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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/45UH/LSC/2014/0104**
Property	:	**Flat 2, 100 Marine Parade, Worthing, BN11 3QF**
Applicant	:	**Willowmile Limited**
Respondent	:	**Mrs D Fleet**
Type of Applications	:	**Determination of the reasonableness and payability of service charges and administration charges; dispensation from the consultation process and determination of breaches of covenant.**
Tribunal Members	:	**Mrs H C Bowers MRICS** **Mr R Wilkey FRICS**
Date and venue of Hearing	:	**5th February and 4th March 2015 Chichester Magistrates' Court, Tribunals Centre, 6 Market Avenue, Chichester, PO19 1YE**
Date of Decision	:	**31st March 2015**

DECISION

The Applicant has not complied with the full consultation process as provided for by section 20 of the Landlord and Tenant Act 1985.

The Tribunal grants the application for dispensation for the full statutory consultation in respect of the major works.

The Tribunal finds that the Respondent has been in breach of the terms of her lease,

- **by reason of the findings made in paragraphs 62-63, the Respondent is in breach of clause 2(iii),**
- **by reason of the findings paragraphs 66, the Respondent is in breach of clause 2(iv),**
- **by reason of the findings made in paragraphs 67, the Respondent is not in breach of clause 2(xx),**
- **by reason of the findings made in paragraphs 68 the Respondent is not in breach of clause 2(i).**

The administration charge of £1,520.82 is not payable by the Respondent.

The Tribunal makes no order under section 20C.

The Tribunal orders that the Respondent should pay to the Applicant within 28 days of this decision £157.50 as a partial reimbursement of the application and hearing fees.

The Tribunal makes no award of costs under either Rule 13 application.

REASONS

Introduction:

1. Willowmile Limited, the freeholder of 100, Marine Parade has made three applications to the Tribunal. All three applications are consolidated into one reference number. The first application is under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) for the determination of service charges and is dated 9th October 2014. The second application is under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) and is for a determination in respect of administration charges and is dated 10th October 2014. The third application is for a determination in respect of a breach of covenant and is under section 168 of the 2002 Act and is dated 13th October 2014. The Tribunal received all three applications on 14th October 2014. Directions were issued on 16th October 2014 and these summarised the issues in dispute between the parties and provided details of how evidence was to be served in this case.

2. At the initial hearing held on 5th February 2015 the issue of whether the Applicant had followed the correct consultation process in respect of major works was raised. Consequently the Applicant made a further application under section 20ZA of the 1985 Act, seeking dispensation for part of whole of the consultation process. This application was dated 7th February 2015. Accordingly, Further Directions were issued on 10th February to deal with how this application would be considered and to deal with other issues that arose in the initial hearing and are discussed below.

The Law:

3. A summary of the relevant legal provisions is set out in the Appendix to this decision.

Background:

4. The Respondent is the leaseholder of Flat 2, (the Flat) which is situated in 100, Marine Parade (the property). The property is divided into three flats; Flat 1 on the ground floor; Flat 2 on the first floor and Flat 3 on the second floor. The Applicant is the freeholder of the property. Mrs Kevern and Mrs McAllister are the two directors of the Applicant company. Mr and Mrs Kevern are the leaseholders of Flat 1 and Mrs McAllister and Mrs Barnes are the leaseholders of Flat 3. Mrs Fleet is the leaseholder of Flat 2.

The Lease:

4. Included in the trial bundle is a copy of a lease relating to Flat 2. This lease is dated 11th June 2004. The original landlord was Willowmile Limited and the original tenant was Richard Barry Bromberg and Jacqueline Bromberg. The

lease is for a term of 999 years from 29th September 2002. The area demised to the tenant is shown on the lease plan and is further described as including:

"1. The internal plastered covering and plaster work of walls bounding the demised premises and the door and door fames and the window frames fitted in such walls (including the external surfaces of such doors and door frames and window frames) and the glass fitted in such door frames and window frames and

2. The walls and partitions lying within the demised premises and the doors and door frames fitted in such walls and partitions and

3. The plastered covering and plaster work of the ceiling any false ceiling and the framework to which it is attached and the floors of the demised premises and

4. The conduits and drains which are laid in any part of the Building and serve exclusively the demised premises

5. The Landlord's fixtures and fittings on or about the demised premises".

5. The lease requires the tenant to pay *"On demand a sum of money equal to one third of the aggregate of the proper costs expenses and outgoings incurred by the Landlord in maintaining repairing decorating and renewing so often as shall reasonably be required the shared entrance, communal areas, communal staircase, landing and front door serving the demised premises and the other flats in the Building"*. There are further obligations for the tenant to pay one-third towards the insurance of the Building and towards the service charges for the Building, including the obligations contained in the Third Schedule to the lease. Also clause 1 of the lease allows the landlord to provide an estimate of the service charge, one month prior to 24th June and 25th December each year and on receipt of such estimates the tenant is obliged to pay. There are provisions in the lease for the recovery of a reserve fund. The lease provides for the provision of accounts, but there does not appear any mechanism for balancing the service charges.

6. Under clause 2 the tenant makes further covenants and these include:

"2(i) During the said term to pay the rent and other monies hereby reserved at the times and in manner aforesaid .....

2(iii) From time to time and at all times during the said term (and in particular always when thereupon reasonably required by the Landlord) well and sufficiently to repair and maintain the interior of the demised premises including the Landlords fixtures therein and to keep the interior of the demised premises in such good condition and complete repair so that the demised premises shall always be fit for the occupation of a tenant at rack rent and in particular not without the permission or sanction in writing of the Landlord or his Surveyor for the time being to alter the elevation or the external appearance of the demised premises or any part thereof so far as the structural or architectural arrangement thereof respectively is

concerned or cut through any main walls in the interior of the Building or the demised premises or cut maim or otherwise injure such main walls or any timbers of any part of the Building or alter the structural character or the height of any walls front railings or fences now or for the time being standing on the property PROVIDING THAT the Tenant shall not repair or replace any joists or beams on which the floors of the demised premises are laid without giving notice to the occupiers of any flat immediately below of intention so to do stating details of the work intended to be done so that the occupiers of any lower flat may take such precautions as may be advised for the protection of the ceilings of the lower flat and if such notice is duly and properly given by the Tenant shall not be liable for any damage relating to the ceilings of any lower flat IT IS HEREBY AGREED AND DECLARED that all interior walls which are common to the demised premises and any adjoining part of the Building are hereby declared party walls and shall be used and repaired and maintained as such .....

