FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/30UH/LSC/2018/0079-85**
Property	**:**	**Various flats at Cinnabar House, Poulton Road, Morecambe, Lancashire LA4 5BW**
Applicant	**:**	**MW Freeholds Ltd**
Representative	**:**	**Darlington Hardcastles**
Respondents	**:**	**Samantha & Richard Scarr; Chapelshire Ltd; Georgia Rudd; Impresario Investments Ltd; Andrew & Christopher Tague; Scott Fisher; and Scott White**
Representative		**BG Solicitors**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A Commonhold and Leasehold Reform Act 2002- Schedule 11 Paragraph 5A**
Tribunal Members	**:**	**Judge JM Going** **S D Latham MRICS**
Date of inspection and Hearing	**:**	**6th August 2019**
Date of Determination	**:**	**30th September 2019**
Date of Decision	**:**	**29th October 2019**

DECISION

THE DECISION

(1) All of the ground rents claimed by the Applicant have been paid or agreed.

(2) The general service charges for the years 2015–2017 were not all reasonable and are not payable in full. Each Respondent's contribution is to be reduced by £1365.02.

The Tribunal cannot make a proper determination as regards the general service charges demanded for 2018 until independently audited accounts are available.

(3) The "Section 20 Sinking Charge provision" was not reasonable and payable and, as with overpaid general service charges must be recredited to the Respondents in accordance with the terms of the Lease.

(4) None of the sums claimed by the Applicant under schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") are payable.

(5) The Tribunal makes Orders pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and under Paragraph 5A of Schedule 11 to the 2002 Act that any costs incurred by the Applicant in relation to the proceedings before the Tribunal shall not be included in the amount of any service charge payable by the Respondents or recoverable from the Respondents by way of an administration charge.

(6) The Tribunal makes a further Order pursuant to Rule 13 of its Procedure Rules that the Applicant pay the Respondent's reasonable costs of the proceedings before the Tribunal which, if not agreed by the parties, are to be assessed by the County Court on the indemnity basis as part of its own proceedings in respect of the same or related matters, and

(7) Because this case gives rise to various common or related issues applicable to all of the flats within Cinnabar House, the Applicant must within 14 days of its receipt of this decision send a full copy of it to each of the owners of such flats.

BACKGROUND

1. In April 2018 the Applicant issued various County Court claims ("the County Court Claims") for monies claimed by way of ground rent, service charges, administration charges and legal costs against a number of the flat owners at Cinnabar House.

2. By Order of District Judge Bland sitting at the County Court at Lancaster on 19th December 2018 ("the December 2018 Order") seven claims were consolidated and transferred to the First-tier Tribunal (Property Chamber) ("the Tribunal") which was tasked with determining:- "

   (a) whether the claimant is owed outstanding ground rent and, if so, in what sum

   (b) whether the claimant is owed outstanding service charges and, if so, in what sum, including whether the claimant is entitled to the sum described in the Particulars of Claim as "the Section 20 Sinking Charge provision" and, if so, in what sum

   (c) whether the claimant is entitled to expenses and costs in accordance with Schedule 11 of the Commonhold and Leasehold Reform Act 2002, and, if so, in what sum."

3. On 17th January 2019 the Tribunal issued its original set of directions.

4. In April 2019 the Applicant wrote to the Tribunal stating "there are now only 2 extant claims (Units 4 and 16) with units 6, 9, 19, 21 and 22…. having discharged now that which was due as service charge as at the date of issue of the Claims. Accordingly our client shall not be pursuing for the time being claims against units 6, 9, 19, 21 and 22 in relation to which our client's position is reserved". The Respondents' reply stated that the Applicant had not filed a notice of withdrawal under the Tribunal's procedure rules and that "For the sake of clarity, it is confirmed that the Respondents would not consent to any withdrawal that does not provide for the Applicant to settle their reasonable costs. Such a discontinuance had been intimated by the Applicant before the County Court but withdrawn when the indication for costs on discontinue was given." The Tribunal noted in subsequent correspondence to the parties that it would not have any jurisdiction in respect of charges that had been agreed, that any request for costs be made in the County Court proceedings and that the claim continued in respect of units 4 and 16.

5. Each party provided extensive written submissions with their statements of case which were copied to the other.

6. The Tribunal set down Tuesday 6th August 2019 for both for its inspection and the subsequent hearing.

7. An email sent by the Applicant's solicitors to the Tribunal on 31st July 2019 stated "following a recent payment there now is no indebtedness in relation to Unit 4. The only issue concerns Unit 16". A further email sent by the Applicant's solicitors to the Tribunal at 16.52 on Friday 2nd August 2019 stated "following recent agreement there will be no indebtedness in relation to Unit 16 once final payment is made. Accordingly the matter need not proceed on 6th August." The Respondents' solicitors on Monday 5th August 2019 in a further email to the Tribunal confirmed agreement to the statements made by the Applicant's solicitors and also asked "if confirmation could be given that the hearing tomorrow can be vacated"

8. It was clear to the Tribunal that none of the parties had properly complied with the notice requirements of Rule 22 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Procedure Rules") relating to a withdrawal of its case, and that in any event under Rule 22(3) "Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal"

9. To try and clarify the parties' position, the Tribunal telephoned the Respondents' solicitor, and it became clear that many of the matters which the Tribunal had been tasked by the County Court to decide had not been agreed. The Tribunal confirmed that the arrangements for the hearing would continue, and that it would be for the parties to decide as to their attendance.

10. The Respondents' solicitors emailed a letter to the Tribunal (copied at the same time to the Applicant's solicitors) at 16.50 on 5th of August 2019 inviting it to consider the matter on the basis of the submitted papers, explaining that they were instructed by their clients not to incur the costs of attending the hearing and asking to be excused. The Applicant's solicitors subsequently sent a further email to the Tribunal at 19.28 confirming that they had seen the email timed at 16.50 "and concur with the pragmatic approach, namely that there now being no indebtedness on the part of the remaining Respondents to proceed with the hearing tomorrow will be disproportionate" Both the Respondents' and the Applicant's solicitors provided further written submissions.

11. The Tribunal inspected the outside of the development now known as Cinnabar House, which the properties form part of, on the morning of 6th August 2019. No one was available to allow for an internal inspection.

