FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LSC/2019/0085**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 58, Trentham Court, Acton, London W3 6AD**
Applicant	**:**	**Maureen Obi-Ezekpazu**
Respondents	**:**	**Gypsy Corner Management Co Ltd** **Avon Ground Rents Ltd**
Representative	**:**	**Scott Cohen Solicitors**
Type of application	**:**	**Service & Administration Charges**
Tribunal members	**:**	**Judge Nicol** **Mr C P Gowman MCIEH MCMI BSc**
Date of decision	**:**	**12th April 2021**

DECISION

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1) The Tribunal refuses the Applicant's application for Judge Nicol to recuse himself.

2) The Applicant is at liberty to seek a transcript of the hearing on 17th March 2021, subject to completing the relevant form and paying the relevant fee or charge.

3) The Tribunal permits the Applicant to rely on the further documents provided with her application dated 22nd March 2021.

4) Service charges in the total sum of £3,674 are payable by the Applicant to the First Respondent.

5) Administration charges in the sum of £420 are payable by the Applicant to the Second Respondent.

6) Pursuant to section 20C of the Landlord and Tenant Act 1985, the First Respondent may regard no more than 30% of their costs of these proceedings as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Reasons

1. The Applicant is the lessee of the subject property, a one-bedroom flat on the third floor of a purpose-built block, part of a development of 255 flats in total.

2. The First Respondent is the management company, a party to the lease, whose responsibility it is to provide services to the block and to collect service charges from the lessees to pay for them. Y&Y Management Ltd are their managing agents at present, having taken over from Crabtree Property Management in November 2013.

3. The Second Respondent acquired the freehold of the property in July 2013 and instructed Avon Estates (London) Ltd to collect the ground rent. R&C Estates Management were the agents for their predecessor-in-title.

4. On 16th February 2019 the Applicant made two applications, one challenging the service charges from 2012 to 2020 under section 27A of the Landlord and Tenant Act 1985 and the other challenging administration charges under Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The procedural history of this case is set out comprehensively in the Tribunal's decision of 1st March 2021.

Hearing

5. The parties attended for the scheduled hearing before the Tribunal by remote video conference on 17th March 2021. The attendees were:

- The Applicant;
- Mr Richard Granby, counsel for the Respondents;
- Ms Lorraine Scott (by telephone), solicitor for the Respondents; and
- Mr Adam Azoulay, witness for the Respondents.

6. The documents before the Tribunal on 17th March 2021 consisted of:

(a) The hearing bundle prepared by the Respondents' solicitors, made up of 618 pages.

(b) A skeleton argument dated 26th February 2021 from Mr Granby.

(c) A statement dated 28th February 2021 from the Applicant.

(d) A copy of the transcript of proceedings between the parties in the county court on 24th October 2019 in which Judge Jarzabkowsko set aside a judgment previously obtained against the Applicant by the First Respondent on the basis that she had not been properly served with the proceedings.

(e) The Applicant's "Legal Argument for Hearing on 17th March 2021".

7. Contrary to the Tribunal's expectation (see paragraph 21 of its decision of 1st March 2021), it was not possible to complete the hearing within the time available and the hearing had to be adjourned, part-heard, to the earliest available mutually convenient date, 6th April 2021. The parties were notified of the new date by Judge Nicol verbally at the hearing on 17th March 2021 and later by letters dated 26th March and 1st April 2021.

8. After the hearing on 17th March 2021, the Applicant submitted a further application, supported by an additional written statement:

(a) For Judge Nicol to recuse himself;

(b) For a transcript of the oral hearing on 17th March 2021; and

(c) To "adduce evidence supporting the position that the Second Respondent, through their agents, Avon [Estates (London) Ltd] did on 10th January 2019 email Apple Estates Ltd attaching relevant documents relating to the ground rent and service charges."

9. The Tribunal directed that the application should be heard at the commencement of the adjourned hearing on 6th April 2021 and that the time estimate should be extended from half a day to the whole day.

10. The Tribunal re-convened at 10am on 6th April 2021. The attendees were the same, save that the Applicant did not turn up. The Tribunal case officer tried phoning her but only reached her voicemail. She also tried emailing her but there was no response by 10:30am. Mr Granby made very brief oral submissions on the Applicant's further application. The Tribunal then brought the hearing to a close.