2(iv) To paint the external window frames once in every three years of the said term and to paint all the inside wood and ironwork of the demised premises respectively in every seven years of the said term and also in the last year of term howsoever determined whether by effluxion of time or otherwise with two coats at least of good oil paint of usual colours and in a proper workmanlike manner and also in every such seventh year to paper whitewash colour and decorate all the walls ceilings and other portions of the demised premises which have therefore or which ought to be papered whitewashed coloured or decorated and on the last occasion before the expiration of the said term howsoever determined whether by effluxion of time or otherwise when such internal papering painting whitewashing colouring or other decorating shall fall due to consult the reasonable wishes of the Landlord as to the papers, colours and decoration to be employed and the times manner when and in which the work shall be done .....

2(xx) At all times to keep the floors of the said flat covered with suitable and effective sound deadening material and not to cause any noise whatsoever by musical or mechanical instruments radio or singing in any manner between the hours of eleven and eight in the morning and not to hang out or shake any clothes rugs mats or carpets from any of the windows in the Building."

7. The tenant covenants under clause 2(ix) "*To pay all costs and charges and expenses (including Solicitors and Surveyors costs and fees) incurred by the Landlord in or in contemplation of any proceedings under Section 146 and 147 of the Law of Property Act 1925 or any enactment or modification therefor not withstanding forfeiture is avoided otherwise than by relief granted by the Court and to pay all Surveyors and Solicitors costs and fees and Value Added Tax thereon where applicable of and incidental to the preparation of any Schedule of Dilapidations whether during the term hereby granted or after the*

said term shall have been determined whether by effluxion of time or otherwise".

Inspection:

8. The Tribunal had an opportunity to make an inspection of the subject property prior to the hearing. The Tribunal was accompanied by the two directors of Applicant company and Mr Kevern and by the Respondent, her representative and Mr Everitt.

9. 100, Marine Parade is an inner terrace, three storey building which faces directly onto the sea front in Worthing. The front façade is of painted, rendered construction. The front, external decorations appear quite fresh. There is a small front garden, which is bounded by a rendered garden wall.

10. The Tribunal made an internal inspection of Flat 2 and compared the layout of the flat to the lease plan. It was noted that a second access door to the flat had been blocked up and this arrangement accorded with the lease plan presented. At the front of the flat, the living room has been opened up into the kitchen area and hallway. It appeared that there is a beam supporting this arrangement. The kitchen area is on a raised plinth with a laminate floor covering. Behind the living room is a double bedroom. The location of the door had been changed with the access point being further down the hallway. Behind that bedroom was a bathroom that has been converted from a separate WC and bathroom to form the new room. The entrance to the original bathroom has been blocked off. At the rear of the property the alterations have removed the lines of the original two bedrooms. The layout now accommodates a hallway with a room, to be used as an en-suite, but without any natural light and at the time of the inspection no fittings. A corridor opening up into the bedroom area. The Tribunal were shown how the boiler had been moved from the original bathroom and a new boiler located in the hallway serving the second bedroom.

11. The Tribunal was able to see that the floor was covered with some carpeting, rugs and some sound insulating material overlaid with laminate flooring that was partially complete. The bay window to the front elevation was observed from the first floor balcony and it was noted that the timber casement was in need of some repair work, although it appeared it had recently been re-painted.

12. The Tribunal noted the external elevation from a rear courtyard area and observed a gas flue that appeared to serve the original boiler to the first floor flat. A few feet to the left of this flue, a further flue was observed and just below it was noted that there was a small hole to the brickwork. The window to one of the first floor bedrooms was seen and again it was noted that it was in disrepair and it appeared that this rear timber casement to the Flat had not been decorated recently.

13. The Tribunal was shown the front room to the ground floor flat and saw signs of water ingress around the bay window on the front elevation and a crack to one of the side walls of the bay widow. The Tribunal was shown signs of water ingress to the window frame of one of the bedrooms. The Tribunal also inspected the top floor flat and noted signs of damp ingress around the bay window to the living room, which was stated to be historic and had been remedied by the major works. Signs of timber decay to the wooden casements of the bay window was observed.

14. Externally we observed that around the bay window at the second floor level there were no iron railings, as it was explained these had been removed during the major works. The house has a parapet wall construction and work was undertaken to this area.

The Hearing:

15. A hearing was held on 5th February 2015 at the Tribunals Centre in Chichester. In attendance at the hearing on behalf of Willowmile Limited was Mrs Kevern and Mrs McAllister. Mr Kevern was also present. Mrs Fleet was present at the hearing and was represented by Mr Cullen of Wannops LLP. Mrs Fleet's partner Mr Julian Everitt was also present at the hearing. At the start the issues between the parties were identified and Mr Cullen explained that the Respondent took no issue with the estimated service charges being proposed for the 2015 service charge year. It was not possible to deal with all the evidence and submissions in one day and as a number of issues had arisen during the first hearing, which required further evidence. A further hearing was arranged for 4th March 2015. In reaching its decisions the Tribunal had regard to all the relevant written and oral submission and a summary of each party's case is set out below.

