



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CAM/33UE/LIS/2020/0025**

**HMCTS** : **Paper**

**Property** : **1 Elizabeth Court, Winston Churchill Drive,  
Kings Lynn, Norfolk PE30 4UR**

**Applicant** : **Kevin Boughen**

**Respondent** : **Elizabeth Court (Bishops) Park) Residents  
Association Ltd**

**Type of Application** : **1) to determine the reasonableness and  
payability of the Service Charges (section  
27A Landlord and Tenant Act 1985)  
2) to determine whether the landlord's costs  
arising from the of proceedings should be  
limited in relation to the service charge  
(section 20C of the Landlord and Tenant  
Act 1985)  
3) to reduce or extinguish the Tenant's  
liability to pay an administration charge in  
respect of litigation costs (paragraph 5A of  
Schedule 11 of the Commonhold and  
Leasehold reform Act 2002)**

**Tribunal** : **Judge J R Morris**

**Date of Application** : **2<sup>nd</sup> October 2020**  
**Date of Directions** : **6<sup>th</sup> November 2020**  
**Date of Decision** : **2<sup>nd</sup> February 2021**

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**DECISION**

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## **Covid-19 Pandemic**

This determination on the papers has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the case is to be determined wholly on the papers because it is not reasonably practicable for a hearing, or to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

## **Decision**

1. The Tribunal determines that a reasonable Estimated Service Charge payable by the Applicant to the Respondent in respect of the Property for the years in issue ending 31<sup>st</sup> December is as follows:

2017	£931.40
2018	£1,088.40
2019	£971.33
2020	£968.40
2. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant and James Andrew Redman of Redcroft Properties.
3. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

## **Reasons**

### **Background**

4. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the service charges to be incurred for the years ending 31<sup>st</sup> December 2017, 2018 2019 and 2020 are reasonable and payable.
5. The Applicant also seeks:
  - a) An order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 for himself and James Redman of Redcroft Properties who is said to be the Leaseholder for Flats 11 and 13.

- b) An order to reduce or extinguish the tenant's liability to pay an administration charge in respect of the litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
  - c) The Applicant also seeks a determination under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the reasonableness and payability of administration charges.
6. The Applicant named Mr and Mrs Burlingham as proposed Respondents and makes allegations about their actions as directors and shareholders, but it appears that the proper Respondent is Elizabeth Court (Bishopspark) Residents Association Limited, which is defined as the Managers under the Lease of the property and is the registered proprietor of the freehold title. Accordingly, pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal has substituted this company as the Respondent.
7. Directions were issued on 6<sup>th</sup> November 2020

#### **The Law**

8. The Law relating to these proceedings is set out in Annex 2 and should be read in conjunction with this Decision and Reasons.

#### **The Leases**

9. A copy of the Lease relating to the Property was provided and the Tribunal presumes it is in like form to the other Leases at Elizabeth Court ("the Block"). By the Lease dated 1<sup>st</sup> November 1991 between (1) Wilcon Homes Anglia Limited ("the Lessor"), (2) the Elizabeth Court (Bishopspark) Residents Association limited ("the Managers") and (3) Susan Kerry ("the Lessee") for a term from the date of the Lease until 31<sup>st</sup> day of 2090. The Applicant states in his Statement of Case that he has held the Lease which was assigned to him over 10 years ago.
10. The Recitals of the Lease state that the Lessor is the registered proprietor with freehold title absolute under Title Number NK79424 of Elizabeth Court (the Block). It is further stated that  
*At the conclusion of the development and the completion of the last of such leases the freehold of the Block is to be transferred by the Lessor in fee simple to the Managers together with the benefit of and subject to such leases and all the provisions thereof*
11. The relevant provisions of the Lease are as follows:
12. Clause 1 of the Lease states that (a) a yearly rent is to be paid and  
 (b) *by way of further or additional rent from time to time one fifteenth of all such sums as are expended by the Lessor in carrying out its obligations set out in Clause 5 hereof*
13. Clause 4 of the Lease states:  
 The Lessee hereby covenants with the Lessor as follows: -