12. The Hearing was subsequently held on the same day at Lancaster Court, but none of the parties chose to attend.

13. Having made its decision on most of the matters that it had been tasked to determine, the Tribunal decided to allow each party's representative a further 14 days to provide further written submissions restricted to answering its question as to "what is the Landlord/Management Company's authority, under the terms of the Lease or otherwise, for including the cost of the insurance of the buildings on the estate (which under the Part V Clause 11 it is obliged to maintain) within the service charge costs which each Leaseholder is obliged to pay a percentage of?"

Facts

14. Cinnabar House was formerly the Morecambe Art and Technical School. It was listed as a Grade II Listed Building in August 2005. Historic England refers to it having been built in 1912 and being of "special architectural interest as a particularly well preserved example of Edwardian baroque architecture, designed as a specialist Art and Technical institution by an education Authority clearly intent on investing in high quality educational provision". Notable features include its "Baroque style, in glazed red Accrington brick with cream stone dressings with Lakeland slate roof".... having "a classical cupola on ridge towards front with a weather vane depicting the ship of knowledge,

and two smaller cupolas towards the rear. Several chimney stacks with stone bands at the top. Rainwater goods are largely cast, some hopper heads with rose motif, others with date. Railings with Art Nouveau designs surround the site". There are 3 storeys in the main block, including the basement level. The building has many large windows with multiple panes.

15. It was converted, in stages, into 22 flats between 2005 and 2014. The Land Registry entries refer to 8 Flats having been sold in April 2008, and a further 14 having been sold in April 2014.

16. The Applicant is the owner of the freehold and according to the Land Registry entries acquired that on 4th November 2014. It has instructed Moreland Estate Management Limited ("Moreland") to A-act as its agent.

17. On 19th May 2017 Lancaster City Council ("the Council") wrote to the Applicant stating that "the external appearance of the above-mentioned premises is a source of concern…" and attached a Schedule of required works warning that if the works were not progressed the Council would have the option of taking enforcement action under Section 215 of the Town and Country Planning Act 1990. The Schedule of required works referred inter alia to the need to "rub down and remove any signs of corrosion/rust to the railings surrounding the turrets… check all timber work to the turrets, replace any rotten timber sections… remove all vegetation and check the cast-iron gutters rainwater pipes hopper heads and soil vent pipes… check all timber eaves/verge detailing and soffits… check all existing timber windows throughout and replace any defective sections… remove any flaking paint throughout, rub down prepare and repaint… Check all metal railings throughout and remove any signs of corrosion/rust. Rub down prepare and repaint… Rebuild any missing cappings/copings to the boundary brick pillars…. remove and discard all vegetation and/or debris to all yard areas as appropriate and maintain in a tidy condition"

18. Laurence Freilich, a Director of the Applicant, prepared a specification of works ("the Applicant's proposed works") in November 2017 based on and in response to the Council's letter, and began what was referred to as the Section 20 Consultation. In December 2017 Moreland also included in the service charge demands to the Respondents the first of what was referred to as "Section 20 Works Sinking Charge provision (quarterly charge)" in the sum of £852.26 to be paid on 1st January 2018. Although the Applicant in its statement of case referred to the estimated cost of the Applicant's proposed works as being £60,510.46 in 2018, it is clear that the combined charge to all 22 Leaseholders in 2018 amounted to £75,000.

19. Each of the Respondents were also invoiced in 2018 a 1/22nd part of £39,555 (ie £1797.95 for the year, being £449.49 per quarter) in respect of general service charges and in due course a further £1947.50 in respect of what were referred to as administration charges and legal costs.

The Lease

20. Each Respondent is the owner of a flat held under a Lease ("the Lease") with a term of 150 years beginning on 1st January 2008 and subject to a yearly ground rent of £150 for the first 25 years of the term. It is understood that the Leases of all of the flats in the development contain or were intended to contain comparable terms and include recitals to the effect that a Management Company had or would be incorporated to acquire the freehold when the last of the flats had been sold, and that each flat owner would be a shareholder and member of that Management Company. The Applicant in its Statement of Case confirms that "consequently, where no management company is appointed under the Leases, the obligations and rights of the Management Company under the Leases are properly to be interpreted as being the obligations and rights of the Landlord." That obligation is made explicit in some if not all of the Leases in a clause numbered 3.6 which states "If no Management Company is incorporated by the Landlord the Landlord shall be responsible for the obligations and duties of the Management Company contained in this Lease and any reference to the Management Company in this Lease shall be varied and replaced by the term Landlord"

21. The service charge year runs from 1st January to 31st December. Clause 4 of the Lease refers to the tenant paying the rent "and also yielding and paying by way of further or additional rent the Current Service Charge". Clause 8, under the heading "Tenant's service charge covenant", states that the Tenant will pay the Management Company the Current Service Charge being a charge for services provided by the Management Company and calculated and payable in accordance with the provisions of the 7th Schedule. The front sheet of the Lease refers to the "Service Charge Proportion" as "1/22nd or the appropriate % of the cost of the Current Service Charge"

22. The 7th Schedule states:

    1. The Current Service Charge shall consist of the Service Charge Proportion of the actual costs to the Management Company of providing all or any of the services set out in Clause 10.1 and defraying the charges and expenses set out in part 2 of this Schedule ("the Service Costs")…

    2. The Management Company shall as soon as convenient after the end of each accounting year… prepare an account showing the amount of the costs incurred by the Management Company in the immediate preceding year and shall supply the Tenant with a copy of such account and shall calculate the Current Service Charge which shall be final and binding on the Tenant.

    3. The Tenant shall pay the Current Service Charge to the Management Company quarterly in advance on the 1st January 1st April 1st July and 1st October in each year or alternatively by ten monthly instalments in advance by standing order …..

    5. The Tenant shall pay for each …. accounting year of the Term the Service Charge Proportion of the Service Costs for the preceding year of the Term and until such sum for any one year shall be ascertained and

calculated as aforesaid the Tenant shall continue to pay the… Service Charge payable for the preceding year but one of the Term ….