Representations:

Applicant's Case

Major Works

16. Mrs Kevern explained the history behind the major works and the consultation process that had occurred. Previously there had been claims on the insurance policy for damp ingress to the building, but the insurer was not accepting any further claims. The building had been decorated prior to 2008 and there were problems with water penetration and work was needed to the exterior of the building. A Notice of Intention was served on 4th April 2013 and this was sent to Mrs Fleet at her address in Providence Place and a copy was hand delivered to the subject flat. Providence Place was the address where the 2013 service charge invoices had been sent. There had not been any nominated contractors proposed by any of the leaseholders as a response to the Notice of Intention. Jordan & Cook (the managing agents) had conducted a survey of the

building. In April 2014 a full specification of the works had been prepared by Crowther Overton-Hart (CO-H), a firm of Building Surveyors. The works were put out to tender in April 2014 and Jordan & Cook managed the process. The date for the return of any tenders was 14th May 2014. Four tenders were received by the due date and a Statement of Estimates was issued on 21st May 2014. The tender prices ranged from £15,020 to £20,982 plus VAT. It was suggested that none of the contractors had inspected the property, but no specific evidence was adduced on this point. The Applicant considered that the prices were too high and was concerned it would not obtain the full contribution from Mrs Fleet. The specification did not reflect the nature of the property and it was considered more appropriate to obtain local quotations. The Applicant wanted the cost of the works to be reduced and for the work to be completed before the onset of any bad weather. It was at this stage Mr Kevern nominated West Sussex Refurbs (WSR). Two meetings were held on 2nd and 8th July 2014. The minutes from those meetings indicated that Mrs Fleet was present, was keen to obtain a lower quotation and agreed to the appointment of WSR. Mrs Fleet and Mr Everitt were given the contact details for WSR so that they could contact the firm to clarify any issues. Subsequently Jordan & Cook were advised of the decision to appoint WSR and a revised Statement of Estimates was served on 18th July 2014. Responding to questions from Mr Cullen it was explained that the further consultation period following from the Statement of Estimates on 18th July 2014 was due to expire on 21st August 2014. There was an exchange of emails between the parties, but although there was an intention to appoint WSR, the firm was not appointed before the expiry of the consultation period. The Tribunal were referred to a document that appears to by the contract for the relevant works and dated in manuscript on 26th August 2014. WSR, Mrs Kevern and Mrs McAllister signed this contract.

17. A quotation provided by WSR was dated 9th June 2014 that detailed the work to be carried out. However, this was superseded by sending in a form of tender responding to the full specification dated 18th June 2014. This quoted a price of £11,050. There had been concerns that the full specification included a lot of unnecessary detail such as health and safety aspects and access arrangements. Mrs Kevern confirmed that the full specification had been carried out and in fact some additional work that included the removal of the ironwork outside Flat 3. The work carried out by WSR started in October 2014 and was completed on 19th December 2014. It was subject to a 12-month guarantee. Mr Cullen asked that given the major discrepancy between the work specified in WSR's quotation of 9th June 2014 and the form of tender responding to the specification of works (18th June 2014), why there was no change to the quoted price. The details of the work omitted from the initial quotation was summarised on page 1-4-3 of the bundle and included several provisional sums. There was no specific answer to this question. However, on the second hearing date, Mrs Kevern had indicated that the initial quotation from WSR had been lower and then increased to reflect

the full specification of works. In addressing a question from Mr Cullen, Mrs Kevern explained that the repairing obligation for the windows was on Respondent. As the windows were in disrepair WSR stated that they would not be able to complete the re-decoration of the Respondent's windows until they were in repair.

18. Although there was no supervision of the work, Mungo a Building Surveyor from Jordan & Cook was due to make an inspection of the building and report on the condition. As at the initial hearing date the inspection had not occurred. Mrs Kevern and Mrs McAllister had dealt with any snagging issues.

19. Regarding the service of documents on Mrs Fleet, it was explained that documents were sent to the address provided by Mrs Fleet. There are inconsistencies in the explanation given by Mrs Fleet about her place of occupation and although she states that she has notified the agent of her new address, she has not produced a copy of any letter to evidence that notification. The Statement of Estimates sent in July 2014 was sent to the Providence Terrace address. The section 146 notice dated 16th September 2014 was sent to the subject flat with copies to Mrs Fleet's solicitor and a copy was hand delivered at 102 Marine Parade, the address where the Applicant believed that Mrs Fleet was living. The managing agent was emphatic that Mrs Fleet had not informed them of any change of address.

20. Following the first hearing date, Mrs Kevern had contacted CO-H to seek a follow up survey on the major works, but they had indicated that they were not able to provide an expert report. Accordingly, Mr Ennis provided an independent expert report and commented on the quality of the works. It was stated any outstanding defects would be covered by the twelve-month guarantee period. The report from Mr Ennis was dated 19th February 2015. This noted that it was not possible to report as to whether the precise extent of the preparation and redecoration of the property was in accordance with the original specification. It is noted that generally the standard of redecoration is apparently satisfactory with only minor further repairs required.

21. Mrs Kevern suggested that regarding clause 1 of the lease for in advance payments of service charges, the key word is that the landlord "may" and that the landlord was not restricted to only serving an invoice in the one month period prior to 24th June or 25th December. All actions undertaken by the landlord were to accommodate Mrs Fleet.

22. In summary Mrs Fleet was aware of what was happening and had agreed for the work to be done and for the amended process to take place. Her current issues are a means to avoid payment.

Section 20ZA

23. Mrs Kevern explained the background to the works as described earlier in this decision. It is stated that at no stage did Mrs Fleet say no to the works or provided any alternative contractor. Mrs Fleet had raised three issues in respect of WSR's appointment and the work to be undertaken. There had been a response to these issues.

24. It was considered important to proceed with the work to ensure the work was undertaken before the winter. There were concerns about recovering a contribution from Mrs Fleet and the Freeholder was unable to fund the more expensive options. There were personal issues for the directors of the Applicant company and therefore a need to address the repair issues as soon as possible.

25. Mrs McAllister explained that there had been meetings on 12th and 16th July when all the leaseholders and Mr Everitt had been present. There was an agreement that the work was needed and the current quotes were too expensive. It was only after 11th August 2014 that it became obvious that Mrs Fleet had no intention of paying her contribution. The observations raised by Mrs Fleet in her email of 13th August 2014 had been considered

26. Essentially Mrs Fleet has benefitted from the works being undertaken. Following the case of Daejan v Benson, it is for the Respondent to demonstrate any prejudice. However, Mrs Fleet has not produced any evidence on this point.

