12280

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2017/0040**
Property	:	**14 and 159 Lucey Way, Bermondsey, London SE16 3UE**
Applicant	:	**Mr S Crutchley, lessee, 159 Lucey Way and Mr G Crutchley, lessee, 14 Lucey Way**
Representative	:	**In Person**
Respondent	:	**London Borough of Southwark**
Representative	:	**Ms C Dowding Enforcement Officer**
Type of application	:	**Liability to pay service charges**
Tribunal members	:	**Mr A Harris LLM FRICS FCIArb Mr C Gowman BSc MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**19 July 2017**

DECISION

Decisions of the tribunal

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

(2) The tribunal does not make 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

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of advance service charges payable in respect of major works.

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

The hearing

3. A hearing was held on 3rd July 2017 at 10 Alfred Place London. The Applicants appeared in person at the hearing. The Respondent was represented by Ms Charlotte Dowding, an Enforcement Officer for the Council who called the following witnesses:

- Mr Winston McLeod a contract manager in the investment and asset management team of Southwark Council;
- Mr Phil Garaccio, a contract manager for the respondents contractor, Keepmoat Limited;
- Mr Mark Ruddell, a senior chartered building surveyor at Potter Raper partnership;
- Mr David Spiller a chartered surveyor and the quantity surveyor responsible for the Rouel Road external works contract.

The background

4. The properties which are the subject of this application both form part of the Rouel Road Estate, Bermondsey which consists of just over 800 units of residential accommodation, primarily occupied by tenants of the London Borough of Southwark.

5. Flat 14 is a flat on ground and first floors with the first floor having a balcony which forms the roof for part of the ground floor.

6. Flat 159 is a two-storey maisonette having an entrance lobby on ground floor and two floors of residential accommodation at first and second floors. The first-floor balcony forms the roof of part of the ground floor flat which is not otherwise involved in this hearing.

7. 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.

8. The Applicants hold long leases of the properties which require 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. Neither leaseholder is resident at the property.

The issues

9. The Council, as landlord, has carried out major works to the estate for which advance service charge payments were demanded. The parties have identified the relevant issues for determination as follows:

   (i) whether the costs incurred in respect of the major works are reasonable

   (ii) whether the costs of some of the works are payable by the leaseholders under the leases

   (iii) whether an order under section 20 C of the 1985 Act should be made.

10. 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.

Lease provisions

11. The leases of the flats are in similar form.

12. By a lease dated 11 April 1994, 14 Lucey Way was let for a term of 125 years from 28th of October 1991. In the lease,

    "the building" is defined as the building known as 2 – 22 Lucey Way including any grounds, outbuildings, gardens, yards or other property appertaining exclusively thereto.

"the estate" means the estate known as Rouel Road Estate including all roads, parks, gardens, and other property forming part thereof...

"the flat" means the flat and land (if any) shown coloured pink on the plan or plans attached hereto and known as number 14 on the ground and first floors of the building and including the ceilings and floors of the flat the internal plaster and faces of the exterior walls of the flat and the internal walls of the flat (and internal walls bounding the flat shall be party walls severed medially) but excluding all external windows and doors and window and door frames the exterior walls roof foundations and other main structural parts of the building.

"the services" means the services provided by the council to or in respect of the flat and other flats and premises in the building and on the estate and more particularly set out hereunder:

(i) Central heating

(ii) hot water supply

(iii) lift

(iv) caretaking lighting and cleaning of common areas

(v) maintenance of common television aerial or landline

(vi) maintenance of estate roads and paths

(vii) estate lighting

(viii) maintenance of gardens or landscaped areas

(ix) un-itemised repairs

13. Under clause 2 (4) the lessee is to keep the flat and every part thereof (except any part which the council is obliged to repair under clause 4 hereof)...

14. At clause at clause 3 (1) a similar obligation appears under which the lessee is to keep the flat in good and tenantable repair and condition (save any part thereof which the council is obliged to repair under clause 4 hereof) so as to provide shelter and support to parts of the building other than the flat.