6. If the Current Service Charge for any accounting year shall exceed the….. Service Charge payable for the preceding year… the amount of the excess shall be added to and be payable by the Tenant with the next monthly payment due to the Management Company but if it shall be less the amount of the overpayment shall be credited against the next monthly payment…

8. Any excess of overpayment carried forward from previous year or year shall not include any sum set aside for the purpose of clause 10.1.11 of this Lease…

Part 2 – Costs

The total of all costs sums payments and expenses properly incurred by the Management Company in any accounting year in carrying out its obligations under Clause 10.1 of this Lease including but without prejudice to the generality of the foregoing, the cost of:

(1) employing auditors and accountants…

(2) employing managing agents and any accountant or surveyor employed to determine the Management Company's costs and the proportion payable by the tenant…..

(3) employment of staff…..

(4) complying with its obligations under clause 10 of this Lease.

……

(6) carrying out any works or providing any other services and amenities of any kind whatsoever which the Management Company may from time to time consider desirable for the better enjoyment and use for the purpose of maintaining or improving the Estate and the services and amenities in the interest of the lessees tenants owners and occupiers of the dwellings on the estate….

23. Clause 10 of the Lease headed "Management Company Covenants" states:

10.1 The Management Company covenants with the Tenant and as a separate covenant with the Landlord as follows:

……

10.1.2 To keep the main structural parts of the Buildings and the Estate including where appropriate, as part of the Estate… all fixtures and additions thereto (including the roof foundations external walls thereof other than the internal faces of the same)… in good substantial repair decoration and condition including the renewal and replacement of all worn and damaged parts…

10.1.6…. to decorate and paint the whole of the exterior of the Buildings usually so painted and also…such inside parts of the buildings (if any) used in common…

10.1.8 For the purpose of performing its obligations hereunder at its discretion to employ on such terms and conditions as the Management Company shall think fit caretakers maintenance staff cleaners or such other persons as the Management Company may from time to time in its absolute discretion consider necessary.

10.1.9 To employ such surveyors builders engineers tradesmen and other professional persons as may be necessary or desirable for the proper maintenance safety or administration of the estate…

10.1.11. To set aside (such setting aside being deemed an item of expenditure incurred by the Management Company) such sums of money as the Management Company shall reasonably require to meet such future costs as the Management Company shall reasonably expect to incur in repairing the replacing maintaining and renewing those items which the Management Company has hereby covenanted to repair replace retain and renew and the Management Company shall hold such sums of money and all interest earned thereon upon trust to expend them in subsequent years as part of the costs of the Management Company, and subject thereto upon trust for the Tenant and the other lessees of the dwellings on the estate.

……

24. Clause 11 of the Lease sets out the Management Company's obligations in respect of insurance and states that
The Management Company hereby covenants with the Tenant and as a separate covenant with the Landlord:

11.1 to insure and keep insured the buildings on the Estate where the same is not the responsibility of any individual tenant;…..

11.1.4 in an amount not less than the full reinstatement value thereof……

11.2. forthwith to pay all premiums for such insurance upon the same becoming due

The Applicant's Case and the Respondents' Reply

25. The Applicant in its Statement of Case referred to the previously recited events, listed the services which it had provided to the Leaseholders, and stated that the total amount incurred by the Applicant are providing those services were "

a. £28,531.38 in 2016.

b. £42,700 in 2017.

c. £39,555 in 2018.

d. £40,305.08 budgeted for 2019."

26. The Applicant confirmed that the Applicant's proposed works included the works required by the Council and additional works which it was obliged to undertake pursuant to the repairing covenants in the Lease, and that the consequent service charge payments had been sought in accordance with Clause 10.1.11 of the Lease allowing for advance payments to meet future costs.

27. It was also stated that as a direct result of the non-payment of the service charges due, the Applicant had incurred expenses and costs falling within the statutory definition of an "administration charge" and had invoiced each of the Respondents for administration charges in the sum of £1947.50. The Applicant then set out its calculations of the amount said to be due from of each of the Respondents.

28. The Respondents in their Statement of Case referred to the limitations imposed by clause 10.1.11 of the Lease. The Respondents argued that the sums demanded under the "Section 20 Sinking Charge provision" were "grossly disproportionate to the likely costs of the works required under the specification provided" and thus not reasonably required as specified under clause 10.1.11.

29. The Respondents contended that there had been no bona-fide or lawful Section 20 Consultation, that no estimates were obtained from genuine contractors, and that the notices given to the Respondents did not comply with the Consultation requirements or Regulations. The Respondents stated that the 3 tender response forms made available for inspection to some of the tenants at Moreland's offices in Hendon were "wholly bogus", that the businesses referred to in those tender response forms did not exist and were the fraudulent creation of Mr Freilich, on behalf of the Applicant and Moreland. It was also stated that Catalin Crisu was connected to both.

30. The Respondents also averred that very little work of value had previously been undertaken and that the monies which had previously been collected under the service charge should still have been available, so that the demands for additional services charges were (or should have been) unnecessary. The Respondents stated that the sums levied as administration charges were without merit, based on a wholly fraudulent tender/Consultation process, and that the level of costs claimed for administration charges were wholly unreasonable in any event.

31. The Applicant included a witness statement from Mr Freilich, and the Respondents included witness statements from Kelvin Kingsley, Richard Scarr and Georgia Rudd.

32. In the submissions made by the Respondents solicitors on 5th August 2019 details of ground rent payments were reaffirmed and that the Applicant had now "indicated that they no longer wish to pursue matters." The Respondents solicitors advised that "any and all claims for service charges made (save for the … "the Section 20 sinking charge provision")…had been settled, without admission to liability and as such the Applicants have chosen not to pursue any further." The Respondents solicitors confirmed confusion as to the status of the Applicant's claim in respect of the sums claimed for the Section 20

sinking charge provision stating "the Applicants appeared to withdraw their claim under Section 20 and have not provided any evidence to reply to the defence filed before the County Court nor the Respondent's statement of case.."

33. The Respondents solicitors within their various submissions included applications for orders, both under Section 20C of the 1985 Act and Paragraph 5A of Schedule 11 to the 2002 Act.