Breach of Covenants:

27. It is claimed that the Respondent changed the layout of the Flat without obtaining the written consent of the landlord. In doing so the works involved cutting through a main wall, changing the flat entrance, removing a structural wall between the living room and kitchen, changing the architectural layout; changing the position of the bathroom, changing a door way into a bedroom; changing the rear corridor layout and changing the flat from a three bedroom flat to a two bedroom flat and accordingly reducing the value of the flat. In respect of the proposed breach of clause 2(iii) it is submitted that the word structural does not necessarily mean a load-bearing wall. If not a load bearing wall why was a beam inserted between the living room and kitchen? Mrs Fleet was informed that she would be required to follow the procedure and obtain consent in writing for the alterations. The Respondent has ignored the process and has not obtained permission from Building Control. The alterations have involved the knocking through of main walls, in particular the wall between the living room and the kitchen. Also moving doors and cutting though timbers and a hole through an external wall for the vent for the gas boiler. The previous Victorian doors and doorframes have been removed from the Flat. There was a second entrance door, but this has now been sealed. It was explained that the lease plan illustrates the layout of the flat prior to the

alternation works; except it does not show the second entrance door. Originally all three flats had a similar layout but the Respondent has altered the layout of her flat including placing a sink in an area that is directly above the living room of Flat 1. As such there has been a change to the architectural arrangement of the Flat.

28. The previous leaseholder of Flat 2 had not left the property in a poor state of repair the only outstanding issue was the condition of the windows. The sales particulars were produced that described the Flat as being recently refurbished. Mrs Kevern was not aware of an electrical inspection or that work was needed to the boiler or the central heating system. Mrs Kevern did not accept that work was needed to be done to the property. It was accepted that given the lease length there would be times when refurbishment work would be carried out to the Flat.

29. Referring to email correspondence that appeared to show the Applicant's knowledge of the works, Mrs Kevern stated she was happy for the works to be undertaken, but subject to the proper procedure. There were small, informal meetings on a regular basis. It was accepted that the previous leaseholder had changed the arrangements about the entrance door on an informal basis.

30. Under clause 2(xix) the tenant covenants, amongst other matters, not to cause a nuisance. For the last three years there has been on-going noise at the Flat. There have been issues regarding damage to the banister, holes to the walls in the communal areas and water coming through the ceiling to the flat below. Reference was made to the Flat being used for Tantric massages, Mrs Kevern accepted she had not witnessed such activities, but had seen a postcard that suggested such activities were going to take place in the Flat. Regarding records of the nuisance that was experienced diaries were kept for two weeks. It is accepted there is no evidence to demonstrate how the value of the Flat has fallen as a consequence of the alleged breaches, but Mrs Kevern states that the flat is not fit for habitation.

31. The third breach claimed relates to clause 2(iii) and the failure by the Respondent to keep the Flat in good order. The alterations have not been completed and there is no sign off from Building Control. No-body is occupying the Flat and it is a fire hazard.

32. Clause 2(iv) requires the tenant to paint the windows every three years. It is suggested that the clause requires the windows to be repaired and not just painted. The window frames at the front of the building are rotten at the base of the casements and previously had weeds growing in the area. The previous leaseholder had historically filled the windows and it was accepted that work was "okayish". Reference was made to two letters from C O-H one dated 8th

November 2010 and the second 9th May 2011. Mrs Kevern explained that she had informed Mrs Fleet of the need to carry out work to the windows. Mrs Fleet had applied for planning permission to replace the windows with double glazed units but the local authority had refused planning permission. It was submitted that the failure on the Respondent's behalf to repair the windows had caused water to ingress into Flat 1, although there was no expert evidence on this point. Mrs Kevern suggested that Mrs Fleet had not obtained expert evidence either as this would have been detrimental to Mrs Fleet's case.

33. The lease provides for the floors in the Flat to be kept covered with sound deadening materials. (clause 2(xx)). There has been building work going on for the last three years and at the Tribunal's inspection it could be observed that the floor coverings that were provided were not of a permanent nature. The flooring arrangements in the kitchen are unsatisfactory.

34. Under clause 2(i) the Respondent is obliged to pay her service charges. It is claimed that Mrs Fleet has not paid her contribution to the major works.

Administration Charges

35. A sum of £1,520.82 was invoiced to the Respondent as administration charges under clause 2(ix) of the lease. The sums were incurred in respect of legal advice and the service of a section 146 notice. Messrs Green Wright Chalton Annis undertook the work. The section 146 notice was produced in the bundle and was dated 16th September 2014. The breaches of lease identified in the notice related to the alterations, repair and condition of the Flat and an alleged failure to keep the floors of the Flat covered with suitable sound deadening material. The summary of costs identifies that a solicitor charging £213 per hour undertook the relevant work. The main work was for two client conferences and for the perusal of the file, the dictation, drafting and preparation. Mrs Kevern explained that the work was undertaken in contemplation of serving the section 146 notice. A grade A solicitor was used as they wanted accurate advice and the file had a significant amount of paper work, hence the time expended by the solicitors.

Cost Applications

36. Willowmile Ltd made an application that the application and hearing fees that had been paid should be reimbursed by the Respondent. The total amount paid was confirmed by the Tribunal as £505 (one application fees of £125; one of £190 and the hearing fee of £190). The Applicant had tried to reason with the Respondent and had tried to resolve these issues without coming to the Tribunal. The Applicant has tried to accommodate Mrs Fleet and amongst other matters had offered to accept the payment of the service charge on an instalment basis. The applications to the Tribunal had been the last resort.

37. A further application was made by Willowmile Ltd under Rule 13 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Rules). The sum claimed was a total of £598. It was explained that the first element arose when Mrs McAllister had spent a total of eight hours working from home as she was waiting for the Respondent's surveyor to attend (eight hours at £18.50 per hour). The Applicant had considered that it was important to take steps to ensure compliance with the Tribunal's Further Directions. It was accepted that no specific appointment had been made for the attendance of the surveyor. A further sum of £450 was claimed as the cost of the report provided by Mr Ennis. It was suggested that this was an abortive sum because the Respondent had not appointed a surveyor and therefore there was no experts meeting and they had been unable to prepare and agreed statement of facts.