- (1) *To pay the reserved rent by direct debit or otherwise as the lessor shall prescribe on the days and in the manner aforesaid*
- (2) *That in consideration of the Lessor or its Managers performing the obligations in Clause 5 hereof he will make payments by direct debit or otherwise as the Lessor shall prescribe in advance to the Lessor in the following manner: -*
  - (a) *from and after the date hereof and from time to time and whenever called upon to do so one fifteenth of the estimated amount of the total costs and expenses to be incurred in the next following period of not more than a year in performing the said obligations due allowance being made for any surplus remaining from any previous payments and due addition being made from any previous deficit*
  - (b) *such estimates shall be certified by Chartered Accountants employed by the Lessor whose certificate shall be final and binding on both parties*
  - (c) *the payments to be made by the lessee pursuant to paragraph (1) and (2) of the Clause shall be paid within 28 days of demand failing which interest at the rate of £4 per centum per month shall be payable from demand until payment*

14. Clause 5 of the Lease sets out the obligations of the Lessor which in summary are:
- A) To ensure the Lessee peaceful enjoyment;
  - B) To insure the Block;
  - C) To enforce breaches of the Lease;
  - D) To provide services including:
    - 1) Repair and renewal of:
      - a) roofs, pipes and guttering,
      - b) water pipes, drains, sewers wires, cables and electrical installations,
      - c) common entrances, staircases, landings and refuse areas,
      - d) common drives, accessways, parking areas, paths, gardens and grounds of the block,
      - e) main structure including party walls but excluding the windows and doors of individual units;
    - 2) Provision of lighting;
    - 3) Provision of TV aerials;
    - 4) Payment of General Rates and outgoings in respect of the common parts;
    - 5) Painting and decorating the interior and exterior of all common parts every 3 years;
    - 6) Employing of staff to care for and manage the Block;
    - 7) Payment of Water rates;
    - 8) Collection and disposal of refuse.

15. It appears from the Applicant's Statement of Case that at some point the Lessee of each Flat was allocated a share in the Respondent. Therefore, each Lessee has a share in the Respondent which is a company that holds the freehold and is also the Lessor to whom a ground rent is payable by the Lessees. In addition, the Respondent has obligations under the Lease to provide services for which the Lessees covenant to pay.

16. Each Lessee has three roles. Firstly, the role of shareholder (some Lessees with the ancillary role of director) of the Respondent which is governed by the Articles of Association which is a contract between the shareholders. Secondly, the role of Lessor (being a shareholder of the Respondent) and thirdly the role of a Lessee. The role of Lessor and Lessee are governed by the Lease and the Tribunal is only concerned with the rights and obligations of the Lessor and Lessee under the Lease.
17. The Applicant made the Application in his capacity as a Lessee and the determination is made accordingly. The subsequent appointment of the Applicant as a director of the Respondent does not affect the position of the parties in these proceedings.

### **Description**

18. From the Statement of Case, the Lease and the Internet, the Property was found to be a Flat in a three storey Block of 15 purpose built one and two bedroom Flats constructed about 1990 of brick under a pitched tile roof. The grounds around the Block comprise a car park and shrubberies. The Block is situated on a Development of similar properties. The Tribunal was of the opinion that the Service Charge items in issue did not require an inspection of the Development, Block or Property and none was undertaken.

### **The Issues**

19. The issue is to determine the reasonableness and payability of the Service Charge with particular reference to the management fee for the years ending 31<sup>st</sup> December 2017, 2018, 2019 and 2020 ("the years in issue"). On examining the bundle, the Tribunal found that the Applicant had provided a spread sheet which set out the Service Charge items and costs incurred for the years ending 2014, 2015, and 2016. However, it only recorded the costs to be incurred (estimated) for the years in issue. It is noted from a letter of illegible date included in the Bundle from Steel & Co to the Applicant that Steel & co are no longer the Managing Agents and states that "All the documents we hold have been boxed up and are awaiting collection by the Director". It is assumed that these will either contain the Service Charge Accounts for the years in issue and/or documents which will enable such accounts to be drawn up.
20. In the absence of the actual Service Charge Accounts for any of the years in issue the Tribunal is only able to determine the estimated costs for the items of the Service Charge for those years.

