as it appears to have been necessary because of a roof leak [312]. The invoice for £680 [312] having been agreed by the Applicant agreed £680 for that invoice.

68. There are various invoices from Future Lighting [309,310,314-316]. The Applicant says that these works are excessive and appear to duplicate the major works already agreed by him that were carried out by Pinner Lighting in 2017/18. The Tribunal carefully considered the various invoices. The invoice for £1936.80 [309] has been duplicated from the previous service charge years and is dealt with above. The invoice for £270 [310] for an emergency light testing is permitted. The invoices for £186.00 [314], £216.00 [315] and £360.00 [316], appeared reasonable and are payable.

69. Although the Tribunal determined the above sums were reasonable, the sum claimed by the Respondent is less, and that amount claimed is allowed £2000.

Service charge period 2019/20

70. The application did not include this service charge period. Nor was this period identified by the tribunal at the case management hearing as an issue to be determined.

71. The Tribunal raised this with the Applicant at the hearing, but his response was that he had included a schedule for that period.

72. On balance, the Tribunal do not consider that this period formed part of the application, and no determination is made.

Application under s.20C, refund of fees and legal costs

73. At the end of the hearing, the Applicant made an application for a refund of the fees paid in respect of this application and hearing[1]. Having heard the submissions from the Applicant and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

74. In the statement of case and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the Applicant, who explained that he had asked for clarification on the disputed issues prior to issuing proceedings, and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

75. The Applicant also seeks an order for costs for £1360 which includes £600 for legal costs, £100 for travel to the solicitors and to the hearing, £400 for paralegal preparation of bundle, £50 photocopying, £200 for paralegal typing and preparation of documents, and loss of 6 days from work because of these proceedings [100]. By Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal may make an order for costs under certain conditions. The Tribunal was not provided with any documentary evidence to support this application, and on balance refuse the application.

Name: Judge D Brandler **Date:** 4th March 2021

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: Summary of the Service Charge Decision

	Service Charge in dispute	Amount claimed by Respondent	Amount agreed by Applicant	Tribunal's decision (if different)
	b/f sums	£1624.61 £1119.41		Not payable
2016/17	Lift maintenance	£1030		Not payable
2017/18	Service charge	£780	£780	
"	Emergency lighting	£3534	£3534	
"	Electricity	£1102		£1102
"	Gardening	£1630		£1480
"	Repairs & maintenance	£4471		£1952
"	Lift	£397		Not payable
2018/19	Cleaning	£1500	£1500	
"	Emergency lighting	£3534		£270
"	Fire risk assessment	£350	£234	
"	Gardening	£1800		£1480
"	Repairs and maintenance	£2000		£2000
"	Lift maintenance	£476		Not payable
"	Water	£550	£550	
"	Engineering insurance	£400		Not payable

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 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.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 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 the Upper 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—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

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.

Landlord and Tenant Act 1987

Section 47

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
(a) the name and address of the landlord, and
(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—
(a) a tenant of any such premises is given such a demand, but
(b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal], there is in force an appointment of a receiver or manager whose functions

include the receiving of service charges [or (as the case may be) administration charges] from the tenant.

(4) In this section *"demand"* means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Section 48

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent [, service charge or administration charge] otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent [, service charge or administration charge]1 shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal] , there is in force an appointment of a receiver or manager whose functions include the receiving of rent [, service charges or (as the case may be) administration charges] from the tenant.

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).