38. Responding to the Respondent's Rule 13 application, Mrs Kevern stated that the problems had been around for the last three years and the service charge had not been paid. But the last straw that had triggered the applications was an email with reference to an inspection by Larry Davidson, the building control officer. Although there had been an attempt to negotiate the payment of the service charge, there was no progress. There was frustration on the Applicant's part and the only way to resolve these problems was the commencement of the proceedings. A similar position was taken by Mrs Kevern in response to the Respondent's section 20c application.

Respondent's Case

Major Works

39. Certain aspects of the history of the major works as detailed by the Applicant are undisputed. No issue is taken with the need for the works. However following the meeting on 8th July 2014, Mrs Fleet took the opportunity to contact the managing agents to raise concerns about the difference between the specification of works and the proposals made by WSR. In an email response on 20th August 2014 the concerns were dismissed and this email demonstrated that the Applicant already had an intention to appoint WSR. Accordingly the consultation process was not followed. In addition the list of items missing from the WSR quotation (Page 1-4-3) is the reason for the lower price. This list of items was taken from a report prepared by Stuart Radley and dated 5th November 2014. Essentially the WSR quotation does not satisfy the specification prepared by C O-H. Additionally it was intended that Jordan & Cook would undertake the supervision of the work. However, the Applicant's evidence suggests that no supervision was undertaken by a surveyor and as such the works are incomplete. The section 20-consultation process had not been completed as there was no adherence to the 30-day observation period. It was clear that the Applicant had decided to appoint WSR prior to the end of the

consultation period and no consideration was taken of Mrs Fleet's observations. The Applicant was committed to the cheapest quote and even dis-instructed Jordan and Cook to pursue this goal. The specification of the work that was actually undertaken was not offered to the other contractors, so there is no like for like comparison. Regarding the work to the windows, this had been excluded by WSR, but the other contractors had included this work in their tenders. There is a further report from Stuart Radley dated 26th January 2015 that indicated that there were problems with the quality of the workmanship. The conclusions state that no substantial repairs have been carried out and in particular to the railings of the first floor balcony; no timber repairs and no work in respect of the second floor windows. The standard of the decorations is described as very poor and there is little evidence of the thorough preparation of the paintwork. It is suggested that one area of wall has been decorated that may not be the responsibility of the Applicant and that another area has been left. The assertion in the initial November report is repeated; that the WSR quotation was not equivalent to the tenders obtained by CO-H. The Respondent claims that it is not possible to ascertain if the works that were carried out were reasonable.

40. Turning to the issue of the interpretation of the lease, Mr Cullen referred to the wording of clause 2 of the lease and that the tenant was only liable for the costs once the landlord had incurred the sums. It was accepted that there were provisions in the lease for sums to be paid in advance but this required for any estimates to be notified to the tenant in a one-month window before either 24th June or 25th December in any year. The relevant invoice (p1-5-1) was dated 18th July 2014 and was sent to the Providence Terrace address. It is Mr Cullen's instructions that Mrs Fleet moved from the Providence Terrace address in May 2014 and informed the managing agent by attending their office and providing a hand written note on 11th August 2014. However, the two windows for the request for advance payment were 24th May to 24th June or 25th November to 25th December. As such the invoice was not served at the correct time for an advanced payment and accordingly, Mrs Fleet was not in arrears and the section 146 notice should not have been served.

41. Following this argument, Mr Cullen accepts that the mechanics of the lease are such that the sum has now been incurred by the landlord and if invoiced now the Respondent would be liable to pay, subject to the other points raised on Mrs Fleet's behalf.

Section 20ZA

42. It was acknowledged that there were no problems with the start of the consultation process. The Respondent had submitted her observations in an email dated 13th August 2014 and it is suggested that in the responding email dated 20th August 2014 the Applicant had indicated that they were already

minded to instruct WSR. The deadline for observations was 21st August 2014 and as such the Applicant was in breach of the process.

43. In the report prepared by Stuart Radley in November 2014 and from the Applicant's own expert there were concerns that the major works had not complied with the specification. The Radley report indicated that the paintwork had not been completed to a satisfactory standard. There was prejudice to the Respondent in that there were no works undertaken to the windows or to the asphalt on the balcony area. As there was no follow up report from C O-H it is difficult to understand the extent of any omitted work. It is submitted that the price of £11,050 does not reflect the work that was done. It is for the Applicant to show the difference between the specification and the works and to demonstrate what should be deducted from the invoice. In the absence of a full consultation the Applicant should be limited to recover only £250 from the Respondent for the works. If the Tribunal is minded to dispense with the consultation process, then such dispensation should be granted on terms. Such terms should reflect the difference in the value of the specified contract against the value of the works carried out. It is also claimed that the Applicant should pay the reasonable legal fees of the Respondent in relation to the section 20ZA application.

Breach of Covenants

44. It was stated that at the commencement of Mrs Fleet's ownership, the fire alarm system for the Building had been connected to the power supply in the Flat. The consequences were that the freeholder required 24 hours access in case the alarm tripped, which it occasionally did. Mrs Fleet had paid £800 to change the arrangement so that the fire alarm was on a separate system. It was alleged that the freeholder had a key to access until August 2012 and had entry into the Flat in February, March, April, May, August and October 2012. It was stated that Mrs McAllister had given permission for the re-configuration of the fire alarm

45. Mrs Fleet stated she had kept the Applicant fully informed of the work that was being undertaken. Most of the major works had occurred in 2012. Regarding a problem when a contractor was unable to gain access, Mrs Fleet stated she was not always at the property as she works in London. The Applicant had a key and could have asked for a key to be left with the managing agents.