11. At 10:37am the Applicant telephoned the case officer. She told the case officer that she sends her apologies but she had lost track of time and thought the hearing was tomorrow. When the case officer pointed out that she had phoned and emailed her, the Applicant replied that she was not looking at those things. The Applicant emailed the next day saying that she looked "forward to receiving Notification of the adjourned hearing, the court accepting my apology for being late."

12. The Tribunal is satisfied that the Applicant has provided no basis on which the hearing could be re-started (which would have necessitated adjourning to yet another date) and proceeded to its decision, as set out below.

Applicant's further application

13. The Applicant's statement set out 13 grounds for Judge Nicol's recusal:

(a) *That on a date between 1st February 2021 and the hearing on 17th March 2021, Judge Nicol took steps to find out about the Applicant's professional practice when he was not permitted to do so. The*

Applicant appeared not in her professional capacity before the Tribunal but as a Litigant in Person.

At page 3 of the county court transcript provided by the Applicant, Judge Jarzabkowsko was informed by counsel that the Applicant is a barrister and even commented (at page 5), "Could you possibly remember your training as a barrister and address this court with some respect." The Applicant's response was the same as here, namely that she should be treated as a litigant in person, not as a barrister. The fact is that she is both. Her professional obligations to the court or Tribunal do not cease to be applicable simply because she represents herself. The Tribunal has made appropriate allowances for the inevitable difficulty of maintaining her emotional distance as a litigant in person compared with when she acts as counsel (see paragraph 17(a) of the Tribunal's decision of 1st March 2021) but, otherwise, the Tribunal is entitled to expect her to keep to the relevant professional standards. In any event, the appeal courts, far from suggesting that litigants in person should get special treatment, have emphasised that they are subject to the same rules as everyone else.

(b) *Judge Nicol had not made the same enquiries in relation to either of the Defendants or their legal representative. A clear demonstration of bias the Applicant says*.

The Applicant could not possibly know whether Judge Nicol had made such enquiries or not. In fact, the Respondents' solicitor is well-known to Judge Nicol from a number of other cases, in one of which she happened to lodge a complaint against him. This was her right and Judge Nicol bears no animus against anyone who exercises that right, let alone allowing it to colour his view of that party's case. Further, in accordance with his normal practice, Judge Nicol briefly looked at Mr Granby's entry on his chambers' website. The Tribunal knows of no rule or principle which prohibits his doing so.

(c) *That in taking the steps he had prior to the Tribunal hearing Judge Nicol demonstrated bias which influenced his decision making in respect of the Application before him and his language and conduct towards the Applicant*.

Neither the Applicant's allegations nor what actually happened are indicative of bias. It is true that the fact that the Applicant is a barrister influenced Judge Nicol's approach towards her but only in that he expected her to maintain professional standards of behaviour. This is a separate issue from the substantive merit of the Applicant's case.

(d) *Judge Nicols' comments during the Tribunal hearing on 17th March 2021 demonstrate clearly and is a plain indicator that in this matter the Applicant I unlikely to achieve a fair hearing before an impartial tribunal.*

The Applicant has not specified which comments she refers to. The Tribunal cannot recall any which would fit the Applicant's description.

On the contrary, as already mentioned, the Tribunal made due allowances for the Applicant's emotional state.

(e) *The language and conduct of Judge Nicol towards the Applicant during the Tribunal clearly a perception in his thinking and decision making such that it is likely that his decision will be influenced by his adverse perceptions of the Applicant*.

Again, the Applicant has not specified the language or conduct complained of and the Tribunal is unaware of any which would give rise to such an allegation in any reasonable observer. Mr Granby offered that, although there were technical difficulties, his understanding of what was happening at the time broadly accorded with the Tribunal's.

(f) *Judge Nicol during the hearing questioned the quality of the Applicant legal practice on the basis of his opinion that the Applicant was incapable of understanding the rules of evidence*;

Judge Nicol expressed the surprise any judge would have felt when the Applicant appeared to be unaware of certain matters which any barrister would be expected to know. This was said in a further effort to guide the Applicant to standards of behaviour that should be expected of a barrister. This is not indicative of bias.