34. The Applicant's solicitors stated their submissions dated 7th of August 2019 were "filed/served… following agreement and (bar the First Respondents whose payment is awaited) payment by all Respondents of monies representing ground rent and (save as appears below) service charges sought in the respective claims. In consequence the parties agree that there are no issues pertaining to either Ground Rent or service charges for this Tribunal to determine" and went on to address the claim for administration costs stating "the Applicant is entitled to such payments against each and every Respondent following payment by each of them in relation to the service charges… (having deducted the section 20 costs which were not pursued..)… It is submitted that it matters not that the Applicant in each case has for the time being decided not to pursue the Section 20 costs following the decision by the local authority not to insist upon the carrying out of the originally envisaged and required works (which would have triggered the requirement to comply with Section 20)… the sum incurred represents a fair and reasonable sum given…the work involved in managing and administering the additional service charges… aside from that undertaken in relation to the requirements of the local authority, even if then subsequently withdrawn…"

35. Submissions were received from the Respondents' solicitors, and (albeit out of time) the Applicant's solicitors in response to the Tribunal's enquiry (referred to in paragraph 13 above) as to the authority for including the costs of the buildings insurance within the service charges.

36. The Respondents solicitors stated that "the management company's obligation for insuring the estate (under part V clause 11) makes no reference to the costs of the same being indemnified by the tenant. There is no statement within the terms of the lease which requires them to form part of either the rent and the service charge, or indeed to be recoverable from the tenant as separate costs over and above the service charge."

37. The Applicant's solicitors referred to clause 5.3 of the Lease (whereby the Tenant covenants "to pay all rates taxes…. impositions and outgoings which may now or at any time be assessed charged or imposed on the Dwelling or any part thereof on the owner or the occupier in respect of the same" and also to paragraph 6 of part 2 of the 7th Schedule.

The Relevant Law

38. Section 27(a) of the 1985 Act provides that:-

"(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) Sub-Section (1) applies whether or not any payment has been made.....

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

39. Section 19 of the 1985 Act confirms that :-

"(1) Relevant costs shall be taken into account in determining the amount of a service charge ....

(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 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."

40. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed Consultation requirements ("the Consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

41. In outline, the Regulations require a landlord (or management company) to: –

- give written notice of its intention to carry out qualifying works, invite Leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the work should be sought;
- obtain estimates for carrying out the works, and supply Leaseholders with a statement setting out, as regards at least 2 of those estimates, the amounts specified, together with a summary of any individual observations made by Leaseholders; and at least one of the estimates must be from a person wholly unconnected with the landlord;

- make all the estimates available for inspection at a reasonable place and reasonable times; invite Leaseholders to make observations about them; and then have regard to those observations;
- give written notice to the Leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, if that is not the person who submitted the lowest estimate.

42. Paragraph 5 of Schedule 11 to the 2002 Act provides that:-

"(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.....

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

43. Paragraph 1 of Schedule 11 states that:

(1) ..... "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 –

....

(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) .....

(3) ..... "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.

44. Paragraph 2 of Schedule 11 to the 2002 Act provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

45. Paragraph 4 of the same Schedule states that: –

"(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges….

(3) A tenant may withhold payment of an administration charge which has been demanded from him if subparagraph (1) is not complied with in relation to the demand."

The Inspection

46. Sadly, the Tribunal when making its external inspection found Cinnabar House to be poorly maintained with the vast majority of the wooden windows, soffits and all of the ironwork railings needing painting. Most alarmingly, many of the main gutters were clearly blocked by large amounts of material and sprouting vegetation which had clearly accumulated over a long period of time. The car parking area was overgrown.

The Hearing and the Tribunal's Reasons and Conclusions

47. The Tribunal began by considering its jurisdiction, particularly in the light of the various emails received in the days immediately before the hearing.

48. The Tribunal found the impression given by some of those emails misleading, particularly as it became clearer that, rather than the parties having agreed all the matters referred to the Tribunal by the December 2018 Order, the Applicant had decided, albeit in some cases very late in the day not to pursue, for the time being, parts, but not all, of the County Court claims seemingly as a consequence of some payments having been made or promised by the Respondents.

49. Both Section 27A(5) of the 1985 Act relating to service charges, and Paragraph 5(5) of Schedule 11 to the 2002 Act relating to administration charges, state that " the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment." The Tribunal was clear therefore that it had jurisdiction.

50. The Tribunal also had regard to rule 34 of the Procedure Rules which allow for it to proceed with the hearing in a party's absence, if it

"(a) is satisfied that the party has been notified of the hearing…. and

(b) considers that it is in the interests of justice to proceed with the hearing."

Both those criteria having been satisfied the Tribunal concluded that it should proceed with the hearing particularly having regard to its obligations in the County Court under the mandate of the December 2018 Order and on the basis of the parties extensive written submissions and papers, contained in 2 box binders with over 675 pages.

51. Following its inspection and after careful analysis of the various papers and submissions, weighing all the evidence before it, and using its own knowledge and experience, the Tribunal made the following specific findings which assisted its subsequent its decision-making;

(1) The Applicant despite having been presented on various occasions with evidence that different ground rent payments had been paid still persisted to referring to them as unpaid both in demands of the Respondents and the County Court claims; Mr and Mrs Scarrs conveyancing solicitors had repeatedly provided written evidence showing full payment of the ground rent before the purchase of their flat in October 2011 but such evidence was continually ignored in the Applicant's subsequent payment demands.

(2) The Applicant's original claim against Mr and Mrs Scarr in the County Court issued on 4th August 2017 and numbered D0QZ1N1D, which included reference to (inter alia) ground rent that had already been paid and administration charges said to amount to £2007.50, was struck out by the Barrow in Furness County Court on 29th January 2018 because the hearing fee had not been paid in accordance with its previous order.

(3) Those administration charges of £2007.50 were removed from subsequent service charge demands.

(4) The Applicant, Moreland and Service Charge Recovery LLP (used by Moreland) all have the same address, and all are closely connected to Mr Freilich. He is a Director of the Applicant, the Managing Director of Moreland and was, before its recent dissolution, noted as a designated member of Service Charge Recovery LLP. Catalin Crisu is associated with and has been held out as an employee of Moreland. Screens shots from its website have shown him to as Moreland's "Head of Reactive and Preventative Maintenance".