46. Mr Everitt explained the background to the works at the Flat. He clarified that the change of the wording on the plans for the alterations from dressing room to changing room was to have the same meaning. He claimed that the alterations had the oral approval of the Applicant. He had spoken to the previous leaseholder, Mr Bromberg, who had been one of the directors of the Applicant company, before and after Mrs Fleet's purchase of the Flat. He

hadn't shown Mr Bromberg the plans. He confirmed that there is currently no building control sign off. The current directors had attended some of the site meetings with the building control officer and he stated that they had given oral consent for the work to take place on Saturdays and Sundays between 9.00am and 5.00pm for a period of four to five weeks. In his opinion the correct procedure had been followed. A report from Gerorge Mah dated 2nd March 2012 indicated that the wall between the kitchen and living room was non-structural. However, it was agreed that as there was a partition wall in Flat 3 above the relevant partition in the Flat, it would be prudent to install a structural, timber beam. The bundles included photographs that appeared to show a stud partition wall that had been partially dismantled. The photographs demonstrate how the partitions have been cut to fit over the original wall and ceiling fittings.

47. It was submitted that the previous management of the property had been very informal and there were many meetings. There had been verbal assurances from Mr Bromberg regarding the work. The Respondent had re-instated the position regarding the second entrance door to reflect the existing lease plan. As to the wording in the lease, the whole contract needed to be considered as there were distinct meanings to main walls and partitions. The work that had been carried out was only to the internal partitions. As to the layout of the flats, the suggestion by Mrs Kevern that kitchens should be located above each other is defeated as the kitchen of Flat 1 is at the rear of the building. The wording of the lease permits the works that have been undertaken. The gas boiler had to be re-located and required to be vented to an outside wall. It was suggested that this arrangement had been agreed orally with the current directors. The directors must have seen the workmen and appreciated what work was being undertaken.

48. Addressing the point that there had been a depreciation in the value of the Flat, the Applicant had not provided any evidence on this point. The lease was for a term of 999 years and during that time there would be periods when the property would be in need of repair and refurbishment and this is the type of work that the Respondent was currently undertaking.

49. There was no definition of what is required by noise deadening material, but the flooring arrangements did make provision for floor deadening material. There was no evidence from the Applicant as to unsatisfactory noise levels. There were aspects of communal living in such a property that meant that some levels of noise would be experienced between the flats.

50. Mrs Fleet had kept the windows in a good condition. The Applicant was aware of the works being undertaken and had been happy with the

refurbishment. The works being undertaken are to ensure that there is compliance with the lease terms.

51. Mr Cullen suggested that the approach taken by the Tribunal should be under the rules of equity and whether the activities of the Respondent were fair and reasonable.

Administration Charges

52. Mr Cullen submitted that in order to serve a section 146 notice there needed to be either an admission from the Respondent or a determination from the Tribunal. As there had been no admission by Mrs Fleet or a decision from the Tribunal, then the notice was premature and invalid. If the Tribunal did not accept that interpretation then the provisions of the 2002 Act required that the associated administration charges should be reasonable. He suggested that the use of a grade A solicitor was excessive and that the time allocated for this work was excessive. In his opinion the work could have been done by a grade C solicitor at a local hourly rate of £163. The notice would have been a proforma and that a total attendance on the client of 1 hour 15 minutes and two hours for the consideration of the file and preparation of the notice would have been sufficient.

Cost Applications

53. In response to the application for the re-imbursement of the application and hearing fees, it was not accepted that the Applicant had made any allowances. The Applicant had been aware of Mrs Fleet's activities and had given Mrs Fleet the impression that there was not going to be applications to the Tribunal. The applications should not have been brought. The service charges are not payable by Mrs Fleet as the sums demanded have not been demanded in accordance with the lease. It is the Respondent's opinion that Mrs Kevern would pursue any means to obtain forfeiture of the Respondent's lease.

54. Regarding the Applicant's Rule 13 costs application, this is opposed as the Respondent was still considering her position in respect of the appointment of a surveyor and no meeting had been arranged. The Further Directions had set very tight timescales and Mr Radley was unable to make a further inspection of the property within the required timescales. Mr Cullen submitted that the Respondent's conduct in respect of the current applications was not unreasonable. The report from Mr Ennis had been helpful and the survey was just a first stage of what was required. The eight hours that Mrs McAllister had spent at home were not abortive costs as she had worked from home. Finally, there had been no arrangement for any surveyor to attend the property.

55. The Respondent made her own application for costs under Rule 13 on the basis that the Applicant had acted unreasonably in commencing the

proceedings. A statement of costs was produced that quantified the legal costs for dealing with these issues as £10,395.90 (including VAT). It was suggested that a meaningful dialogue would have been more appropriate. But there had been no discussions to attempt to resolve this matter. The Applicant had found it hard to distinguish the roles of freeholder of the property and leaseholders of the two respective flats.

56. An application was made under section 20c of the 1985 Act that the costs incurred by the Applicant should not be treated as relevant costs and potentially recoverable by the service charge mechanism. This application was made as the Respondent had raised legitimate concerns about the Applicant's ability to recover service charges from her.

Tribunal's Determination

Major Works

57. The Tribunal determines that the Applicant has not correctly followed the section 20-consultation process. The Tribunal accepts the evidence from the Respondent that the works undertaken by WSR did not follow the specification prepared by CO-H. There was a significant difference between the specification and the works carried out, so much so that the Tribunal accepts the submissions from the Respondent that there was not a like for like comparison. To some extent the Applicant's position supported this conclusion. It was acknowledged that the preliminaries and the provisional sums were considered inappropriate for this type of property. Also some of the work in respect of the windows was not undertaken. Therefore the work that was actually undertaken was not subject to the full tendering process and consequentially to the full consultation process as the original, full specification of works.

Section 20ZA

58. In considering whether or not to dispense with the consultation process it is useful to consider the guidance given in Daejan Investments Ltd v Benson [2013] UKSC 14. It is suggested that the practical effect of the consultation process is to ensure that tenants are not required to pay more for works than is necessary and that the works are provided to an acceptable standard and not to pay for unnecessary works or works that are provided to a defective standard.

