12161

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2016/0425**
Property	:	**Flat G, Ferndale House, 86 Blackheath Hill, London SE10 8AD**
Applicant	:	**Rosslyn Investments Limited**
Representative	:	**Mr S Simon, Solicitor, of Integrity Property Management Limited**
Respondent	:	**Ms Donna Bewers**
Representative	:	
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge and/or administration charges**
Tribunal Members	:	**PMJ Casey MRICS** **Stephen Mason FRICS**
Date and venue of Hearing	:	**9 March 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**27 April 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £Nil is payable by the Respondent in respect of the service charges for the years 2016/17.

(2) The tribunal determines that the Respondent is not liable for any administration charges or contractual legal costs under the terms of the lease.

(3) If the tribunal is wrong in its interpretation of the lease provisions the sum of £550 plus VAT is payable by the Respondent as administration charges up to the filing of her defence but no sums are payable thereafter.

(4) If however the Applicant is entitled to further administration charges and/or contractual costs under the lease provisions from the Respondent after that time those charges are limited to a further £1,500 plus VAT.

(5) The tribunal makes the determinations as set out under the various headings in this Decision.

(6) 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 lessees through any service charge.

(7) The tribunal determines that the Respondent shall not reimburse the Applicant in respect of the tribunal fees paid by the Applicant.

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 Respondent in respect of the service charge year 2016/17.

2. Proceedings were originally issued in the County Court Business Centre under claim no. C4QZ7Q72. The claim was transferred to the County Court at Chelmsford and then in turn transferred to this tribunal, by order of District Judge Mitchell on 17 October 2016.

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

The hearing

4. The Applicant was represented by Mr S Simon, Solicitor, of Integrity Property Management Limited at the hearing and the Respondent appeared in person.

5. Ms Bewers had sent to the tribunal (copied to Integrity) a supplementary reply to the Landlord's Statement of Case dated 4 March but not received until 8 March. Mr Simon, a solicitor of nearly 10 years post qualification experience, of Integrity Property Management Limited complained about the late service of this document and Ms Bewers previous failures to comply with the tribunal's directions in a timely manner. We decided to allow the statement which contained no new matters.

6. Mr Simon told us there was one other case involving arrears of service charges in the block but that remained in the County Court and was likely to be heard within the next couple of weeks. They had not wanted this case transferred as the Court could deal with all issues including costs. He also thought the Respondent who had asked for the transfer should be the Applicant in the tribunal. These however were matters which had been raised with and dealt with by the tribunal prior to the hearing. It was his client's application to the County Court and they remain the Applicant on transfer.

The background

7. The property which is the subject of this application is a late Victorian house which has been extended to provide 10 flats, with Flat G situated on the first floor.

8. 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.

9. The Respondent holds a long lease of the property, dated 15 April 1994 granting a term of 125 years from 24 June 1993 at a ground rent of £100 pa, 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 will be referred to below, where appropriate.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i) The payability and/or reasonableness of service charges in advance for 2016/17.

(ii) The payability and/or reasonableness of administration charges for the same year arising from the Respondent's failure to pay those service charges when alleged to be due.

(iii) Whether an order under S20C of the 1985 Act should be made

(iv) Whether an order for reimbursement of application/hearing fees should be made

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Applicant's case – Service Charges

12. Mr Simon said that a service charge demand for £1,575 being her contribution to anticipated expenditure for 2016/17 was sent to the Respondent on 8 February 2016. Ms Bewers had not made the payment due by 25 March. A pre action letter was sent to her on 13 May 2016 and on 30 August she made a payment of £887.50 of which Integrity allocated £100 to the ground rent payable for the year. The claim in the County Court was lodged on 28 July 2016 for an amount of £1,697.10 plus Court fee £105 and Legal Representatives costs £80. The amount claimed was made up of service charge arrears of £603.18, and three amounts invoiced to the respondent as administration charges being £60 for the pre action letter on 13 May 2016 and £435 and £300 on 17May and 19 May respectively for legal costs. To all of these amounts interest at 8% was added for the number of days outstanding.