### **Evidence**

#### ***Service Charge***

21. The Applicant provided a Statement of Case on the Application Form and letter with the Bundle dated 23<sup>rd</sup> January 2021 together with various supporting documents. No Statement of Case or other evidence was adduced by the Respondent.

22. The Statement of case included the following table of Service Charge Items and Costs which are presumed to be actual costs for the years ending 31<sup>st</sup> December 2012, 2013, 2014, 2015 and 2016.

Actual Service Charge Costs	2012 £	2013 £	2014 £	2015 £	2016 £
Bank Charges	41.00	50.00	0.00	0.00	0.00
Electricity	504.00	448.00	1,010.00	783.00	1,560.00
Electrical Repairs	429.00	657.00	335.00	409.00	0.00
Fire Prevention	174.00	354.00	276.00	6,642.00	0.00
General Repairs	349.00	1,673.00	333.00	1,433.00	500.00
Health & Safety	144.00	144.00	324.00	0.00	0.00
Grounds Maintenance	5,000.00	4,000.00	5,779.00	5,261.00	3,978.00
Accountants' Fee	498.00	498.00	528.00	282.00	420.00
Buildings Insurance	1,157.00	1,472.00	1,214.00	1,346.00	1,395.00
Directors' Insurance	77.00	80.00	249.00	249.00	450.00
Legal Fees	0.00	0.00	0.00	500.00	3,583.00
Insurance Valuation	492.00	0.00	0.00	0.00	0.00
Management Fees	3,488.00	4,896.00	1,844.00	2,970.00	2,160.00
Sundries	165.00	125.00	14.00	0.00	0.00
Total	12,518.00	14,397.00	6,127.00	14,614.00	14,046.00
1/15 <sup>th</sup>	834.53	959.80	408.46	974.26	936.40
Reserve	5,325.00	4,444.00	5,779.00	5,261.00	1,362.00
Total in Reserve	17,843.00	18,841.00	11,906.00	19,875.00	15,408.00
1/15 <sup>th</sup> per Flat	1,189.53	1,256.07	793.73	1,325.00	1,027.20

23. The Applicant submitted that the estimated service Charge for the years ending 31<sup>st</sup> December 2017 and 2018 as set out below were unreasonable in respect of the Legal fees, the Management Fees and the Reserve.

Estimated Service Charge Costs	2017 £	2018 £
Bank Charges	50.00	150.00
Electricity	1,600.00	1,850.00
Electrical Repairs	350.00	1,500.00
Fire Prevention	276.00	276.00
General Repairs	300.00	600.00
Health & Safety	350.00	350.00
Grounds Maintenance	4,500.00	5,000.00
Accountants' Fee	420.00	500.00
Buildings Insurance	1,400.00	1,600.00
Directors' Insurance	450.00	500.00
Legal Fees	30,500.00	30,000.00
Insurance Valuation	500.00	0.00
Management Fees	5,000.00	5,000.00
Sundries	25.00	250.00
Total	45,721.00	47,576.00
1/15 <sup>th</sup>	3,048.06	3,171.73
Reserve	34,000.00	28,000.00

Total in Reserve	79,721.00	75,576.00
1/15 <sup>th</sup> per Flat	5,314.73	5,038.40