59. It is common ground that Mrs Fleet was aware of the proposed works and she received the Notice of Intention. No real point was pursued by Mr Cullen as to the receipt of the original Statement of Estimates. The evidence is that Mrs Fleet attended meetings and the minutes of these meetings demonstrate her knowledge of the proposal to bring in WSR. She is recorded as having agreed that the initial tenders were excessive. The evidence seems to indicate that she was happy to pursue the WSR option and although she raised some observations, these were to some extent dealt with by the Applicant. The

correspondence from Mrs Fleet shows an awareness of the revisions proposed and an overall general agreement to proceed subject to certain concerns. Given these findings it is apparent that Mrs Fleet was fully aware of the Applicant's revised position. To this extent Mrs Fleet was not prejudiced by the lack of any knowledge as to the intentions of the Applicant.

60. Mr Cullen is wrong in stating that it was for the Applicant to show the difference in value between the specification and the works undertaken by WSR. Daejan Investments Ltd v Benson indicated that the factual burden of identifying any prejudice is on the tenant. The Respondent has not discharged that factual burden. Whilst the works did not comply with the specification and despite the Applicant's suggestion and the claims made by WSR, the Tribunal considers that it is possible that the cost incurred may well reflect the works that were actually carried out. The Respondent did not persuade us that was not the position. Therefore the Tribunal does dispense with the whole or part of the consultation process that was not followed by the Applicant. The Respondent's case as to prejudice was not proven and therefore this dispensation is not granted on terms.

Breach of Covenants

61. The covenants identified in the application for breaches of covenant are clauses 2(i), 2(iii), 2(iv) and 2(xx). It is these breaches that are the subject of the Tribunal's determination. It is appreciated that the Applicant makes further allegations of breaches in both the statement of case, at the hearing and purportedly evidenced by further documentation. However, these were not part of the original application and were not identified in the initial Directions. Accordingly the Tribunal makes no finding on these issues and focuses its attention on the clauses and alleged breaches initially identified in the application.

Alterations to the Flat

62. The Applicant claims that the Respondent is in breach of clause 2(iii) to the extent that alterations have been carried out to the Flat without the written permission of the landlord. The clause prohibits the tenant from cutting through the main walls of the Building and the demised premises. Mr Cullen submitted that the definition of Building was the whole of the property and as such "main walls" would be the external walls of the property beyond the demised area. We agree with that submission. However, the clause goes further in its prohibition. It extends to the main walls within the demised premises. We accept the evidence that the wall between the kitchen and the living room is not a structural wall. However, we also agree with the Applicant that a main wall does not need to be a structural element. However, the fact that the Respondent has placed a timber beam over the new opening is an indication of the nature of the wall as a main wall. Accordingly, the Tribunal

determines that the wall between the kitchen and the living room is a main wall. Although we had no evidence of the structural capacity of the bedroom wall, we consider that this is also a main wall. The re-location of the bedroom door involves cutting through a main wall. We further accept the Applicant's position that the change of the layout of the Flat does constitute a change to the architectural arrangement of the Flat.

63. Therefore the removal of the kitchen/living room wall, the relocation of the bedroom door and the change to the architectural layout of the Flat are works that are in breach clause 2(iii). We accept the Respondent's position that the alteration of the second entrance into the Flat is a re-instatement of the Flat to its original configuration and as such this work does not constitute a breach of clause 2(iii).

64. Whilst the Tribunal noted the new gas vent on the external wall of the Flat, this was not part of the original application and as such we make no determination on this matter.

65. The Respondent suggested that the Tribunal should adopt the rules of equity in considering the alleged breaches. Although pressed Mr Cullen did not make out a case in this regard. The case law on whether the Tribunal can consider any equitable principles is undecided. In Swanston Grange (Luton) Management Limited v Langley-Essen [LRX/12/2007], Judge Huskisson consider that the Tribunal had the discretion to consider waiver in relation to a particular breach, in contrast with the consideration of waiver in relation to forfeiture. However, GHM (Trustees) Limited v Glass and another [LRX/153/2007] held that the Tribunal was limited to considering the factual circumstances of whether a breach has occurred. In the current case, given that the Respondent has not made out a proper case in respect of any claim for waiver, it would be more appropriate for this Tribunal to limit its consideration to the factual circumstances and leave the Respondent the opportunity to argue its case properly as to any equitable aspects if the claim for forfeiture is to be pursued.

Condition of the windows

66. The Applicant alleges that the Respondent is in breach of clause 2(iv) that requires the windows to be painted every three years. The first part of this clause relates to the external window frames and only requires that the windows are to be painted every three years. This clause makes no reference to the repair of the window. At the time of the Tribunal's inspection the external casements at the front of the Flat had recently been painted. This appears to have occurred since Mrs Fleet purchased the Flat in 2011. However, the Tribunal observed that the timber casement to the rear bedroom window was

in poor condition and it appeared that it had not been recently decorated. As such the Respondent is in breach with this lease obligation.

Floor Coverings

67. The requirement under clause 2(xx) is that the floors within the Flat are to be covered with sound deadening materials. The Applicant presented no specific evidence to the Tribunal as to the extent of the floor covering up to and at the time of the application. The lease does not provide for the Flat to be carpeted and there is no definition of sound deadening material. However, at the time of the Tribunal's inspection we observed rugs and some form of floor insulation, covering the majority of the floor surfaces. The Applicant suggested that these coverings were not of a permanent nature. Whilst we agree that these appear temporary, it is not a requirement of the lease that there are permanent coverings. There was some evidence of laminate/hard surface flooring being installed and the Tribunal noted that the construction of this flooring seemed to provide some sound insulation. Accordingly, in the absence of any specific evidence from the Applicant we find that the floors do appear to be covered in sound deadening material and as such there is no breach of this clause of the lease.

Non-Payment of Service Charges

68. We accept the submissions made on the behalf of the Respondent to the interpretation of the lease in respect of how service charges can be recovered. The lease essentially allows the landlord two opportunities to recover the service charges from the tenant. The first relevant clause allows the landlord to recover various costs once the landlord has incurred the sums. The second clause seems to give the landlord to recover service charges in advance. We agree with the Respondent that the use the word "may" in this clause, indicates that the landlord is not obliged to recovery service charges in advance, but is if wishes to do so, then he has a narrow window to make such a claim. We do not accept the Applicant's suggested construction that the word "may" is discretionary to the time frames of any claim by the landlord. Accordingly, the invoice served on the Respondent on 18th July 2014 was not served in accordance with the lease provisions as it is outside the window of one month prior to either 24th June or 25th December. Therefore the landlord is limited to raising an invoice once the sums have been incurred. As the invoice in question was not in accordance with the lease provisions, it is not payable by the Respondent. Therefore the Tribunal determines that the Respondent is not in breach of clause 2(i) of the lease.