15. Under clause 4 (2) the council is to keep in repair the structure and exterior of the flat and of the building (including drains gutters and external pipes) and to make good any defect affecting the structure.

16. Under clause 4 (3) the landlord is to keep in repair the common parts of the building and any other property over or in respect of which the lessee has any rights under the first schedule hereto. Under clause 4 (5) the lessor is to provide the services more particularly hereinbefore set out under the definition of services to or for the flat and to ensure so far as practicable that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.

17. The first schedule sets out the rights of the lessees. Clause 2 gives a right of way on foot over such parts of the building as afford access to the flat. Clause 3 gives full right-of-way with or without cars or motor bicycles over the estate roads (if any) clause 9 gives the right to use the landscaped or garden areas (if any) for the purpose of recreation.

18. Schedule three sets out the provisions in relation to the service charge accounts. Service charge costs include:

7(1) the carrying out of all works required by subclause (2) to (4) inclusive of clause 4 of the lease,

7(6) the maintenance and management of the building and the estate (but not the maintenance of any other building comprised in the estate)

7 (7) the employment of any managing agents appointed by the Council in respect of the building or the estate or any part thereof provided that if no managing agents are so employed in the council may add the sum of 10% to any of the above items for administration.

7 (9) the installation (by way of improvement) of:

(i) double glazed windows (including associated frames and sills) in replacement of any or all of the existing windows of the flat and of the other flats and premises in the building and in common areas of the building... Should the council in its absolute discretion (and without being any under obligation) decide to install the same...

19. The lease of 159 Lucey Way is in broadly similar form except that the building is defined as "157 to 183 Lucey Way" and the flat as "the flat and land (if any) shown coloured pink on the plan or plans attached hereto and known as number 159 on the ground and first and second floors of the building..."

20. The list of services includes refuse disposal.

The works

21. In 2013 the council determined to carry out external repair works to the estate. The works were based upon a feasibility report on the various blocks commissioned by the council and dated November 2013. The works were carried out under a Qualifying Long Term Agreement (QLTA) by the council's long-term partnering contractor, Keepmoat. The feasibility report was prepared in conjunction with building surveyors, CYD.

22. The schedule of rates costs for the major works contract were established under competitive tender. The rates are continually monitored to ensure the costs under the agreement are competitive. The costs under the contract were certified for the Council by Potter Raper who were the quantity surveyors for the works.

23. A consultation was carried out for the purposes of section 20 of the Landlord and Tenant Act 1985 as amended. A notice of intention was issued on 7 August 2014 and hand-delivered to all leaseholders. The notices set out the apportionment of the cost of the works for each leaseholder.

24. The items of work which are the subject of this reference are

159 Lucey Way	Totals for 157-183 Lucey Way
Roof repairs at all levels and associated stairways, tank rooms and walkway link bridges	£4,336.20
Asphalt repairs to private areas	£11,331.94
Remove damaged glass panels and replace with wired glass or polycarbonate fire retardant sheet	£5,452.66
Window replacement	£50,371.53
Replace front entrance door	Nil (claim withdrawn by respondent)
Preliminaries, overheads and survey costs	£20,299.00

14 Lucey Way	Totals for 2-252 Lucey Way
Asphalt repairs to private areas	£256,808.16
Window replacement/enhancement	£719,616.03
Door replacement	Nil (claim withdrawn by respondent)
Preliminaries, overheads and survey costs	£484,060.96

25. The service charge is apportioned to leasehold flats by a calculation based on bed spaces. The apportionment for 14 Lucey Way is 6/888 and for 159 Lucey Way is 7/72 of the appropriate costs. The method of apportionment is not challenged.

The Applicant's case

26. Arguments which are the same for both flats will be considered together.

27. The first item at 159 Lucey Way is listed as roof repairs – section refers to roof at all levels and associated stairways, tank rooms and walkway link bridges. Mr S Crutchley argues that there are no associated stairways for this block nor walkway link bridges. Accordingly, he is not prepared to pay for associated stairways nor walkway link bridges. Given that scaffolding has been costed elsewhere he only considers he should pay a fair price for any works carried out to the roof, if any. There was no independent survey undertaken to ascertain what was necessary.