(g) *Judge Nicol opined that the Applicant seemed incapable of listening and that were she to listen to him that she might understand the rules of evidence in question*;

Unfortunately, at times, the Applicant had great difficulty in listening rather than talking over Judge Nicol.

(h) *Judge Nicol made numerous references to the fact that the Applicant was a Barrister and as such she ought to know how to address the Tribunal and understand the rules applicable to the Tribunal and made no effort to assist the Applicant in this regard*.

It is correct that Judge Nicol referred to the fact that the Applicant is a barrister and that, therefore, she should know how to address the Tribunal and what the law is governing legal procedure. He attempted to assist her in the same way as any litigant before the Tribunal, in particular by raising issues of concern so that she had an opportunity to address them.

(i) *Judge Nicol opined that the Applicant was not a credible witness prior to making a decision on the Applications before him; suggesting in his oration to the Tribunal that the Applicant was lying by denying that she has had Notice from the Defendants or that she had waited 5 years so that she could advance her case in the manner that she had before the Tribunal*.

The Applicant has misconstrued Judge Nicol's efforts to assist her. He pointed to the apparent contradictions in her evidence so that she had

an opportunity to address them. Further, it is not just open to the Tribunal but part of its job to assess the credibility of those giving evidence to it in order to reach findings of fact.

(j) *Judge Nicol refused the Applicant the ability to refer to documents in her position where the Defendant had produced the Tribunal hearing bundle without reference to her documents and omitting documents that were sent the Defendants, simply ruling that because she had not done so, she would not be permitted to do, even though those document were before the tribunal but not in the bundle prepared by the Defendants.*

The hearing on 1st March 2021 was adjourned specifically so that the Applicant could consider the Respondent's bundle. She made no attempt prior to the adjourned hearing on 17th March 2021 to suggest that it was inadequate in any way. At both hearings, Judge Nicol set out what documents were in front of the Tribunal and they did not include any documents from the Applicant separate from the Respondents' bundle other than those listed above. It would not be fair to the Respondents or conducive to proper management of the hearing to permit the Applicant to rely on documents not before the Tribunal and in respect of which she gave no prior notice that she wished to rely on them.

(k) *Judge Nicol refused the Applicant an opportunity to cross question the Defendant Avon Ground Rents Limited and permitted the Defendant to deny any knowledge of the management of the ground rents due under the terms of the Lease.*

The Applicant insists on treating the Respondents and their agents as a single entity when, in fact, there are two separate Respondents with separate interests. There was no witness present from the Second Respondent. Therefore, there was no-one from the Second Respondent to cross-examine. Judge Nicol asked Mr Azoulay, the witness from the First Respondent's agents, whether he had ever been involved in the arrangements for demanding ground rent on behalf of the Second Respondent and he answered that he had not.

(l) *Judge Nicol shouted at the Applicant that he had had enough and was striking out both Applications and would hear submissions as to why the Applications before the Tribunal should not be struck out.*

Regrettably, Judge Nicol had to raise his voice several times when the Applicant insisted on talking over him. Judge Nicol repeatedly asked the Applicant to stop talking over him and warned her as to what would happen if she did. Nevertheless, she continued with her unprofessional and rude behaviour. On the last occasion when she did so, he did say that that was enough and submissions would be heard on why her applications should not be struck out. The Tribunal heard submissions and then took time for consideration. The Tribunal's decision was not to strike out the applications.

(m) *The Applicant felt bullied and harassed by Judge Nicol and found all exchanges with him difficult.*

It is more than unfortunate that the Applicant felt bullied and harassed and found all exchanges with Judge Nicol difficult. No litigant, whether in person or not, should have to feel that way. However, the Applicant herself attempted to bully and harass the Tribunal and deliberately made many exchanges difficult, despite Judge Nicol's attempts to get her to do otherwise. The evidence of the county court transcript is that this behaviour is not limited to her reaction to Judge Nicol. If she behaves in this way, it is unlikely that any court or Tribunal will respond in a way that she would find anything but difficult. The solution is not to talk over the judge and to listen respectfully when asked to do so.

14. Mr Granby eschewed the opportunity to make any submissions on this issue, leaving it to the Tribunal. In the circumstances, the Tribunal has not found any grounds on which Judge Nicol should be recused.