13. Mr Simon referred to his Statement of Case and the lease provisions relied on which he set out at some length but which will not be repeated here. He told us that following the managing director of Integrity's tribunal appointment as manager of another block previously managed by Lewis and Tucker (L&T), the former managing agents of this block, L&T recommended them to the freeholder and they were appointed as managing agents of 86 Blackheath Hill on 14 December 2014 which was confirmed to the leaseholder by letters dated 22 December. Integrity are he believed the only firm of solicitors registered with the Association of Residential Managing Agents (ARMA). Their agreement with the freeholder is in the form of ARMA's model terms of engagement and is for a term of one year renewable annually unless terminated by either party by written notice.

14. Having collected building management information from L&T Integrity prepared a budget for 2015/16 which they sent to leaseholders with a demand for their respective shares. Clause 1.9 of the lease defines "The Service Charge" by reference to sub-clause 7.1 and the Third Schedule. The Tenant's Proportion for Flat G is defined as 9% of the expenditure described in sub clause 7.1 and the Third Schedule. Sub-clause 7.1 contained the tenant's covenant to pay "... the Tenant's Proportion of the amount which the Landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure ... And to pay the Service Charge not later than 28 days of being demanded the contributions being due on demand ..." Paragraph 5 of the third Schedule provides "without prejudice" to the generality of the Tenant's covenant to pay the service charge on account of anticipated expenditure "the meaning of Service Charge Expenditure shall be deemed to include reasonable provision for the future in respect of (1) Periodically recurring items whether recurring at regular or irregular intervals and (2) the replacement or renewal of items ..."

15. Whilst accepting that the accounts relating to the service charge expenditure had been drawn to 30 June in each year during L&T's tenure and indeed under Integrity on 30 June 2015 and 30 June 2016 Mr Simon said the only date referred to in the lease (save as to the term) was contained at 1.8 – "Rent Day: 25 March which relates to Clause 6 and the payment of "the Rent and other money made payable to the landlord at the times and in the manner as provided ...". He accepted that the Service Charge provisions in Clause 7 did not reserve that as rent but as the only date they felt justified in demanding the Service Charge contributions for 12 months from then. Whilst the accounts might be dated 30 June the expenditure was on the 12 months from 25 March he seemed at one point to suggest. In fact the demand and budget for 2015/16 was not issued until 23 June 2015. The accompanying letter said "Please find enclosed the service charge demand for the above property for the period 25 March 2015 to 24 March 2016 together with the Ground Rent demand for the same period". That budget amounted to £17,500 with Ms Bewers share being £1,575. There is no question of any arrears on her part arising out of that demand.

16. The budget said to be for the period 25 March 2016 to 24 March 2017 was for the same total amount with the same contribution for Flat G, demanded along with the ground rent on 8 February 2016. The demand did not specify a payment date and the hearing bundle does not contain a copy of any covering letter but Clause 7.1 of the lease provides for payment "not later than 28 days of being demanded the contributions being due on demand" which Mr Simon said means on or before 7 March. His claim for interest under the lease provisions is however from 8 February being he says the date demanded and due. Clause 7.23 of the lease provides that if Rent or any other monetary payment is not paid within 28 days of "becoming due" interest is to be paid "commencing on the date payment became due".

17. As to the make up of the budget, evidence was given by Lisa Ellis, a para legal and head of property management for Integrity, in line with her Witness Statement dated 8 February 2017. She explained that the apparently large increase over the amounts expended by L&T was in large part down to their practice of not including as part of the Service Charge the cost of insurance which was included as a separate item on demands. There had also been a deficit in 2013/14 made good by voiding the service charge so that this had been reduced to a negative figure. Integrity restored this to a zero balance by not refunding to leaseholders the surplus from 2014/15 but using it to clear the deficit and carrying forward a balance. The estimated sums under each expenditure heading were arrived at by reviewing these sets of accounts (she also referred to actual expenditure shown in the 2015/16 accounts but these were not available when the budget was being prepared) and making judgements based on experience. As it turned out there was a deficit in 2015/16. There was an underestimate in the budget for management fees and the provisions for annual asbestos and Health and Safety/Fire Risk assessments was a requirement. The reserve fund contributions sought were towards the cost of external repairs and redecorations identified as needed in the near future by a condition report. She thought the budget reasonable. When questioned by Ms Bewers why no notification of a change in the service charge period had been given she said none was required, as managing agents they made demands in accordance with the lease. She said only one other resident had questioned this recently. She confirmed there were no arrears on 2015/16 accounts. The accounts had not been sent out late but the 2015/16 demand was delayed she said because there had been an L&T half year demand to deal with. The Management Agreement was only a template not the actual but as a one year contract renewable it was not a qualifying long term agreement that required consultation. She denied there had been a big increase in management fees. These were £625 a quarter plus VAT but the 2015/16 accounts included the initial set up fee of £625 plus VAT, a pro rata fee for the period 14 December 2014 to 31 December 2014 and then five quarters at £625 plus VAT through to 30 June 2016.