(5) The papers include evidence of accounts from Moreland to the Applicant, not just for management services but also additional matters. As an example, there is an invoice dated 20th December 2017 from Moreland to the Applicant for £425 with the narrative "Attend site on 12/10/2017 to roof repair" and the contractor referred to as "Alin". The Tribunal questioned to why a contractor would not write his own invoice. Is therefore "Alin" an employee or an associate of Moreland?

(6) Confusingly, entirely different developments, as well as Moreland's own premises are shown on the composite invoices from the electricity suppliers.

(7) The certificates appended to the auditor's accounts are severely qualified and even the accounts themselves include some obvious date errors.

(8) The development has been poorly managed from distance, the paperwork presented to the Leaseholders by Moreland was opaque, chaotically presented, and did not included any proper budgets with anything like adequate detail. The Respondents witness statements attest to continuing poor management by Moreland since its appointment in November 2014, with Cinnabar House deteriorating as

a consequence, and despite significant increases in the general service charges (increasing from £1151.12 charged to each flat owner in 2015 by over 68% to a figure of £1940.89 in 2017)

(9) The amounts actually expended as shown in the audited accounts show that the Applicant's references in its Statement of Case (as referred to in paragraph 25 above) are incorrect and have been overstated. The accounts show that the expenditure in 2017 was £30,049.02 rather than the £42,700 referred to, which was in fact the budgeted figure. The Applicant's Statement of Case also wrongly referred to the expenditure in 2018 being £39,555, which again was the budgeted figure. No audited accounts for 2018 have been produced to the Tribunal. The figure for expenditure in 2016 of £28,531.38 referred to in the Statement of case is confirmed in the accounts, but it was some £11,370 less than the budgeted figure of £39,905 on which the charges for that year had been based.

(10) The Tribunal's inspection shows that the Management Company/ landlord is clearly in breach of its repairing and painting obligations confirmed in Clauses 10.1.2 and 10.1.6 of the Lease.

(11) The Section 20 Consultation clearly did not properly comply with the Regulations and most significantly was fraudulent and included reference to fictitious estimates. The Tribunal found the witness statements provided by Mr Kingsley, Mr Scarr and Ms Rudd credible and compelling. All 3 tender response forms supplied to the leaseholders were in the same format referred to as being "completed and sent back to Moreland in electronic format via docusign". The first referred to a quotation from Catalin Crisu contractors of £85,000 excluding VAT. Catalin Crisu contractors quoted address was a building which had formerly been a police station and at the time of Mr Kingsley's enquiry being marketed as a redevelopment opportunity. The 2nd tender response form referred to a quotation of £102,475 excluding VAT from a firm described as Young & Harris of Market Street, Morecambe. However, as confirmed by the Tribunal's own inspection Market Street is part of the shopping high street. One side is entirely taken up by the large Telephone Exchange and Post Office, the other by a car park and part of a shopping precinct. There is a reference on the internet to Young & Harris building contractors, but only in Birmingham and not in Morecambe. The 3rd tender response referring to quotation of £92,199 excluding VAT was said to be from Grosvenor Developments whose address was given as 11 Elmdale Road Liverpool L9 2PH which is a small terraced house in Walton. The Respondents witness statements aver to internet searches and other enquiries finding no evidence of the quoted contractors being in business or at the stated addresses, and concluded that they were a fiction using partially cloned details, which conclusions the Tribunal agree with. Significantly, the Applicant provided no evidence in rebuttal. Because of the gravity of the Respondents claims of deceit and serious misconduct, the Tribunal finds it inconceivable, if the contractors provided the losing estimates had actually existed, that the Applicant would not have immediately provided corroborating evidence as to their existence, for example by providing evidence of a presence on the web or in trade directories,

advertising, letterheads, accounts, testimonials or the like. But it has not provided any evidence at all.

(12) The invoice for £2022 from the national firm HSS for the hire of a 26.4 metre boom/cherry picker on 15th May 2017 for 12 days was wrongly, probably falsely, included within the service charges; close examination of that invoice shows that it was booked to Cinnabar House with the customer reference as "Catalin" and with the HSS branch as East Finchley. This is in contrast to 2 previous invoices for the hire of a long ladder from HSS on 11th May 2017 with the customer reference as Morecambe and the HSS branch being Lancaster. Lancaster is the local branch for Morecambe. East Finchley, 4 miles from Hendon, is some 240 miles further away by road. Significantly, the Applicant's ledgers do not include any accounts or invoices for works done at the same time.

(13) Two invoices totalling £2680 for architect's services should not have been included within the service charges; the Respondents asked for the Applicant to supply further details of what was being charged for, but none have been forthcoming. From the scant details on the invoices it appears that they relate to plans for possible development of, or a new building on, part of the car park, i.e. matters outside those which can be legitimately charged to the leaseholders as part of the service charges.

(14) The Applicant has included insurance premiums within the service charges which it is not entitled to and which should be repaid.

Clause 11 of the Lease confirms covenants by the Management company with the Tenant

"11.1 to insure and keep insured the buildings…

11.2. forthwith pay all premiums for such insurance.."

The 7th Schedule which sets out the costs to be included in the service charges is restricted to those which are properly incurred in carrying out the Management Company's obligations under clause 10.1. The 7th Schedule makes no reference to the Management Company's insurance obligations under clause 11. The Lease does not provide for the insurance premiums to be included in the service charges.

The Applicant's solicitors submitted that clause 5.3 of the Lease obliges the tenant to pay the insurance premiums as an outgoing. But clause 5.3 does not explicitly refer to insurance premiums and, even if an insurance premium could in this context be properly regarded as an outgoing, the clause makes it clear that payments are limited to such as are "imposed on the Dwelling or a part thereof" i.e. the individual leaseholder's flat rather than all the buildings on the Estate.

Neither clause 5.3, nor paragraph 6 of part 2 of the 7th Schedule (also referred to in the Applicant's solicitors submissions and set out in paragraph 22 above) provide a means by which the Management Company can shift its clear obligation to pay the buildings insurance premiums under clause 11.2 to others, and nor can it be argued that it is

"in the interest of the lessees tenants owners and occupiers of the dwellings" to have to take over a payment which the Lease has clearly made the responsibility of the Management Company.

The Lease intended (as referred to in Clause 3.6) that each leaseholder would be a member and shareholder in the Management Company "incorporated for the purposes of maintaining managing administering controlling and providing certain services to and for the lessees of the estate and to acquire the freehold of the common parts of the estate from the landlord at a nominal consideration when the last of the dwellings has been demised".