Transcript

15. The Tribunal knows of no reason why the Applicant should not be provided with the transcript of the hearing on 17th March 2021. The case officer has provided her with the requisite form to obtain the transcript from the transcriber. She will have to pay the relevant fee in due course.

Further evidence

16. The Applicant sought to rely on an email dated 10th January 2019 from the Second Respondent's agents enclosing various invoices for ground rent (the copies provided by the Applicant had no reference to service charges). The Respondents had no objection as it is part of their case that this email was sent. Normally, the Tribunal would not allow documents in so late but there is no prejudice to either the Respondent or the administration of justice and so the Tribunal took the additional documentation into account when making the decision below.

The dispute

17. The original application concerned the years 2012-2020. However, on 13th August 2014 the First Respondent obtained a default judgment in the county court for alleged service charge arrears which included those claimed for 2012-2014 (case no: AY75M424). Therefore, on 13th May 2019 the Tribunal limited the dispute to the period May 2014-2019.

18. On 24th October 2019 District Judge Jarzabkowsko upheld the Applicant's application to set aside the default judgment. In theory, therefore, the earlier service charges remain in dispute. However, the Tribunal's order of 13th May 2019 has not been set aside or appealed. The earlier service charges are now the subject of ongoing county court proceedings, with a Defence and a Reply having been filed and served.

The dispute before the Tribunal remains limited to 2014-2019, together with the estimated charges for 2019-2020.

19. The parties prepared a schedule of disputed charges. The Applicant complains of the service charges, claimed by the First Respondent, in the following categories:

(a) Cleaning
(b) Concierge
(c) Management fees
(d) General maintenance
(e) Drain repairs
(f) Fire alarm testing
(g) Major works (not 2015)
(h) Water pump maintenance (2014, 2016, 2019)
(i) Lift works (2014 only)

20. The Applicant also complains of administration charges, allegedly incurred by the First and Second Respondents in chasing her for non-payment of service charges and ground rent respectively.

Service of demands for service and administration charges

21. The Applicant's primary submission is that the service and administration charges were not properly demanded from her in that any demands were sent to her old address at Flat 3 Newquay House, Black Prince Road, Kennington, London SE11 6HL. This is a housing association flat from which, in 2010, she moved to her current address at 17 Hemans Street, South Lambeth, London SW8 4SQ.

22. The First Respondent accepts that they did send demands to Newquay House rather than Hemans Street until they sent demands to Hemans Street on 31st January 2019 for the administration charges and 4th March 2019 for the service charges. However, they assert that Newquay House remained a good address for service in the light of the following matters:

(a) On 19th March 2019 the London Borough of Ealing granted a selective licence for Flat 58 Trentham Court with the Applicant listed as the licence-holder and her address as Newquay House. The Applicant says that her agents, Apple Estates Ltd, made the licence application for her and made a mistake on the address.

(b) A web search for directorships shows the Applicant as a director for Families for Justice Ltd with her address listed as Newquay House. However, the Tribunal notes from the web page provided on behalf of the Respondents that this was only for the period 11th March 2010 to 1st November 2011.

(c) Companies House details for the Applicant also show her as a director of Luton Law Centre, with her address as Newquay House. However again, the Tribunal notes that the web page provided on behalf of the

Respondents shows she resigned her position in 1997. Therefore, it is not relevant to her address from 2010 onwards.

(d) The Applicant's land registry title for Flat 58 Trentham Court still shows her address as Newquay House. In the absence of any other address, the Respondents would be entitled to rely on the contents of the Land Registry as providing an address for service: *Oldham MBC v Tanna* [2017] EWCA Civ 50; [2017] 1 WLR 1970.

23. The Applicant concedes that she has yet to change her address with the Land Registry but asserts that the Respondents are not entitled to rely on it rather than the address she actually told them about in 2010 when she moved.

24. Mr Granby conceded that, if the Applicant had actually notified the Respondents of her address at Hemans Street, they would be bound to use it and service elsewhere would be defective. He pointed to the fact that the Applicant was unable to produce any documentary evidence of such notification or even to recall the precise manner in which such notification was given.