Administration Charges

69. The Tribunal accepts Mr Cullen's submissions relating to the service of the section 146 notice. The provisions of the 2002 Act do require a determination from the Tribunal for the breaches alleged in the notice, in the absence of any admission by the tenant. The first step should have been the application to the

Tribunal for their determination. As this step was not taken the section 146 notice was premature. Accordingly the Tribunal determine that none of the costs incurred are payable by the Respondent.

Cost Applications

70. Section 20C – The Tribunal accept the Applicant's position that the only way to resolve the issues considered in this decision was the issue of the current applications. The parties appear to have reached stalemate. Accordingly, it would not be appropriate to make a section 20c order. We make no finding as to whether the lease makes any provision for the recovery of any costs relating to this case to be treated as service charges. However, the implications of not making a section 20c order is that any costs will be treated as "relevant costs" and if the lease so allows will be recoverable by the service charge mechanism.

71. Application for the application and hearing fees - As seen above the Applicant had not complied with the full section 20 process. That lack of full compliance necessitated the section 20ZA application. Accordingly, the Tribunal determine that the Respondent should not re-imburse the Applicant for that application fee. Turning to the other application fee and the hearing fee, the Tribunal accepts the arguments made by the Applicant that the only way to resolve the issues between the parties was by making the various applications and for a hearing. Both parties have had partial success and accordingly we consider that it is appropriate that the original application fee of £125 and the hearing fee of £190 should be split 50:50 between the parties. Therefore Mrs Fleet is ordered to reimburse the Applicant the sum of £157.50.

72. The Application's claim for costs under Rule 13 – The First-tier Tribunal is not a cost shifting Tribunal. The test under Rule 13 permits costs to be recovered if a party who brings, defends or conducts proceedings acts in an unreasonable manner. The test for unreasonableness is a high barrier to cross. Turning to this application, the attitude of the Applicant to ensure full compliance with the Tribunal's Directions is applauded. However, in examining the circumstances behind the claim for Mrs McAllister's wasted expenditure in remaining at the property, no appointment was made for the Respondent's surveyor to attend. As such the Respondent cannot be said to have been acting in an unreasonable manner. The Applicant also claims for the cost of the survey carried out by Mr Ennis. At the first hearing The Respondent had indicated that they already had an expert report and was seeking to adduce this evidence. The Applicant indicated that they were minded to obtain a report to show how the major works complied with the CO-H specification. The Further Directions invited the parties to consider their position and that if expert reports were obtained then there should be a meeting to agree a statement of facts/findings. There was no compulsion on the Applicant and there was no action in these proceedings on the part of the Respondent that caused the Applicant to incur this cost. No meeting was arranged and as such the Applicant incurred no further costs. The

costs were incurred, but not as a consequence of any behaviour on the Respondent's part, but as a means for the Applicant to monitor the major works and to further plead its case. In conclusion the Tribunal make no determination of costs to be awarded to the Applicant under Rule 13.

73. The Respondent's claim for costs under Rule 13 – This claim for costs arises from the submission that the Applicant had been unreasonable in commencing proceedings. Given the decisions made by the Tribunal above, it would appear that the Applicant had little choice but to bring the applications. Accordingly, the Tribunal do not consider that the Applicant has acted in an unreasonable manner and make no award for costs under Rule 13 against it.

Chairman: Helen C Bowers **Date: 31st March 2015**

Appeal Provisions

1. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office that 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 admit the application for permission to appeal

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 that the person is seeking.

APPENDIX

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(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 of 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.

20 Limitation of service charges: consultation requirements

(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 20C Limitation of service charges: costs of proceedings
(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 ..... or leasehold valuation tribunal ....., 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.
.....
(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 20ZA Consultation requirements: supplementary
(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.
(4) In section 20 and this section *"the consultation requirements"* means requirements prescribed by regulations made by the Secretary of State.
(5) Regulations under subsection (4) may in particular include provision requiring the landlord—
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
(6) Regulations under section 20 or this section—
(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.
(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27A Liability to pay service charges: jurisdiction
(1) An application may be made to a leasehold valuation 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 it which it is payable.....
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to a leasehold valuation 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 it 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 subject of determination by a court, or
(d) has been 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.
.....

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Section 168 No forfeiture notice before determination of breach
(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
(2) This subsection is satisfied if—
(a) it has been finally determined on an application under subsection (4) that the breach has occurred,
(b) the tenant has admitted the breach, or
(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until

after the end of the period of 14 days beginning with the day after that on which the final determination is made.
(4) A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for a determination that a breach of a covenant or condition in the lease has occurred.
(5) But a landlord may not make an application under subsection (4) in respect of a matter which—
(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(6) For the purposes of subsection (4), *"appropriate tribunal"* means—
(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to a dwelling in Wales, a leasehold valuation tribunal.

Schedule 11 ADMINISTRATION CHARGES

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.

Paragraph 2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 3
(1) Any party to a lease of a dwelling may apply to [the appropriate tribunal] 1 for an order varying the lease in such manner as is specified in the application on the grounds that—
(a) any administration charge specified in the lease is unreasonable, or
(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
(3) The variation specified in the order may be—
(a) the variation specified in the application, or
(b) such other variation as the tribunal thinks fit.
(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

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

13.— Orders for costs, reimbursement of fees and interest on costs
(1) The Tribunal may make an order in respect of costs only—
(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration case.
(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
(3) The Tribunal may make an order under this rule on an application or on its own initiative.
(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.
(7) The amount of costs to be paid under an order under this rule may be determined by—
(a) summary assessment by the Tribunal;
(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.