The Applicant became the freehold owner of the estate in November 2014 after the last of the flats had been demised. The accountants certified service charge accounts refer to no insurance having been demanded in 2014, but subsequent accounts/papers include references to figures of £6640.75 charged to the leaseholders for 2015, £8184.50 for 2016 and £8694.17 for 2017, but without the freehold having been transferred to the Management Company.

It is only when the Management Company envisaged by the Lease has been properly constituted, that the leaseholders, as its shareholders, will become liable to pay the insurance premiums. Until that happens the insurance liability remains with the landlord i.e. the Applicant.

(15) The papers show shortly before or possibly even on the same day of the issue of the County Court claims the Applicant included a sum of £1947.50, labelled as a section 146 notice fee in the payment demands, sent to each of the Respondents. £1947.50 multiplied 7 times over equates to £13,632.50.

(16) Such charges were not properly made in contemplation of forfeiture proceedings, and in any event, were unreasonable.

(17) The Tribunal's directions specified that the Applicant's Statement of Case include copies of (inter-alia) relevant notices invoices and demands for payment, but no evidence was provided to show that the demands for "administration charges" had been accompanied by the appropriate summary of rights and obligations in accordance with the Administration Charges (Summary of rights and obligations) (England) Regulations 2007. The Tribunal has therefore concluded that no such summaries were given.

52. The Tribunal also carefully considered the precise terms of the Lease, before providing the following determinations in response to the questions posed in the December 2018 Order

Whether the Applicant is owed outstanding ground rent and, if so, in what sum

53. The Lease is clear that the annual ground rent due from each Respondent during each of the years in question is £150.

54. The Tribunal understands from the submissions made by both the Applicant and the Respondents that it is now properly agreed that (save for a payment of £150 due for 2019 which was still to be paid by the first Respondent on 6th August 2019) there are no further sums due in respect of ground rent from any of the Respondents. If that understanding is correct the Tribunal has no further jurisdiction in respect of this particular matter and does not need to further deliberate on it.

55. Nevertheless, for the avoidance of any doubt it is confirmed that the Tribunal has determined that the Applicant had no valid reason for including in its payment demands or the County Court claims that ground rent was due for the years 2009 – 11 but nevertheless continued to do so following receipt of clear and repeated evidence that such payments had been paid.

Whether the Applicant is owed outstanding Service charges including "the Section 20 Sinking Charge Provision"

56. The Tribunal in reviewing the amounts which had been demanded by the Applicant from the Respondents, distinguished between firstly those which for ease of reference are referred to as "general service charges" which amounted to £42,700 in 2017 and £39,555 in 2018, secondly the additional charges in respect of the Applicant's proposed works referred to as the "Section 20 Sinking charge provision" amounting to £75,000 in 2018, and finally the additional solicitors charges and costs referred to as "the Applicant's administration charges".

The General Service Charges

57. Section 19 of the 1985 Act is the all important provision in judging service charges, making it clear that for the general service charges to be payable they had to be both reasonably incurred, and when completed of a reasonable standard.

58. The Tribunal's first cursory appraisal of the published accounts, seen in isolation, was that the general service charges were not necessarily out of line with what might have been reasonably expected, or the market norm. However, it soon became apparent that it was unsafe to rely solely on those accounts, and a closer inspection shows that the Applicant has fallen well short of showing that all of the sums that it has demanded are reasonable. Indeed, the Tribunal finds that some of the items charged for were not just unreasonable, but a deceit. It is also clear that a number of the works undertaken or services supplied were not of a reasonable standard.

59. The Tribunal has found that the following items were not reasonably incurred having been included in general service charges either without merit or the necessary authority from the Leases and are therefore not payable at all:

- the invoice for the cherry picker in the sum of £2022 (referred to in paragraph 51(12) above),
- the invoices for the architects services totalling £2680 (referred to in paragraph 51(13)), and

- the insurance premiums of £6640.75, £8148.50 and £8694.17 totalling £23,483.42 (referred to in paragraph 51 (14)).

60. The Tribunal, having regard to the service provided and the Applicant and Moreland's conduct, also found that the Moreland's management fees were excessive. The Tribunal took into account the evidence from its own inspection and its overall findings. The annual charges shown in 2017 accounts of £5145 equates to a charge of £233.86 to each flat owner, which the Tribunal would have considered to be on the high side, even if one had been able to assume a good service. In the light of its findings as to the inadequacies of the service provided, but nevertheless acknowledging that the Applicant had provided some services, the Tribunal concluded that the reasonable charge per flat for 2017 should be no more than £150 per annum.

61. In consequence of all of the above the Tribunal has determined that the general service charges must be reduced by a total sum of £30,030.42 with that figure divided by 22, i.e. £1,365.02 being credited to each flat owner in accordance with the provisions set out in paragraph 6 of the 7th schedule to the Lease against the next payment due.

The Section 20 Sinking Charge Provision

62. The Tribunal has no hesitation in agreeing with the RICS's "Service charge Residential Management Code-3rd edition" stating that "it is … considered good practice to hold reserve funds where the Lease permits". Tribunal is also absolutely clear that Cinnabar House, a Listed Building on a constricted site, requires strategic management and an ongoing rolling plan of maintenance and repair to sustain its unique structure, roof and infrastructure.

63. There is no statutory requirement for Consultation prior to levying an "on account" service charge if the Lease in question allows for it. Section 19 (2) of the 1985 Act makes it quite clear that it is perfectly possible for service charges to be payable before the relevant costs are incurred, but it also states that "no greater amount than is reasonable is… payable".

64. In this case the authority to collect certain monies in before they are expended starts with paragraph 10.1.11 of the Lease.

65. Paragraph 10.1.11 imposes its own constraints and make explicit that the monies that can be set aside are limited to "such sums … as the Management Company shall reasonably require to meet such future costs as the Management Company shall reasonably expect to incur…". It also confirms "such setting aside being deemed an item of expenditure by the Management company" which brings it within the costs which can be included in the service charges. Those costs are however themselves also limited by the wording of the first line of part 2 of the 7th schedule to those which are "properly incurred".