Applicant's Case: Administration Charges

18. Mr Simon relied on Clauses 7.15 and 7.20 of the lease to justify the claim for Administration Charges arising out of the Respondent's alleged failure to pay service charges due. His clients he said were aggressive in pursuing forfeiture proceedings whenever a breach of a lease occurred and clearly had such action in contemplation when instructing this application to be made even though on the face of it the application related to recovery of sums owed.

19. The pre action letter to Ms Bewers on 13 May 2016 incurred a standard fee of £60 including VAT. Further initial fees relating to solicitors' fees attending to the matter were incurred up to 19 May in the sum of £735 including VAT (two invoices sent). None of these sums were paid prior

to the issue of proceedings. Further invoices were sent to the Respondent relating to legal costs incurred in subsequent pursuit of the claim which by 20 December 2016 amounted to £5,596.72 including VAT though no clear explanation for these sums has ever been given to Ms Bewers nor indeed was one offered to the tribunal save that it related to time spent and the hourly charging rate. This period up to 20 December 2016 included attendance at the Case Management Conference held by the Tribunal on 13 December 2016.

20. At the hearing Mr Simon produced a document entitled Statement of Costs (summary assessment) Rule 13(b)(iii) of the Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013. This included the legal costs said to have been incurred by Integrity on behalf of the Applicant up to and including the hearing. Those incurred since 20 December 2016 have not yet been invoiced to the Respondent as Administration Charges but Mr Simon says could be. The document breaks down the claimed sum to attendances on opponents, on others, at the CMC and hearing, a schedule of work done on documents and other expenses including Court fees and travel. It lists the hours claimed and the caseworker hourly rate but gives no dates for the various actions. The sum total claimed is £11,131 plus VAT £2,062.

21. Mr Simon urged us to deal with these sums either as Administration Charges under the lease provisions he had already referred to or, to the extent not already invoiced, as sums recoverable under paragraph 1(2) of the Third Schedule as Service Charges being "the expenses and fees for the collection of all other payments due from the tenants of the flats in the Building not being the payment of rent to the Landlord". Had the case remained in the County Court his claim would have been dealt with in its entirety and the Directions issued after the CMC identified the issues to be determined as the reasonableness and payability of the service charges and administration charges claimed in respect of the service charge year ending 24 March 2017. As to our jurisdiction to deal with what is a contractual obligation under the lease to pay the Applicant's legal fees he referred us to (and provided copies of) the Court of Appeal decision in Chaplair Limited and Kumari [2015] EWCACiv798 and the Upper Tribunal (Lands Chamber) decision in 87 St George Square Management Ltd and Michael Henry Anthony Whiteside [2016] UKUT438(LC). Ms Bewers agreed that she would like the tribunal to deal with all the issues and we accordingly decided to do so.

22. There were two other administration charges invoiced to the Respondent the first for £58.80 including VAT on 14 September 2016 the second for £577.20 including VAT on 6 October 2016. These related to Integrity's contractors to investigate and repair a blocked sink in the Respondent's flat, which was her responsibility under the terms of the demise. Mr Simon accepted when we put it to him that none of the lease provisions were invoked to do this work and hence these could not be administration charges or a matter within the

tribunal's jurisdiction. Ms Bewers while expressing some surprise at the cost said she had not refused to pay these sums but had merely requested that she first be given copies of the contractor's invoices, not Integrity's as she required these for her records/accounts (the flat is let).