25. Unfortunately, such lack of evidence is not uncommon and is entirely unsurprising nearly 11 years after the event. The Applicant is adamant in her assertion that she notified the Respondents of her address and so the Tribunal has looked at the surrounding circumstances to assess the credibility of her assertion:

(a) When a person moves home, they need to notify various organisations of their change of address. It would be entirely unremarkable and, indeed, expected, that the Applicant would have informed the agents who sent her service charge demands. In this case, that was Crabtree, Y&Y's predecessors as agents for the First Respondent. It is almost equally unremarkable that the Applicant would no longer have the letter or email which provides the notification.

(b) Crabtree wrote to the Applicant at Hemans Street from time to time. An example in the hearing bundle was a letter dated 10th January 2014 informing her that their instruction as agents for the First Respondent had been terminated.

(c) Similarly, although the Tribunal did not see the relevant papers, there were earlier county court proceedings issued by the First Respondent against the Applicant in which the Hemans Street address was used.

26. The Tribunal is satisfied that, on the balance of probabilities, the Applicant notified Crabtree of her new address and they used it. Since Crabtree were their agents, the First Respondent was fixed with this knowledge.

27. The changeover from Crabtree to Y&Y in 2013-14 did not go smoothly and Crabtree tried to challenge their removal. It seems that, as a result, Y&Y were not told of the Applicant's new address. Y&Y liaised with R&C Estates, the previous freeholder's agents, but the address they had

was for Apple Estates Ltd who the Applicant only used to manage her letting of Flat 58 Trentham Court.

28. Y&Y did their best to find an alternative address and it is not surprising that they decided to use the one at the Land Registry. However, it is also noteworthy that they did not send demands to the actual address at Flat 58 Trentham Court. The Applicant unwisely had no mail forwarding arrangements for that address but the First Respondent might have been on stronger legal ground if they had made use of the subject property.

29. The Respondents pointed to the fact that the Applicant's mortgagees, Livingstone Mortgages, claimed in a letter dated 30th October 2014 that they had written to the Applicant to inform her about her service charge arrears. That, and the mere fact that, on her case, she received no service charge or ground rent demands for many years, would suggest that the Applicant would have been on notice that there was something wrong with the method of communication being used.

30. Somewhat unconvincingly, the Applicant said she did nothing in the years 2014-19 to enquire what was happening to her service charges and ground rent because she had no legal obligation to do so and due to her involvement as a witness in a child abuse case (which was entirely unevidenced). In the Tribunal's opinion, any reasonable person would have got round eventually to enquiring what was going on. However, this is beside the point. The Tribunal is satisfied that the First Respondent, through their agents, were properly notified of the address to use for the Applicant and, from when Y&Y took over in around November 2013, failed to do so.

31. It follows that any demands for service and administration charges for 2014-2019 sent on behalf of the First Respondent to Newquay House rather than Hemans Street were not properly served and no liability can arise from those demands.

18-month rule

32. If a demand is made invalidly for service charges, a valid demand can always be made later. However, under section 20B of the Landlord and Tenant Act 1985, if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then the tenant is not liable to pay so much of the service charge as reflects the costs so incurred.

33. Under section 20B(2), this rule does 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 she would subsequently be required under the terms of her lease to contribute to them by the payment of a service charge.

34. In this case, no valid demand for the disputed service charges was made until 4th March 2019. On that date, Y&Y served on the Applicant at the correct address an invoice setting out the amount of the Applicant's alleged service charge arrears and provided a statement of the annual service charges in advance of £320.34 for estate services and £1,095.27 for building services.

35. Further, the Applicant was served at the correct address with service charge statements on 31st March 2019 which showed the actual amounts payable for 1st April 2018-31st March 2019. These are obviously all within the requisite 18-month period.

36. However, since amounts arising from costs incurred prior to 1st April 2018 were only validly notified to the Applicant on 4th March 2019, any service charges raised in respect of costs incurred more than 18 months previously, i.e. before 4th September 2017, cannot be recoverable. The precise amount payable by the Applicant is considered further below.