66. Taking those requirements together, for advance payments to be collected, and payable, they must be: –

1. for future costs that are reasonably expected,

2. for costs that are reasonably required,

3. properly incurred, and

4. reasonable.

67. The Tribunal had no doubt looking at Cinnabar House that costs to pay for the works referred to by the Council and in the Applicant's specification could be both reasonably expected and would be reasonably required, if funds were not already available. The mismatch between the amounts previously demanded under the general service charges, and the management company's actual expenditure as shown in the audited accounts should have ensured that there were adequate balances to be able to proceed with at least some (but not necessarily all) of the Applicant's specified works forthwith.

68. The Tribunal then went on to consider whether the costs demanded for the "section 20 sinking fund provision" were properly incurred and, when looked at in the round, reasonable.

69. Whilst compliance with the Regulations and the Consultation requirements are not a necessary prerequisite to an estimated on account demand for service charges, compliance is certainly required in respect of qualifying works. The Regulations and the Consultation requirements also provide a template by which to judge whether advance payments are properly incurred and reasonable. Any deliberate deviation or avoidance must draw in to question the reasonableness of the end result. Significantly the Consultation requirements make it abundantly clear that at least one estimate must be from a person "wholly unconnected with the landlord". The purpose of the Consultation requirements has been confirmed by the Supreme Court in Daejan Investments Ltd v Benson and others (2013) UK SC 14 (the leading case on the proper way to deal with applications for dispensation) as being to ensure that leaseholders are not put at risk of having to pay for inappropriate works or paying more than would be appropriate. The Tribunal is clearly of the view that the same benchmark should be applied when considering whether the costs demanded in this case were properly incurred and reasonable.

70. Sadly, the Tribunal has had no difficulty in concluding that the Applicant has shown in its dealings with the Respondents a wholesale disregard for both the purpose and the detailed provisions of the Consultation requirements, and by its actions put the Respondents at risk of having to pay for inappropriate works or paying more than would be appropriate. As such, it has concluded that the costs demanded under the heading "Section 20 sinking fund provision" were not properly incurred and not reasonable.

71. It also follows, from the Tribunal's finding that the Consultation requirements were not properly complied with, that the service charge contributions due from each of the Leaseholders for any actual works included within the Applicant's proposed works would be limited to £250 as a consequence of Section 20 of the 1985 Act, unless and until there has been a properly compliant consultation or until any dispensation is granted.

72. It further follows that, as soon as it became apparent that the Consultation requirements were not being properly complied with, the Respondents became immediately entitled (in the knowledge that their maximum individual contributions were then limited by statute to £250) to conclude that no more than £250 should or could be charged to each for the Applicant's proposed works. As was put in the Respondents submissions "if works are required, genuine estimates will need to be obtained and the statutory consultation process will need to be undertaken again."

73. In all the circumstances, the Tribunal has concluded that the Applicant was not entitled to any of the sums described as the Section 20 sinking charge provision.

74. In the light of this analysis, it came as no surprise that the Applicant, albeit only at the eleventh hour, decided in the words of its solicitor "not to pursue the section 20 costs". What was not then clear was what is to happen as regards those leaseholders that have paid towards the costs of the Applicant's proposed works, particularly in the light of its solicitors further statement that this was "following the decision by the local authority not to insist on the carrying out of the originally envisaged and required works". Taking those statements at face value, the Tribunal finds that all of those leaseholders who have contributed to the "Section 20 sinking charge provision" should now have such monies credited back to them in accordance with the provisions set out in paragraph 6 of the 7th schedule to the Lease.

The Applicant's Administration Charges

75. The Applicant claims it was entitled in April 2018 to £1947.50 from each of the 7 Respondents, i.e. a total sum of £13,632.50 in administration charges. The Applicant has provided no detail or breakdown of such costs, nor made it clear as to whether such costs were actual costs payable to others or its own internal charges, or both. The Applicant has stated that they were incurred as a direct result of non-payment of charges which were due, and in its latter submissions represent "a fair and reasonable sum… of the work involved in managing and administering the Additional Service Charges… aside from that undertaken in relation to the requirements of the local authority, even if then subsequently withdrawn."

76. It is a misconception, made by many landlords and managing agents, that administration charges are payable by reason of the provisions of the 2002 Act. That is not the case. Administration costs are not payable unless expressly provided for under the terms of the Lease.

77. Both the definitions of "administration charge" and "variable administration charge" contained in paragraph 1 of Schedule 11 of the 2002 Act specifically limit such charges to those which are "payable". The 2002 Act did not seek to introduce independent and new charges where none had previously existed but rather to regulate those that were already payable and so any such charges should be reasonable.

78. The Tribunal is clear therefore that for the Applicant's administration costs to be passed on to a tenant there would need to be clear and unambiguous authority from within the Lease itself.

79. The Tribunal has carefully studied and considered the wording of both Clauses 5.16 and 5.17 of the Lease.

80. Clause 5.16 refers to a Tenant "having to pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses (including those payable to counsel solicitors and surveyors) reasonably and properly incurred by the Landlord in relation to or contemplation of or incidental to the preparation and service of a notice under the Law of Property Act 1925 Section 146 or the taking of proceedings under the Law of Property Act 1925 Sections 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court."

81. Although labelled as "Section 146 notice" fees in its payment demands there is no corroborating evidence to suggest that the Applicant was in reality contemplating forfeiture of the Respondents' Leases either when issuing the demands or when instituting the County Court claims.

82. The Tribunal has concluded that the Applicant was not properly, truly or legitimately contemplating forfeiture at those times for various reasons;

- despite the words used in the payment demands the Applicant has provided no evidence of actually issuing a Section 146 notice or notices, and the Respondents have confirmed that none were received,
- the Applicant knew that if forfeiture was contemplated it would first need to seek and obtain a ruling from the Tribunal or court that the service charges claimed were reasonable and payable (as consequence of the preconditions set out in Section 81 of the Housing Act 1996) which information was referred to with its payment demands, but
- the Applicant made no attempt to engage with the Tribunal before issuing the County Court claims, and
- the County Court claims were for money judgements only, without a claim for forfeiture being included.

83. It is also significant that the wording of clause 5.16 also specifically limits any costs to those that are "reasonably and properly incurred". The Tribunal has concluded that such costs as the Applicant did incur were neither reasonable nor properly incurred.