23. Mr Simon acknowledged that the respondent had made payments since the claim was lodged, £887.50 on 30 August 2016 and the £326.88 demanded on 24 November 2016 in respect of the deficit on the 2015/16 accounts. These sums had been allocated to the ground rent and then to the earliest sums due in order to reduce the interest charges. At the date of the hearing Integrity calculated the actual service charge arrears as a little over £300.

Respondent's case – Service Charges

24. The Respondent said the lessees had not been told of the change in managing agents until after the event and she still thought the appointment was a long term qualifying agreement. They were not notified that L&T's practice of making two half yearly demands was to change nor notified of the change in service charge period. Having heard Ms Ellis explanation of the sums in the budget and not having realised the need to bring evidence of her own she really could not dispute the sums. She had however been trying to obtain such information for a long time, in June 2015, March 2016, 16, 18, and 20 May 2016, 10 and 20 October 2016 and only got the accounts for 2015/16 on 25 November 2016. She still however disputed the various risk assessment items, surely only needed once.

Respondent's case – Administration Charges

25. Ms Bewers said that she really did not understand these charges. The initial £60 letter clearly related to her alleged arrears but she didn't think she should pay this as she had requested a meeting by telephone with a member of Integrity's staff on 17 March 2016 to no avail. The rest of the charges she had had invoices for just referred to "settling matter" which she didn't understand the meaning of. Most of the invoices were not provided to her until 20 December and contained no proper breakdown. The plumbing issue in her flat had already been dealt with.

Application under s.20C and refund of fees

26. In addressing the S20C application, the question of refunding of fees and in closing remarks generally Mr Simon said that the Applicant was entitled to recover legal costs in pursuit of arrears through the service charge by virtue of the provisions of paragraph 1(2) of the Third Schedule "... and of the expenses and fees for the collection of all other

payments due from the tenants of the flats ... not being payment of rent to the Landlord". If we did not determine all the administration charges payable by the Respondent or the contractual cost she was liable for under the lease we should leave the Landlord free to recover through the service charge and so not make the Order sought especially so if he were successful on the service charge budget issue. Similarly if successful on that the Respondent should be ordered to refund the application and hearing fees (£105 and £200). Had the case stayed in the County Court he would have had all his costs dealt with. A previous such case had resulted in the award of costs of £7,500 on the successful recovery of £7,500 of service charge arrears. The costs he sought were on the statutory scale at £409 per hour for a Grade A fee earner, £226 for Grade C and £138 for Grade D. The Respondent had behaved unreasonably in failing to comply with Directions in a timely manner and she failed to take advantage of a generous offer to settle for £1,600 after the CMC.

27. Ms Bewers in closing referred to posting issues which meant she did not receive everything when she should have. The service charge had risen by a huge amount and she had constantly asked for a breakdown of costs and an explanation of the increase to no avail. The offer to settle made to her would have left the leaseholders as a whole footing the rest of the bill for legal costs through the service charge and she could not in conscience do this. The first budget from Integrity she paid despite the big increase deciding to wait and see what the accounts showed. She thought the following year she could withhold payment until the accounts were produced under S21 of the Act and clear explanations but these were never forthcoming just very litigious letters referring to S146/147 proceedings and the possible loss of her flat. She would never put that at risk as it was her pension.

The tribunal's decision

28. 1) Reasonableness of Service Charges

Save for the item relating to asbestos and other risk assessments the budget forming the basis of the 8 February 2016 demand for service charges on account of anticipated expenditure for 2016/2017 is on the evidence a reasonable estimate of those costs. Mr Simon tried to persuade us that the 2015 Asbestos Regulations required annual checks. They do not require more than monitoring where no physical changes have taken place. That said the amount included for Management fees is an underestimate and we see no reason to alter the overall sum.