Service of demands for ground rent and administration charges

37. While the Tribunal accepts that it is likely that Crabtree, the First Respondent's then agents, were notified of the Applicant's change of address in 2010, the same arguments do not apply to the Second Respondent:

    (a) As referred to above, the Applicant has insisted throughout this case on treating the two Respondents and their agents as one entity. This is exemplified by her assertion that she informed both Respondents of her new address in 2010. This is impossible in relation to the Second Respondent as they did not purchase their interest in the property until 2013. It is clearly possible that the Applicant would have sent only one notification of her change of address in 2010, perhaps under the mistaken impression that informing one agent would be a sufficient method of informing both agents.

    (b) In those circumstances, the Tribunal would need other evidence to show that the Second Respondent was notified or knew of the Applicant's address at Hemans Street. However, there is no evidence that R&C Estates or their principal, the Second Respondent's predecessor-in-title, were so notified in 2010 or otherwise knew. There is no evidence that R&C Estates used or knew of any address other than that of Apple Estates Ltd. There is no suggestion that the Second Respondent or its agents were notified or came to know of Hemans Street between 2013 and 2019.

    (c) The Applicant asserted that the Second Respondent is somehow fixed with the knowledge of the agents of their predecessor-in-title, not least because they pursued her for arrears of ground rent allegedly owing from before they purchased their interest. However, even if R&C Estates had known of her Hemans Street address, the Applicant was unable to put forward any authority for her assertion.

38. In these circumstances, the Tribunal is not satisfied that the Second Respondent or their agents were notified or could or should have known of the Applicant's address at Hemans Street. Therefore, they were entitled to use the address available to them through the Land Registry. Any demands for ground rent sent to Newquay House would have been validly served, as would any demands for administration charges for costs incurred in pursuing that ground rent. Again, the amount of any such administration charges payable by the Applicant is considered further below.

Service charges

39. In order to determine the amount of service charges payable by the Applicant, and in the event that the Tribunal's ruling on service is overturned, the Tribunal has considered all the service charges in dispute. The objections for all years going back to 2014 are virtually identical for each category of service charge and so determining the relevant issues in relation to one year will have the same effect for other years. The only exception is lift works which were only charged in 2014 and are now irrecoverable due to the lack of a valid demand.

40. Paragraph (i) of Part V of the Schedule to the lease identified the Applicant's share of the relevant expenses as 1/255th, which is 0.3922%. In fact services were split up into building and estate expenses, the latter of which were apportioned at the lower rate of 0.2155%.

Cleaning

41. The Applicant conceded that the cost is chargeable but asserted that there was double charging each year. The Tribunal was able to look at the service charge accounts for each year and a comprehensive reconciliation sheet setting out all the relevant invoices and costs. The Tribunal also had the benefit of evidence from Mr Azoulay who, in respect of this item, exhibited the current cleaning contract and explained what the cleaners are expected to do. Invoices were provided for this service, as for others. Neither the First Respondent nor the Tribunal could identify any double charging.

Concierge

42. The Applicant asserted that the concierge service was not always provided but it wasn't clear that she understood what it consisted of. As Mr Azoulay explained, the concierge is an on-site manager employed for 40 hours a week – by definition, he or she would not be available 24/7. The cost of the concierge includes agency cover during absences, office costs such as phone rental charges and computer maintenance and minor repairs such as replacement light bulbs.

43. The Applicant asserted that she was unable to reconcile the figures but the Tribunal was not sure she had included all the aforementioned costs and could not identify any errors.

44. The Applicant also pointed to the fact that the cost of the concierge rose each year but the figures she provided in a statement dated 13th May 2019 did not match those in the actual service charge accounts. Those accounts show a consistent cost of around £37,500 for the four years from 2014 to 2018 before an increase to £49,052.14 in 2018-19 but a large increase is not proof in itself of any unreasonableness. Despite having the opportunity, the Applicant provided no basis for questioning the reasonableness of this cost and did not put the issue to Mr Azoulay.

Management fees

45. The Applicant again conceded that management fees are chargeable but asserted that they were unreasonably high for each year. According to the service charge accounts, the actual management fees for the estate (of which the Applicant has been charged 0.2155%) have ranged from £65,858 in 2014-15 to £101,670 in 2018-19 whereas those for the building (of which the Applicant has been charged 0.3922%) have ranged from a low of £17,940 in 2018-19 to a high of £44,370 in 2015-16. By the Tribunal's calculation, the Applicant's share of these costs has ranged from a low of £289.46 in 2018-19 to a high of £326.98 in both 2015-16 and 2016-17. The total estimated management fees for 2019-20 are a little higher, the Applicant's share being £350.75.