28. In addition, the council's calculations state the lessee is to pay £337.47 for link weighbridges as an estate charge. Mr Crutchley's argument is that he does not have to pay for works which do not affect his building. The usage made by lessees of his flat is no different from members of the general public. If these bridges are for general use they are not chargeable as public paths are not chargeable. Any refund should include associated professional and management costs.

29. The next item is common to both flats and is asphalt repairs to private areas. The same argument is used in both cases. The private areas are, by definition, private. The respondents say they have surveyed the

balconies but they certainly did not survey 159 nor number 14. The leaseholders say they took care of their property and at 159 the balcony had recently been repaired by the leaseholder and new decking laid a year before the works. This was ripped up and replaced without any kind of independent survey. The work was unnecessary. For flat 159 a refund of £1101.62 is sought plus associated management costs of 18.4%.

30. For number 14 Lucey Way it is claimed the work was shoddy and tiles badly laid over the asphalt. A refund is claimed for their share of this cost. No survey was completed to this area which is for the sole use of the flat and not available to any other persons. Works were not necessary and a refund is claimed to include fees.

31. In respect of 159 Lucey Way liability for the cost of replacing glass panels is disputed. It is said there are none associated with that flat as these are individual to flats with balconies and provide no benefit to other leaseholders. They form a party wall boundary and the lessees should not be charged for these. The applicant claims they kept their balcony in good repair and should not be penalised for this by being forced to subsidise others. The historic neglect admitted by Southwark is a motivator for this. A full refund with associated professional and management costs is sought.

32. The cost of window replacement is common to both flats and disputed in each case. At 159 Lucey Way, the contractors report notes that some of the original timber windows and doors have already been replaced on the estate. It was not noticed this also applied to 159 Lucey Way as no individual survey was made. As 159 is about 1/10th of the building in apportionment of costs, a survey would have been practicable and saved money. Particular mention is made of the poor condition of the estate and historic neglect by Southwark Council. However there is a conflict between the interests of leaseholders, who it is claimed maintain their properties properly, and the council as landlord of their own directly rented flats.

33. It is claimed the council did not survey individual properties, only those which were tenanted and applied random works to the leasehold flats under a five-year plan without any consideration of whether they were necessary. The entire regeneration and major works scheme was based on the condition of properties owned and tenanted by the council which has admitted it was negligent in maintaining. It is claimed that in 159 Lucey Way all but one window was already double glazed and the one single place unit was of high quality in good repair. Two double glazed windows had already been replaced by Southwark in the last three years due to failure to carry out maintenance. Southwark made no attempt to determine whether any windows in his property needed replacing it simply applied blanket and refundable costs in the major works. That is unreasonable.

34. The applicants cite the case of Merryweather Court and Brennand Court (reference LON/00AU/LSC/2011/0228) as authority for a proposition that the failure of the landlord to carry out an independent survey was cause to doubt the reasonableness of decisions to carry out works. The lack of surveys was the motivator for the introduction of The Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014.

35. The lack of an independent survey (costing about £350 on the general market and cheaper in bulk) would have saved costs overall and the lack represents a failure to achieve value for money. The existing arrangement amounts to a blank cheque to contractors. There was no incentive for contractors not to replace windows. Not replacing some windows amounts to taking money from leaseholders whose windows were not replaced and put in the pockets of other people.

36. In respect of the preliminary costs, overheads and survey costs these are excessive as no independent survey was carried out.

37. The applicant's say they are not opposed to major works in principle and they are prepared to pay for them less the items referred to above.

The Respondents case

38. Under the leases, the respondents have a responsibility to repair the exterior of the blocks and an ability to replace windows by way of improvement. The leases also permit an administration charge.