29. 2) Payability of Service Charges

There is clearly provision in the lease for service charges to be demanded in advance and no requirement for half yearly demands

whatever the previous practice had been. Clause 6 of the lease is a tenant's covenant with the landlord that requires the tenant at 6.1(a) "to pay the rent and other money made payable to the landlord at the times and in the manner provided without any deduction whatsoever". Clause 6.1(b) is a requirement to pay by bankers order etc if requested to do so in writing. There is no linkage between Clause 6 and Clause 7 which at 7.1 deals with the separate covenant to pay service charges and repeats the requirement regarding bankers orders etc. Whether or not "other money" in 6.1(a) includes service charge is unclear. Clearly the Rent (£100 pa) is due on the Rent Day defined in 1.8 of the particulars as 25 March but there is nothing in the lease to say that this is the date on which the service charge is to be paid as argued for by Mr Simon. The lease does not define the service charge year or specify a date for payment. Clause 2 of the Third Schedule provides "As soon as is convenient after the expiry of each accounting period of not more than 12 Months commencing with the accounting period now current there shall be prepared ... a written summary (the Statement) setting out the Service Charge Expenditure ..." Paragraph 3 says "The accounting period may from time to time be varied". We do not know however what the "Accounting "period now current" was when the lease was granted though the term granted commenced 24 June. The two sets of accounts included in the hearing bundle, both produced during Integrity's tenure, are for the twelve months ending 30 June. We do not think it is possible on a proper construction of the lease that demands for service charges in anticipation of expenditure can be made for a different period ie 25 March 2016 to 24 March 2017 from the accounting period the last of which was 1 July 2015 to 30 June 2016. Those accounts included Integrity's setting up fee in December 2014 and their fees for the period 14 to 31 December 2014, 1 January to 31 March 2015, 1 April to 30 June 2015, 1 July to 30 September 2015, 1 January to 31 March 2016 and 1 April to 30 June 2016 (but not for some unexplained reason the fee for the quarter 1 October to 31 December 2015). They clearly are not limited to expenditure to 24 March 2015 or 2016. It is common ground that the Respondent had no arrears arising from the 2014/15 accounting period and she paid in full the demand in respect of anticipated expenditure for 2015/16. In our view she was fully paid up on her service charge obligations until 30 June 2016 and could not possibly be liable for a further sum on 25 March 2016.

30. We were not provided with a statement of account for Ms Bewers but clearly between the service of the demand and 20th May 2016 she made some payment because there are no ground rent areas in the claim and only £603.18 of service charge. On 30 August 2016 she made a further payment of £887.50. The claim was lodged in the County Court on 28 July 2016 the first day on which her arrears, if we are right that they only became due on 1 July 2016, became more than 28 days in arrears entitling the Applicant to take action. But all she would have owed is the service charge, interest thereon and the Court fees, £105 and legal representatives cost of £80 per the claim form. The pre action letter

and the legal costs incurred in May and invoiced to her as administration charges would not be payable as administration charges would not be payable as incurred prior to any liability on her part. Her payments in August as part of her defence more than cleared such sums. She owed nothing.

31. The lease does provide that the accounting period may be varied though never for a period exceeding 12 months. In our view there is implied an obligation to give notice of such a variation to the leaseholder. The demand for 2015/16 whilst said to be for the period 25 March 2015 to 24 March 2016 was not issued until 23 June 2015 and was based on a budget for 12 months. The disputed demand was again based on a budget of 12 months from 25 March 2016. There has been no attempt to produce a budget for the period 1 July to 24 March to align the accounting period with the desired period to be covered by the demand for service charges in anticipation of expenditure. The accounting period remains as it was.

Administration Charges

32. Mr Simon bases his claim for administration charges on clauses 7.15 and 7.20 of the lease. The former is a typical forfeiture clause which he says was clearly in the Applicant's contemplation when instructing the claim to be lodged. The latter does not in our view help him at all: "not to do or omit to do ... in or about the flat ... whereby the landlord may become exposed to liability to pay any penalty damages compensation ..." clearly relates to physical activities.

33. The charges are not clearly broken down but Mr Simon, though based in Manchester, clearly seeks to base his fee as a Grade A fee earner on a central London hourly rate at £409. The National 1 rate appropriate for Manchester is £217, nearly half. The charge of £60 including VAT for the pre action letter is not unreasonable but the amounts invoiced on 19 July 2016 relating to work done on 17 and 19 May are. Those sums £362.50 and £250 both excluding VAT do not appear separately on Mr Simon's costs statement and the invoices merely refer to "settling matter". The claim form identifies the principal debt as comprising the alleged service charge arrears and these three administration charges (with VAT added) which with interest at 8% to the date of claim totals £1,427.10 yet the claim is for £1,697.10 plus court fee and £80 legal representative costs. There is a further invoice dated 3 August 2016 for work done on 28 July drafting the claim form which was signed by Eli Pawlowski, apparently a Grade C fee earner but again no such entry appears on the statement of costs. The amount claimed is £410 plus VAT. There are no other invoices before Ms Bewers filed her defence and no evidence of any correspondence or meetings with her.