46. Mr Azoulay said in his witness statement that the management fees have been calculated over the years on the basis of between £143.50 and £155, plus VAT, per unit for the building and between £120 and £140, plus VAT, for the estate but it is not clear how those figures translated into the amounts in the service charge accounts. He also explained the various services provided for the charges under the management agreement Y&Y have with the First Respondent.

47. From the Tribunal's knowledge and experience, it is arguable that the charges calculated by the Tribunal are higher than average for a development of this size but they are well within the range found in the market. There is nothing in the amounts themselves to suggest that they are unreasonable. The Applicant has put forward nothing else to suggest that they are unreasonable and so the Tribunal has no basis on which to hold that they are.

General maintenance

48. The Applicant asserted that the general maintenance cost has been overcharged every year. It seems she has misunderstood the difference between estimated and actual charges. The First Respondent has managed to underspend the budget for general maintenance each year but, of course, this is accounted for in any balancing charges or credits in the following year. There is no suggestion that the estimates were not reasonable at the time they were made. An underspend is more normally grounds for approbation than criticism. It is worth noting that the balancing charges or credits in the Applicant's service charge

demands have been consistently small, normally coming in at well under £100.

Drain repairs

49. The Applicant queried why there was a charge for drain repairs every year but Mr Azoulay explained that there is a drains repair contract which includes twice-yearly inspections and twice-yearly drain clearances. She also asserted that it was unreasonable on the basis that the cost differed from the amount charged. The Tribunal could not identify the source of this claim, let alone confirm it.

Fire alarm testing

50. The Applicant asserted that, for some years, the cost of fire alarm testing was unknown and that, for other years, it was overcharged. This category is charged in each year's accounts, so the amount is clear. As for overcharging, the Applicant again appears to have misunderstood the difference between estimates and actual charges and to have failed to appreciate that balancing charges and credits offset any underspend or overspend.

Major works

51. The Applicant objected to the major works item for each year on the basis that she could not find any invoices which related to it. However, the First Respondent confirmed that this was actually a transfer to reserves. While it is fine for abbreviated headings to be used to describe services and service charges, it would be better if the First Respondent could use accurate ones and it is understandable that the Applicant misunderstood the purpose of this item. However, that is no basis for challenging its reasonableness.

52. The Applicant asserted that it was not reasonable to charge this item on top of general maintenance costs but that is to misunderstand the purpose of a reserve fund. Money which goes to a reserve fund is not lost to the payer in the same way as money going to pay any other cost. It will be used to offset a later cost – if it hadn't been paid in advance into a reserve fund, it would have to have been paid later to pay for the actual work. The reserve fund is used to smooth out long-term maintenance costs rather than to pay for major works at one go, to the benefit of all parties.

Water pump maintenance

53. The Applicant objected to water pump maintenance, charged in 2014, 2016 and 2019 on the basis that it was "repetitive" and she could find no invoices. The First Respondent explained that, as the Tribunal would expect in a building of this nature and size, there are cold water booster pumps, housed in the basement, to ensure a constant water supply at a constant pressure. There are 6 monthly inspections and charges are raised for additional works when required. The Tribunal is

satisfied that this is an unremarkable item of expenditure and the Applicant has provided no basis for considering it to be unreasonable.

Amount of Applicant's service charges

54. Therefore, the Applicant is liable to pay all the service charges validly demanded, namely those demanded on 4th and 31st March 2019, subject to the 18-month rule. Those are:

(a) The annual service charge in advance for estate and building services for 2019-20 (£320.34 and £1,095.27 respectively);

(b) The actual charges for 2018-19 (£354.08 and £1,024.27); and

(c) Those items within the claimed arrears which reflect costs incurred after 4th September 2017 but before 1st April 2018.

55. The hearing bundle included a reconciliation of relevant invoices for the service charges with the period including 4th September 2017 to 1st March 2018 on pages 195 to 197. By the Tribunal's calculation, the estate costs for that period amounted to £79,838.96, of which the Applicant's share (0.2155%) would have been £172.05, and the building costs were £180,517.10, of which the Applicant's share (0.3922%) would have been £707.99.