24. The Applicant said that Leases on 8 of the 15 Flats were purchased by Mr A and Mrs M Burlingham. Mr A Burlingham used his shares in the Respondent to take control of the company and became sole director notwithstanding the Articles of Association require 2 directors. He appointed Managing Agents all of whom resigned, the last being Steel & Co who resigned in July 2020.
25. The Applicant said that at an Extraordinary General Meeting of the Respondent Mr Burlingham used his votes to adopt a one-year service charge holiday resulting in depletion of the £20,000 reserve. In addition, at the Annual General Meeting held on 28<sup>th</sup> December 2016 the management fees were increased from £912.00 per annum to £5,147.00 and a Service Charge cost in the form of a reserve contribution of £34,000.00 for general repairs and redecoration and £31,000.00 for legal fees was submitted although no supporting documents were provided (minutes of meeting were provided).
26. The Applicant said that at the Annual General Meeting on 14<sup>th</sup> October 2019 Mr Burlingham as the sole director refused to provide annual accounts (minutes of meeting were provided). Following the meeting Mr and Mrs Burlingham announced that they intended to subdivide the flats and issue further shares in the management company.
27. In a letter dated 16<sup>th</sup> December 2020 from the Applicant to the Tribunal it was said that Mr and Mrs Burlingham had been declared bankrupt on 18<sup>th</sup> November 2020 and that Mr Burlingham resigned as the sole director on 18<sup>th</sup> November 2020. At an Extraordinary General Meeting held on 13<sup>th</sup> December 2020 Mr James Andrew Redman, Mrs Ann Booty and the Applicant were appointed directors of the Respondent (minutes of meeting were provided). This information was confirmed in a letter dated 23<sup>rd</sup> January 2021 from the Applicant to the Tribunal
28. The Applicant noted that the Block had fallen into disrepair and works were required including:
- The entry door lock;
  - Collapse of surrounding fences resulting in security issues;
  - Overgrown gardens.
29. In addition, car parking and internal cameras had been installed without consultation, which were to be removed.

## Decision

30. The Tribunal considered all the evidence adduced. As stated previously because no actual Service Charge Accounts are available the Tribunal can only assess the reasonable cost to be incurred (estimated) for the years in issue. An estimate had already been made for the year 2017 and 2018 which the Tribunal reviewed as the Applicant particularly challenged the amounts set aside for Legal and Management Fees. The actual costs may be more or less than the amounts estimated and will be subject to a balancing payment or credit, but should be supported by invoices.

31. The roles of Lessor and Lessee are governed by the Lease which is a contractual relationship between the two. The Lessees in their role as Lessor incur the costs of the Service Charge and in their role as Lessees pay them. As a Lessor they are obliged to carry out the services set out in the Lease for the benefit of all Lessees (referred to in the Lease as "neighbours") and as Lessees they are each obliged to meet the costs incurred for those services. It is these costs that the Tribunal is concerned with in relation to these proceedings. The Tribunal firstly looks at the terms of the Lease to determine whether the services charged for are authorised and secondly at the amount of the estimated costs, taking into account the sums actually incurred in previous years, to determine whether they are reasonable.
32. The Tribunal's determination in these proceedings does not preclude the Lessor or Lessee applying for a further determination as to the standard and reasonableness and payability of the costs actually incurred once the accounts for the actual Service Charges for the years in issue have been produced by the Lessor and made known to the Lessees.
33. The Applicant's Statement of Case refers to the Lessees' role as shareholders of the Respondent which is governed by the Respondent's Articles of Association. This is outside the Tribunal's jurisdiction except where resolutions are passed which lead to a cost to the Service Charge. Any cost to the Service Charge must be within the terms of the Lease. If the cost incurred is outside the Lease then its payability is a matter for the directors and shareholders of the Respondent company. It is not a Service Charge cost.
34. The Tribunal considered each of the items of the Service Charge and firstly considered whether they were within the range of services which the Respondent was obliged to provide under Clause 5 or other provision of the Lease and secondly whether their estimated cost was reasonable based upon what had been charged in the past and the Tribunal's knowledge and experience.

#### *Bank Charges*

35. Bank Charges are payable in respect of the outgoings and the management of the common parts of the Block under Clause 5(D)(6). The Charges have been relatively modest in past years where incurred and for some years there had been no charge. The amounts set aside for 2017 and 2018 appeared reasonable and sufficient to cover 2019 and 2020 as well.

#### *Electricity*

36. The charge for Electricity is made under Clause 5(D)(2) and is presumably based on an actual meter reading taken at some point during the Service Charge year. The cost since 2014 appears to have been around £1,000. An allowance of £1,500 appears reasonable.