84. The Tribunal has also carefully considered Clause 5.17 of the Lease which sets out the tenant's covenant "to be responsible for and keep the Landlord fully indemnified against all liability made against or suffered or incurred by the landlord arising directly or indirectly out of…. any breach or non observance by the tenant of the covenants conditions or other provisions of this Lease."……

85. Whilst the indemnity referred to is wide ranging, the Tribunal has concluded that it would be stretching the ordinary meaning of the wording too far and totally inequitable to argue that it could allow a landlord to legitimately claim that it had suffered or incurred a liability when pursuing (inter-alia) monies that it knew it was not properly entitled to.

86. The Tribunal is also minded that if there is any ambiguity in the wording of a Lease then the "contra proferentem rule" applies because the onus is on a landlord who prepares a Lease to ensure that any obligation it seeks to impose on a tenant is clearly set out.

87. For these reasons that the Tribunal has concluded that in the circumstances of case the Applicant did not satisfy the necessary preconditions to legitimately engage with any limited contractual rights under the terms of the Lease to claim the costs claimed as administration costs directly from individual tenants.

88. Of course if, it had been found that some or all of the costs claimed as administration costs were potentially or properly and directly payable by the individual leaseholders under the contractual terms of the Lease, the provisions of the 2002 Act would have then applied, and thereby paragraph 2 of Schedule 11, which confirms that the charges would be " payable only to the extent that the amount…is reasonable".

89. In that instance, the Tribunal would have again found that none of the Applicant's administration costs were payable, having decided that they had been incurred in pursuit of various grossly overstated charges, the validity of which are of concern, and thereby totally unreasonable.

90. The Tribunal also found that because there was no evidence of the Applicant having issued the necessary Summary of rights and obligations in relating to administration charges when demanding payment, that the Respondents were, in any event, entitled under paragraph 4 (3) of schedule 11 to the 2002 Act to withhold payment of the sums claimed as such.

The Section 20C and Paragraph 5A Applications

91. The Tribunal went on to consider the Respondents applications, that the Tribunal make an Order under Section 20C of the 1985 Act that the Applicant be precluded from including within the service charges the costs incurred by the Applicant in connection with the present proceedings before the Tribunal and for a further order under Paragraph 5A of Schedule 11 to the 2002 Act to reduce or extinguish liability to pay a particular administration charge in respect of litigation costs, i.e. to limit the payment of any contractual costs that might be allowed for under the Lease.

92. In both cases, the Tribunal having regard to what is just and equitable in all the circumstances, and in the light of its foregoing decisions, determined that Orders should be made precluding the Applicant from seeking to recover any of its costs incurred in relation to the proceedings before the Tribunal from the

Respondents either as part of the service charges or as an administration charge.

Rule 13 Costs

93. Rule 13 of the Procedure Rules provides that a Tribunal may determine (whether in response to an application or on its own initiative) that one party to the proceedings before the Tribunal pays the costs incurred by the other party in the limited circumstances set out in that rule, if that party has acted unreasonably in bringing defending or conducting those proceedings.

94. The Tribunal has given each party the opportunity to make representations about an order for costs and considered such representations carefully.

95. The Applicant has questioned the Tribunal's jurisdiction stating that "it has not had – and does not have – cause to consider any issues and/or facts". For the reasons set out in paragraphs 47-50 above the Tribunal rejects that assertion.

96. The Respondents have referred to various steps in the proceedings, both before the County Court and the Tribunal. Correspondence between the parties shows that, despite repeated requests for clarification, the Applicant continually refused to clearly state its position as regards the possible withdrawal of its section 20 sinking fund provision claim which had been indicated months before the proceedings before the Tribunal began. The Respondents aver that the Applicant was warned by the County Court in October 2018 that it would prospectively find itself liable for the Respondents costs when discontinuance was discussed. The Applicant chose to continue, allowing the proceedings before the Tribunal to be initiated, and only withdrew the section 20 sinking fund provision claim in respect of the last of the Respondents at the very last hour.

97. Both the Applicant and the Respondents have referred to the leading Upper Tribunal case of Willow Court Management Company (1985) Ltd v Alexander and others (2016) UKUT 0290(LC) ("Willow Court") whereby Martin Roger QC, Deputy Chamber President of the Upper Tribunal (Lands Chamber) and Siobhan McGrath Chamber President of the Tribunal provided detailed guidance as to how the discretionary power afforded under Paragraph 13 should be exercised.

98. That case confirms that a finding of "unreasonable conduct" is an essential precondition to the exercise of the Tribunal's discretion. It is only if and when such a finding has been made that a 2nd stage in the process is engaged and when "it is essential for the Tribunal consider whether, in the light of the unreasonable conduct it has found…. it ought to make an order for costs or not." "It is only if it decides that it should make an order that a 3rd stage is reached when the question is what the terms of that order should be".

99. The first question for the Tribunal to address therefore is has the Applicant acted unreasonably, i.e. acted without any reasonable explanation for the conduct complained of. Previous authorities such as the Court of Appeal in

Ridehalgh v Horsfield (1994) Ch 205 make it clear that "unreasonable" conduct includes "conduct which is vexatious, and designed to harass the other side rather than the advance the resolution of the case."

100. The Tribunal has determined, based on all of the evidence, that a principal motive in the Applicant's beginning, and continuing the proceedings for as long as it did, was to try and force a settlement by the Respondents by duress (including frightening them with the risk of having to pay, on occasions, grossly exaggerated and sometimes invalid costs) in an attempt and to obtain (inter-alia) monies which it knew that it was not properly entitled to. The Tribunal has had no hesitation in concluding that the Applicant's tactics and conduct in relation to the proceedings were vexatious and designed to harass the other side rather than properly advance a just resolution of the case, and thus clearly "unreasonable" within the meaning attached to it under Rule 13.

101. The Tribunal has decided that because the Applicant has behaved so unreasonably that it is only fair and reasonable that the Respondents be compensated by having their reasonable legal costs paid, and that the Applicant be ordered to pay all of the Respondent's reasonable costs of the proceedings before the Tribunal.

102. The matter is now returned to the County Court.

JM Going
Tribunal Judge
29 October 2019