56. Therefore, in relation to the disputed service charges, namely the actual service charges for 2014-2019 and the estimated service charges for 2019-2020, the Applicant is liable to the First Respondent for a total of £3,674 (£172.05 + 707.99 + £354.08 + £1,024.27 + £320.34 + £1,095.27).

Administration charges

57. The First Respondent claims a number of administration charges, the first of which is for "Solicitors Fees" of £336 from 15th May 2014. Despite the name given to this charge, the First Respondent's case is that this represents work carried out by their agents, Y&Y, to support the court case on which judgment has since been set aside. The First Respondent claims this sum under clause 2(5) of the lease by which the Applicant covenanted,

> To pay all costs charges and expenses (including solicitor's costs and surveyor's fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Sections 146 or 147 of the Law of Property Act 1925 …

58. The Court of Appeal confirmed in *Freeholders of 69 Marina, St Leonards-on-Sea v Oram* [2011] EWCA Civ 1258 that this type of clause entitles a landlord to their costs of establishing their entitlement to unpaid service charges.

59. The Applicant's defence is that these provisions only apply in the event that she is in breach of covenant whereas she was not properly notified of the service charges and so was not in breach of covenant.

60. The Statement of Account from Y&Y attached to the county court claim was addressed to the wrong address, namely Newquay House. It includes an "Opening Balance" of £2,791.88 which conceivably dates from Crabtree's time and so might have been demanded properly. However, the Tribunal has to work from the available evidence, namely the wrongly-addressed Y&Y Statement of Account. This means that there is no evidence that the Applicant was in breach of covenant and so no basis for the administration charge. Therefore, it is not payable.

61. The next two administration fees are the court issue fee of £455 and interest of £225.31 payable under the County Courts Act. The payment of these items is within the jurisdiction of the county court in the ongoing proceedings before it and should be decided in those proceedings.

62. The last administration charge is £180, demanded on 31st January 2019, also for work carried out by Y&Y to chase the Applicant for non-payment of service charges. The demand for this amount was sent to the correct address at Hemans Street but at a time when the relevant service charges had yet to be validly demanded. It cannot be reasonable to incur such a charge before the Applicant becomes liable for the substantive charges.

63. Therefore, the Tribunal concludes that none of the administration charges claimed by the First Respondent are payable, subject to the aforementioned matters which are left to the county court.

64. The Applicant challenged administration charges of £840 claimed by the Second Respondent for costs incurred following her alleged failure to pay her ground rent. The Second Respondent withdrew half the charges, leaving £420 incurred on 20th August and 23rd September 2013 for letters before action.

65. The Applicant seeks to use the same defence, namely that she was not notified properly of her liability for the ground rent. However, the Tribunal has already determined that issue against her. Therefore, no basis has been established for denying her liability to this sum. The sum of £420 is payable to the Second Respondent.

Costs

66. The Applicant applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

67. Under section 20C the Tribunal may order, as it considers just and equitable in the circumstances, that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

68. In this case, the First Respondent has failed to establish the greater part of the Applicant's alleged liability due to its own failures of service. It would not be just or equitable that they should be able to recover all their costs. In all the circumstances, the Tribunal has decided to make an order permitting them to recover no more than 30% of such costs through the service charge.

69. Under paragraph 5A, the Tribunal may make an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs. In the Tribunal's opinion, this provision only applies where there is an extant claim for litigation costs. The Respondents have yet to seek any costs in relation to these proceedings so there is nothing for this provision to operate on as yet.

70. The Respondents indicated that they might seek to claim their costs thrown away due to the Applicant's non-attendance on 6th April 2021 under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. As with the application of paragraph 5A, this is a matter for another time and nothing in this decision prevents the parties making applications on these matters at a later date.

Name: Judge Nicol **Date:** 12th April 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

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

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

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

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

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge

payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

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

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

  (a) the person by whom it would be payable,
  (b) the person to whom it would be payable,
  (c) the amount which would be payable,
  (d) the date at or by which it would be payable, and
  (e) the manner in which it would be payable.

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.