39. Service charges are apportioned using a bed weighting method for major works charges whereby a property is assigned a weighting of four units with an additional unit for each bedroom. The total sum of units per block is tallied and the total cost divided by the sum of units providing a cost per unit. The decision to charge in this manner was agreed with the home owners Council which is the formal consultative body for homeowners within the respondent's organisation. The home owners council representatives are leaseholders and freeholders across the borough who have been nominated by tenants and residents associations in their particular area. The method is considered to be reasonable and ensures that leaseholders of smaller properties are not subsidising those in larger properties.

40. 159 Lucey Way has three bedrooms attracting a bed weighting of seven units and the total block weighting is 72. Therefore, the applicants contribution is 7/72.

41. 14 Lucey Way has two bedrooms attracting a bed weighting of six units. The block total is 888 and the applicant's contribution is 6/888.

42. In order to comply with its obligations, the respondent commissioned a feasibility study which resulted in the preparation of a specification of works. The works were to be carried out under a Qualifying Long Term Agreement by the council's long-term partnering contractor Keepmoat. The schedule of rates to be used was established under competitive tender. In the respondents view the costs of works have been tested in market conditions and are reasonable.

43. The contract start date was 29 September 2014 and achieved practical completion on 29 April 2016. The defects period is estimated to complete on 29 April 2017.

44. The respondent contends it has complied with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 as amended. A notice of intention was issued on 7 August 2014.

45. The charge at 159 Lucey Way is £23,251.61 made up of building works to the block of £19,301.04, estate charges for works to link bridges of £337.47 with the balance made up of professional and administration fees.

46. The charge for 14 Lucey Way is £29,348.95 made up of building charges of £24,450.90, works to link bridges of £337.47 with the balance made up of administration and professional fees.

47. Professional fees are 9.7% of the contract cost for drafting the specification, putting the contract out for competitive tender, evaluating the tenders, supervising the works and agreeing the final account.

48. Administration fees are 10% of the costs of the service charge demand as permitted by the lease.

49. An external survey of the leasehold properties on the estate was carried out by CYD surveyors and the contractor, Keepmoat. The respondent considers this method reasonable for the following reasons.

- A good view can be obtained from the estate walkways which overlook large parts of the estate. To make a detailed inspection of roof and upper-level windows would have necessitated scaffolding.

- The works at Lucey Way were phase 5 of an estate wide renewal of windows asphalt and doors. During phase 1, time was invested with the Resident's Association to determine what was needed to the estate.

- To gain access to every flat would be costly and time-consuming. The respondent has no repair maintenance obligations inside the leasehold properties.

- Rotting of timber windows would be visible externally.

- The condition of roof surfaces was visible and missing tiles are easily identified. Facias were inspected once scaffolding was in place

- A further inspection was carried out by Potter Raper partnership who reviewed the Feasibility Report.

- Repair logs would have been viewed to see what regular repairs were undertaken at the blocks.

- In respect of balconies a further inspection was carried out by Permanite Asphalt and a specification of works prepared.

- A door survey was carried out but replacement of entrance doors is no longer being claimed in respect of the two flats.

50. Isolated roof repairs were carried out as a number of roof tiles were noted to be damage cracked loose or missing in the Feasibility Report. While scaffolding was up the fascia boards were inspected and UPVC facias fitted with necessary guttering re-fixing.

51. Linkway bridges are an estate charge not a block charge and are therefore shown separately. The cost has been charged to the whole estate.

52. Under the terms of the leases the respondent is responsible for the repair and maintenance of balconies as these form part of the exterior of the building. The balcony to 159 also forms part of the roof of the flat below. Balconies are divided by class panelling. The feasibility report estimated the balconies had an economic life span of 1 - 5 years and recommended balcony coverings be replaced. Permanite Asphalt were instructed to provide a specification for works to walkways and balconies and various samples were taken in preparing the specification.

53. The balcony at 14 Lucey Way runs the length of the block and is partitioned per property with concrete which connects to the walkways above. The applicant argues he should not pay the estimated cost of these works because the respondent did not carry out a survey. Similar investigations were carried out as for 159 Lucey Way. The respondent challenges the standard of the works but this application only deals

with estimated invoices and once the actual final completion invoice has been issued the applicant will have an opportunity to query the standard of the works.