#### *Electrical Repairs*

37. The charge for Electrical Repairs is made under Clause 5(D)(2) and will be based upon invoices. For most of the past years the cost has been an average of £450.00. It is not clear why the estimate for 2018 is significantly higher unless it was anticipated that particular works were to be undertaken. In the absence of evidence, the amounts for 2017 and 2018 have not been adjusted although it is determined that the reasonable anticipated cost for 2019 and 2020 is £400.00.



*Fire Prevention*

38. The charge for the Fire Prevention is payable under Clause 5(D)(1) and (6). There was a large sum for Fire Prevention for substantial works in 2015. However, the amount incurred for 2014 was £276.00 and the estimated amount for 2017 and 2018 is also £276.00 presumably for standard maintenance. In the absence of evidence to the contrary this figure is determined to be reasonable estimate.

*General Repairs*

39. The charge for General Repairs, payable under Clause 5(D)(1), will be based upon invoices and varies significantly from year to year. The sum of £300 and £600 had already been estimated for the years 2017 and 2018 respectively. The Tribunal determined that the higher amount of £600.00 was reasonable. For most of the past years the cost has been an average of £450.00.

*Health & Safety*

40. The charge for the Health and Safety Survey is payable under Clause 5(D)(6). It was noted that a Health and Safety Survey is not been carried out every year so an allowance of £350.00 is determined to be reasonable for the years 2017, 2018 and 2019. No allowance was made for 2020 as it is assumed that for that year it would be deemed unnecessary.

*Grounds Maintenance*

41. The cost of Grounds Maintenance, payable under Clause 5(D)(1)(d), has been consistently around £5,000 per annum and therefore in the absence of evidence to the contrary the Tribunal determined £5,000.00 is a reasonable estimate for the years in issue.

*Accountant's Fee*

42. The Accountant's Fee is payable under Clause 5(D)(6). Based upon previous actual Service Charges and in the knowledge and experience of the Tribunal the estimated cost of £500.00 for Accountants' Fees is determined to be reasonable.

*Buildings & Directors' Insurance and Insurance Valuation*

43. For all Insurance payable under Clause 5(B), the Lessor or the Manager should themselves, or instruct their brokers, to go into the market place at regular intervals to obtain competitive insurance quotations. The premium does not have to be the cheapest but it must give appropriate cover and provide good value. The amount of the premium was not challenged and it is understood from the minutes of the Extraordinary General Meeting of the Respondent held on 13<sup>th</sup> December 2020 that the premium is under review. The Tribunal therefore determines the estimate already set for 2018 to be reasonable and in line with previous premiums charged.
44. An amount had been set aside for 2017 for an Insurance Valuation which was determined to be reasonable. Such valuations should take place at regular intervals, say every four or five years, unless there is a change in the building when a fresh valuation should be carried out after such alteration.

*Legal Fees*

45. Legal Fees are payable as part of the Service Charge under Clause 5(D)(6) if related to the management of the Block. No evidence was adduced as to why such a

substantial estimated cost had been set for Legal Fees in the estimated Service Charges for 2017 and 2018 and the Tribunal considered the amount excessive when set against the limited circumstances in which legal fees can be charged to the Service Charge under Clause 5(D)(6). The Tribunal therefore determined that, in the absence of evidence that the costs have been or are likely to be incurred, no estimated charge for Legal Fees was reasonable for the years in issue.

46. However, the Tribunal is aware from the Applicant's Statement of Case that a past director of the Respondent may have incurred legal costs on behalf of the Respondent, purportedly or otherwise. This is a company matter for the Respondent and its shareholders and not one within the jurisdiction of the Tribunal. However, as such substantial sums have appeared on the Service Charge spread sheet provided, the Applicant, as a shareholder would be well advised to investigate the matter as it may be a charge against the Respondent if not against the Lessees.

#### *Management Fees*

47. The Management Fee is payable under Clause 5 (D) (6). The role of the Managing Agent is set out in the RICS Service Charge Residential Management Code and includes in the present circumstances:

- Inspecting the property and checking for minor repairs and instructing contractors;
- Responding to emergencies;
- Annual surveys of the Building and assessing when major works are required;
- Preparing of estimates and demands;
- Collection of rents and service charges; and
- Making and accounting for payments and receipts.