34. All of these administration fees would seem to relate solely to deciding to take action and lodging the claim. With the £80 costs they total

nearly £1,000. The claim was a simple money claim probably filed on line and not only are the hourly rates inflated but so is the time taken. The most that in our opinion could be said to be reasonable up to the defence filing is £500. Thus the sum owed and claimable would have been £603.18 plus £60 plus £600 (to include VAT) plus the court fee of £105 to give £1,308.18 together with a small amount of interest. The amount the Respondent paid on 30 August reduces this to £422.68 but applying the sum paid to the oldest debt first would mean the service charge element of the claim was paid in full. If this were so the tenant would no longer be in breach of her obligations and it is hard to see how any further administration charges could arise under the provisions of Clause 7.15 of the lease.

35. Integrity however continued to invoice the respondent including on 14 September for £58.80 and on 6 October £577.20 both inclusive of VAT and relating to the blocked sink in the flat now admitted by Mr Simon not to be administration charges. The case was transferred to the Tribunal on 17 October and the 2015/16 accounting period deficit was invoiced on 24 November and paid by the Respondent though Integrity applied this sum to their outstanding claimed administration charges. Two further invoices for £105 were issued on 21 December one said to be time spent preparing for tribunal the other recovery of arrears though again no further explanation was given by the Applicant of what was done or who the fee earner was and neither corresponded with any entry on the Statement of Costs. Yet more followed, £785.28 for "recovery of arrears on 21 December and £3,638.56 (both including VAT) for the same purpose on 6 January 2017. Presumably these largely relate to the CMC held on 13 December attended by both Mr Simon (down from Manchester) and Ms Ellis. Such a straightforward matter could have been dealt with by Ms Ellis alone. She is a paralegal based in Watford and head of Integrity's management team. The most we would say was reasonable as administration charges relating to the CMC is £500 plus VAT.

36. At the hearing Mr Simon, produced his Statement of Costs in the sum of £10,310 plus Court fees and travel and postage costs of £821 to give a total of £11,131 plus VAT which he says could be billed as administration fees to the extent they have not already been or claimed as contractual costs under the lease. It is assumed that this sum includes all such administration fees claimed to date. Even if Mr Simon is right bearing in mind the original service charge debt was claimed to be £603 these costs are totally disproportionate, exaggerated and unreasonable. Integrity are the managing agents, the solicitors are part of the firm. In the tribunal's view the case only came to hearing because they failed to engage with the Respondent and give her a clear explanation of why they were changing L&Ts previous practices and how the sums demanded were made up. If Integrity are right and the hearing were necessary to recover their properly incurred administration charges the sum we would allow as reasonable having regard to all the circumstances is £1,500 plus VAT.

37. The Respondent has not behaved unreasonably at any stage in these proceedings indeed she has been swamped by them. It is Integrity who have failed to show any evidence that they used "best endeavours to collect current and ongoing routine service charge arrears ..." part of the service they were to provide in return for the management fee per the ARMA contract. It is Integrity who have rushed to Court against a previously compliant leaseholder far quicker than any managing agents in the tribunal's experience and who have piled costs on costs in pursuit of their own fees as on any analysis the service charge debt had been paid in full by 30 August 2016. It is Integrity, too, who have sought to change what had been the practice with regard to the Service Charge without offering leaseholders any explanation and, in the tribunal's opinion without justification.

Application under S20C and refund of fees

38. At the CMC the Applicant made an application for refund of the fees paid in respect of the application/hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

39. The CMC had identified as an issue for determination the Respondent's application for an order under section 20C of the 1985 Act. Having heard the submissions from the parties 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: PMJ Casey **Date: 27 April 2017**

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S1 2013 No 1169

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 of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period

for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

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

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

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

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

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

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

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the

tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

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).

40. In the application form/ in the statement of case/ at the hearing, the Applicant/ Respondent applied for an order under section 20C of the 1985 Act. [Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines] [Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless 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 Applicant/ Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.