54. At flat 159 the windows were replaced and a schedule of the repairs history of windows at this flat was exhibited. The Feasibility Report found that windows to this block were generally single glazed and set in timber frames. Windows may be stiff and difficult to open, thermal properties would be poor and not meet current standards. The report recommended replacement with double glazed windows. Once scaffolding was erected contractors would be able to assess the condition of each window and if replacement was not required then works would be omitted from the final account.

55. At 14 Lucey Way no repairs to windows had been carried out to the property in the previous 10 years.

56. The respondent called Mr Winston McLeod to give evidence. His role is as contract manager from June 2016 with no involvement prior to that date. He explained the standard procedures which would have been adopted. A meeting was held with leaseholders on 9 September 2014.

57. In cross-examination Mr MacLeod confirmed he was familiar with the estate. He was unable to say if errors in reports provided to the council would have been challenged further up the line. It was unable to explain why the fire safety report for the estate shows gas heating for each flat when there is no gas on the estate. The flats have communal central heating.

58. In response to a question from the tribunal it was stated that the fire safety reports were provided as justification for replacement of the front entrance doors but the claim for new doors is no longer being pursued.

59. The respondent then called Mr Phil Garaccio who is contract manager for Keepmoat who had design responsibility for the scheme and they in turn appointed CYD surveyors to carry out a Feasibility Report to give an independent opinion on the condition of the estate. Potter Raper partnership were contract administrators and inspected with Keepmoat and both agreed with the findings in the Feasibility Report.

60. In cross-examination Mr Garaccio confirmed detailed inspections would be made from scaffolding once erected and the clerk of works would check what works required carrying out. He was asked why cherry picker was not used for inspections and why no detailed individual surveys were carried out. He confirmed in his view the inspection regime was satisfactory for the works.

61. Mr Garaccio was also questioned regarding the relationship between Keepmoat and Southwark. It was suggested that the more work that Keepmoat found to be carried out the more money they made.

62. The respondent then called Mr Mark Ruddell who is a senior chartered building surveyor at Potter Raper Partnership. In January 2014 he was assigned the role of building surveyor to manage the contract on behalf of the respondent. This involved administration of the contract terms, regular site meetings, quality review, inspections of works and management of the completion and handover process. His evidence relates to the estimated invoice and not with the actual works and actual costs of the contract.

63. After the Feasibility Report was prepared, PRP were instructed to assess whether the descriptions and recommendations within the report were an accurate representation of the condition of the buildings and if the works required were reasonably necessary. This involved both a desktop study and the site inspection. The surveyors who undertook the work are no longer with the firm but site inspections were made in July and August 2013 and a copy of the report is exhibited. The Feasibility Report identified various works to be carried out and/or considered. PRP took the report and various specialist surveys and undertook their own site inspection. This was reviewed with all of the evidence to be able to review/challenge any of the works put forward. The resulting Feasibility Review Report issued with an events influence the contractor when they produced their Task Order Price (TOP). Building surveyors would then review the schedule of works descriptions and this will be checked by PRP quantity surveyors resulting in a TOP Review Report highlighting any queries raised.

64. In cross-examination Mr Ruddell confirmed he did not make internal inspections of flats 14 and 159.

65. The respondent then called Mr David Spiller of Potter Raper Partnership who is the quantity surveying partner involved with the contract. Following a competitive tender process PRP were appointed by Southwark as pre-and post contract quantity surveyor for the works. PRP were involved in agreement of the contractor's proposed task order price, checking the pricing of the specification, monitoring spending and assessing and certifying payments to the contractor and agreeing the final account following completion of the works. Any items of works not required during the course of the contract have been omitted from the final account.

66. Lucey Way forms part of a construction project known as the Rouel Road External Works Contract under which refurbishment works were carried out to various residential blocks under one contract by a framework contractor. The Preliminaries costs were priced in the form of a quantified schedule of rates. This is a standard list of contractors

Preliminaries cost items priced to reflect site setup and management levels required for the contract. Quantities and rates were checked by PRP during the analysis of the TOP and were found to be consistent with the framework rates agreed. Quantities were remeasured where necessary.