Included in the management fee are the administrative and professional insurance costs of the agent and there is an optimum charge.

48. No evidence was adduced by the Applicant with regard to the amount of the management fees which he considered reasonable. The Tribunal therefore used its knowledge and experience and determined that in the absence of evidence to the contrary the estimated Management Fee of £3,750.00 being £250.00 per Flat is reasonable and payable.

#### *Sundries*

49. The estimated sum of £25 and £250.00 appeared reasonable for sundries for 2017 and 2018 respectively and the Tribunal determined an estimated sum of £100.00 for 2019 and 2020 was reasonable as an average amount.

#### *Reserve or Sinking Fund*

50. There is no specific provision in the Lease for a reserve or sinking fund to be created. Clause 4(2)(a) of the Lease authorises the Lessor to demand the estimated amount of the total costs and expenses to be incurred but only for "the next following period of not more than a year". It is noted that the Respondent has in the past set aside a sum in reserve for major works. The Tribunal is of the opinion that such funds held in trust are to be encouraged as they mitigate the cost to a tenant of a demand when substantial works are required. Although the Lease does not

authorise such funds it is open to the Lessees to agree separately from the Lease to maintain a reserve.

51. As the Tribunal has found that there is no provision in the Lease to maintain a reserve fund no estimated contribution is included in the reasonable estimated Service Charge determined.

### **Summary**

52. Tribunal determined that the reasonable estimated Service Charge is as follows:

Estimated Service Charge Costs	2017 £	2018 £	2019 £	2020 £
Bank Charges	50.00	150.00	0.00	0.00
Electricity	1,600.00	1,850.00	1,500.00	1,500.00
Electrical Repairs	350.00	1,500.00	400.00	400.00
Fire Prevention	276.00	276.00	276.00	276.00
General Repairs	300.00	600.00	600.00	600.00
Health & Safety	350.00	350.00	350.00	0.00
Grounds Maintenance	4,500.00	5,000.00	5,000.00	5,000.00
Accountants' Fee	420.00	500.00	500.00	500.00
Buildings Insurance	1,400.00	1,600.00	1,600.00	1,600.00
Directors' Insurance	450.00	500.00	500.00	500.00
Legal Fees	0.00	0.00	0.00	0.00
Insurance Valuation	500.00	0.00	0.00	0.00
Management Fees	3,750.00	3,750.00	3,750.00	3,750.00
Sundries	25.00	250.00	100.00	100.00
<b>Total</b>	<b>13,971.00</b>	<b>16,326.00</b>	<b>14,576.00</b>	<b>14,526.00</b>
1/15th	931.40	1,088.40	971.33	968.40

53. The Tribunal determines that a reasonable Estimated Service Charge payable by the Applicant to the Respondent in respect of the Property for the years in issue ending 31<sup>st</sup> December is as follows:

2017	£931.40
2018	£1,088.40
2019	£971.33
2020	£968.40

### **Representations re Section 20C & Paragraph 5A of Schedule 11**

54. Neither party made any representations in respect of the application for an Order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

### **Decision re Section 20C & Paragraph 5A of Schedule 11**

55. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not

both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.

56. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.
57. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from the tenant.
58. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicants.
59. The Tribunal examined the Lease and found that Clause 5(C) of the Lease is intended to cover costs generally incurred by the Landlord in the administration of the Block. However, these proceedings are not in order for the Lessor or the Manager to carry out its obligations under the Lease. Therefore, the Tribunal found that there were no provisions that enabled the Respondent Landlord to charge the costs of the Proceedings to the Service Charge.
60. With regard to claiming these costs directly from the Applicant the Tribunal found that the only possible provision was contained in Clause 3(9) that refers to section 146 and 147 of the Law of Property Act 1925. However, the Tribunal is of the opinion that these proceedings are not "*incidental to the preparation and service of a notice under section 146 and 147 of the Law of Property Act 1925*" and therefore they cannot be claimed directly from the Applicant.
61. The Tribunal therefore finds that the Respondent can neither claim its costs under the service charge nor directly from the Applicants.
62. Notwithstanding there being no provision in a lease, for the avoidance of doubt, a tribunal is able to make an order under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act if it is satisfied that it is just and equitable to do so. In deciding whether or not to do so the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.
63. With regard to the conduct of the parties in respect of these proceedings, the Tribunal found from the Statement of Case and correspondence received from the Applicant that there was a lack of transparency exhibited by the Respondent and its Agent which precipitated the Application and was exacerbated by the failure to respond to the Directions that were issued following the Application. The previous director and controlling shareholder has now been replaced but not in time for the current directors to remedy the failings before this determination. The Tribunal

finds that the conduct of the Respondent in respect of these proceedings was unsatisfactory.

64. With regard to the outcome, the Tribunal has found generally in favour of the Applicant. Therefore, the Tribunal is satisfied it is just and equitable to make Orders under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant and James Andrew Redman of Redcroft Properties and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants' liability to pay an administration charge in respect of litigation.
65. The Tribunal is conscious that the costs of these proceedings will fall upon the shareholders of the Respondent company. It appears from the minutes of the meetings of the Respondent that there have been considerable difficulties which have been reflected in the Service Charge. The Respondent's shareholders would be advised to take appropriate advice in exercising their rights and meeting their responsibilities following this case.

**Judge JR Morris**

#### **APPENDIX 1 - RIGHTS OF APPEAL**

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.

## APPENDIX 2 – THE LAW

### **The Law**

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
  - (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, improvement 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 of which the service charge is payable.
  - (3) for this purpose
    - (a) costs include 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 period
3. Section 19 Landlord and Tenant Act 1985
  - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
    - (a) only to the extent that they are reasonably incurred; and
    - (b) where they are incurred on the provision of services or the carrying out of works, only 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.
4. Section 20B Limitation of Service Charges: time limit on making demands
  - (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 the demand for payment of the service charge 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.
5. Section 21 Service Charge Information (Only partly in force)

- The version of section 21 in italics is only in effect in so far that an appropriate national authority may make regulations. However, no regulations have been made as at the date of this Decision and Reasons therefore the version that is in plain text is that which is currently in force.

- (1) *The appropriate national authority may make regulations about the provision, by landlords of dwellings to each tenant by whom service charges are payable, of information about service charges.*
- (2) *The regulations must, subject to any exceptions provided for in the regulations, require the landlord to provide information about—*
  - (a) *the service charges of the tenant,*
  - (b) *any associated service charges, and*
  - (c) *relevant costs relating to service charges falling within paragraph (a) or (b).*
- (3) *The regulations must, subject to any exceptions provided for in the regulations, require the landlord to provide the tenant with a report by a qualified person on information which the landlord is required to provide by virtue of this section.*
- (4) *The regulations may make provision about—*
  - (a) *information to be provided by virtue of subsection (2),*
  - (b) *other information to be provided (whether in pursuance of a requirement or otherwise),*
  - (c) *reports of the kind mentioned in subsection (3),*
  - (d) *the period or periods in relation to which information or reports are to be provided,*
  - (e) *the times at or by which information or reports are to be provided,*
  - (f) *the form and manner in which information or reports are to be provided (including in particular whether information is to be contained in a statement of account),*
  - (g) *the descriptions of persons who are to be qualified persons for the purposes of subsection (3).*
- (5) *Subsections (2) to (4) do not limit the scope of the power conferred by subsection (1).*
- (6) *Regulations under this section may—*
  - (a) *make different provision for different cases or descriptions of case or for different purposes,*
  - (b) *contain such supplementary, incidental, consequential, transitional, transitory or saving provision as the appropriate national authority considers appropriate.*
- (7) *Regulations under this section are to be made by statutory instrument which, subject to subsections (8) and (9)—*
  - (a) *in the case of regulations made by the Secretary of State, is to be subject to annulment in pursuance of a resolution of either House of Parliament, and*
  - (b) *in the case of regulations made by the Welsh Ministers, is to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.*
- (8) *The Secretary of State may not make a statutory instrument containing the first regulations made by the Secretary of State under this section unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.*