67. Inevitably there are works which cannot be fully quantified or priced in advance and provisional sums are included. Costs against provisional sums are not payable until the contract instruction has been issued by PRP.

68. In cross-examination Mr Spiller was unable to confirm how many leaseholders were on the estate. He was also asked why leaseholder surveys were not undertaken. In Mr Spiller's view the cost of individual surveys would have come to more than the £250 per flat professional fees which were charged.

69. Mr Spiller confirmed that if windows at flat 14 were not replaced these would not be charged for in the final account.

The tribunal's decision

70. The tribunal determines that the amount payable in respect of advance service charge 159 Lucey Way for external works for the years 2014/2015 is £23,251.62.

71. The tribunal determines that the amount payable in respect of advance service charge 14 Lucey Way for external works for the years 2014/2015 is £29,348.95.

Reasons for the tribunal's decision

72. The tribunal reminds itself that the case concerns an advance service charge and challenge under section 19 (2) of the Landlord and Tenant Act 1985 and not a challenge under section 19 (1) as to reasonableness and quality of the works.

73. The primary grounds of challenge by the applicants are that there is a conflict of interest between the various contractors who had a vested interest in maximising the amount of work to maximise their profits. Secondly inadequate surveys were carried out resulting in a failure to correctly identify works which were required to flats 14 and 159 resulting in overcharging. The fire risk assessment and door survey were both criticised for being inaccurate.

74. The applicants relied on two cases in support of the argument that inadequate surveys give grounds for a successful challenge to costs. The first of these cases is Merryweather Court (reference LON/00AU/LSC/2011/0228) and the second at St Saviours Court, a decision of the Upper Tribunal. (reference LRX-6-2016)

75. The tribunal does not consider that the cases have the effect contended for. Each of these cases turned on its own particular facts. The Merryweather Court decision is not binding upon this tribunal in any event but the claim failed on the evidence. The tribunal does not consider that the decision of the Upper Tribunal in St Saviours Court lays down a binding legal principle as to the surveys necessary. In that case the council failed to establish that there was disrepair which justified replacement of fire doors with upgraded doors as the tribunal preferred the evidence of the expert witness for the leaseholders. The work was an improvement which was not covered by the covenant. There is no expert evidence in this case as to the condition of the windows or balconies at Lucey Way or of the lack of disrepair so that repairs are not required and the repairing covenant is not therefore engaged.

76. The tribunal has considered the evidence of the respondent and accepts that a reasonable approach has been made to the assessment of works required to an estate of 888 units of residential accommodation.

77. The tribunal accepts that replacement of timber windows on a large scale with UPVC double glazed units falls within the covenant in the lease allowing improvement of windows and does not accept the criticism that double glazing the windows merely makes hot flats even hotter. Indeed, the criticism at flat 14 is that the existing double glazed windows were not replaced. The tribunal accepts that the reduction of future maintenance requirements by removing the need for replacing rotted sections of timber and regular external decoration is sufficient to justify the works.

78. The tribunal accepts the evidence of the respondents that asphalt surfaces to walkways balconies and other flat surfaces were approaching or at the end of their useful life and that complete replacement was justified. No expert evidence was produced to contradict that view.

79. The tribunal accepts the explanation of the fees and preliminary costs provided by PRP and notes that no evidence was provided that these are not within normal bounds.

80. The tribunal notes that the respondent is no longer claiming for the cost of replacing front entrance doors.

81. The tribunal does not accept the argument that the flat lessees should not pay for repairs to estate walkways as these are not connected with the individual buildings. Estate charges are a separate charge and the tribunal accepts that the repairs were necessary. The tribunal notes no contrary evidence was produced.

Application under s.20C and refund of fees

82. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application and 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.

83. In the application form the Applicant 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 that it is just and equitable in the circumstances for no order to be made under section 20C of the 1985 Act, so that the Respondent may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Mr A Harris LLM FRICS FCIArb **Date: 19 July 2017**

Valuer Chair

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