- (9) *The Welsh Ministers may not make a statutory instrument containing the first regulations made by the Welsh Ministers under this section unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.*
- (10) *In this section—*
  - “the appropriate national authority”—*
    - (a) *in relation to England, means the Secretary of State, and*
    - (b) *in relation to Wales, means the Welsh Ministers,*
  - “associated service charges”, in relation to a tenant by whom a contribution to relevant costs is payable as a service charge, means service charges of other tenants so far as relating to the same costs.*

6. Section 21 Request for summary of relevant costs.

- (1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred—
  - (a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of the request, or
  - (b) if the accounts are not so made up, in the period of twelve months ending with the date of the request,
 and which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period.
- (2) If the tenant is represented by a recognised tenants’ association and he consents, the request may be made by the secretary of the association instead of by the tenant and may then be for the supply of the summary to the secretary.
- (3) A request is duly served on the landlord if it is served on—
  - (a) an agent of the landlord named as such in the rent book or similar document, or
  - (b) the person who receives the rent on behalf of the landlord;
 and a person on whom a request is so served shall forward it as soon as may be to the landlord.
- (4) The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection (1)(a) or (b) whichever is the later.
- (5) The summary shall state whether any of the costs relate to works in respect of which a grant has been or is to be paid under section 523 of the Housing Act 1985 (assistance for provision of separate service pipe for water supply) or any provision of Part I of the Housing Grants, Construction and Regeneration Act 1996 (grants, &c. for renewal of private sector housing) or any corresponding earlier enactment and set out the costs in a way showing how they have been or will be reflected in demands for service charges and, in addition, shall summarise each of the following items, namely—
  - (a) any of the costs in respect of which no demand for payment was received by the landlord within the period referred to in subsection (1)(a) or (b),
  - (b) any of the costs in respect of which—
    - (i) a demand for payment was so received, but
    - (ii) no payment was made by the landlord within that period, and
  - (c) any of the costs in respect of which—
    - (i) a demand for payment was so received, and



- (ii) payment was made by the landlord within that period, and specify the aggregate of any amounts received by the landlord down to the end of that period on account of service charges in respect of relevant dwellings and still standing to the credit of the tenants of those dwellings at the end of that period
- (5A) In subsection (5) "relevant dwelling" means a dwelling whose tenant is either—
  - (a) the person by or with the consent of whom the request was made, or
  - (b) a person whose obligations under the terms of his lease as regards contributing to relevant costs relate to the same costs as the corresponding obligations of the person mentioned in paragraph (a) above relate to.
- (5B) The summary shall state whether any of the costs relate to works which are included in the external works specified in a group repair scheme, within the meaning of Chapter II of Part I of the Housing Grants, Construction and Regeneration Act 1996 or any corresponding earlier enactment, in which the landlord participated or is participating as an assisted participant.
- (6) If the service charges in relation to which the costs are relevant costs as mentioned in subsection (1) are payable by the tenants of more than four dwellings], the summary shall be certified by a qualified accountant as—
  - (a) in his opinion a fair summary complying with the requirements of subsection (5), and
  - (b) being sufficiently supported by accounts, receipts and other documents which have been produced to him.

7. Section 21A Withholding of service charges

- (1) A tenant may withhold payment of a service charge if—
  - (a) the landlord has not provided him with information or a report—
    - (i) at the time at which, or
    - (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
  - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.
- (2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
  - (a) the service charges paid by him in the period to which the information or report concerned would or does relate, and
  - (b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.
- (3) An amount may not be withheld under this section—
  - (a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or
  - (b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

- (4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.
- (5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

8. Section 21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

9. Section 27A Landlord and Tenant Act 1985

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner 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 a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner 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 arbitration agreement to which the tenant was a party
  - (c) has been the subject of a determination by a court

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

10. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier 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 the county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.