FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) and in
THE COUNTY COURT at Exeter

Case Reference:	CHI/18UC/LIS/2022/0025. County Court Claim No 282MC824
Property:	21d Morton Crescent, Exmouth, Devon EX8 1BG
Applicant/Claimant:	Ogden Kibble Ltd
Representative:	Mrs Ogden
Respondent/Defendant:	Miss Vanessa Freeman
Representative:	In Person
Type of Application:	Transferred proceedings from The County Court in relation to service charges. Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 Liability to pay service charges Landlord's application for the determination of reasonableness of service charges.
Tribunal Members:	Judge A Cresswell (Chairman) Regional Surveyor WH Gater FRICS
In the County Court	Judge A Cresswell sitting as Judge of the County Court exercising the jurisdiction of a District Judge
Date and venue of Hearing:	27 October 2022 by Video
Date of Decision:	3 November 2022

DECISION

The Application

1. The Applicant/Claimant issued proceedings against the Respondent/Defendant in the County Court, under claim number 282MC824, on 21 March 2022.
2. The proceedings were transferred by the County Court at Exeter to the First-tier Tribunal by an Order made by Judge R Griffiths on 23 May 2022.
3. The subject property is Flat 21d Morton Crescent, Exmouth, Devon EX8 1BG.
4. The Respondent holds a long lease of the flat. The lease requires the freeholder to provide services and for the lessee to contribute towards its costs by way of a variable service charge.
5. The claim in the County Court against the Defendant comprised of the following: £1,463.75 for building costs and £221.50 for insurance, all as service charges, interest on arrears of service charges and costs of the action.
6. A Judge of the Tribunal sitting as a County Judge exercising the jurisdiction of a District Judge in accordance with the County Courts Act 1984 as amended by the Crime and Courts Act 2013 can determine any aspects of the claim outside the Tribunal's jurisdiction.
7. All First-tier Tribunal ("FTT") judges are judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to interest or costs that would not normally be dealt with by the Tribunal.

Summary Decision in the Tribunal

8. The Tribunal has determined that the sums claimed are not payable by the Respondent.
9. The Tribunal allows the Respondent's application under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Applicant from recovering its cost in relation to the application by way of service charge.

Summary Judgment in the County Court

10. The FTT has determined that the Defendant is not liable to pay the sums claimed as service charges.
11. The Court orders that the claims are dismissed.
12. The Defendant has paid the insurance claim, which was not payable in accordance with the law.

13. Accordingly, the claims for interest are also dismissed.
14. The Court does not order the Defendant to pay the Claimant the court fee, the Court having dismissed the claim against her.

Inspection and Description of Property

15. The Tribunal did not inspect the property.
16. The Property has been described as comprising a four-storey house, together with a three-storey rear wing with a small single storey lean-to at the rear. The conversion into four flats probably took place in the 1960s. The property was constructed in the Victorian era and lies in a long terrace of similar properties. It is situated on a level site with a southwesterly aspect at the front overlooking the seafront.

Directions

17. Directions were issued on 11 July 2022.
18. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
19. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Mrs J Ogden and Mr C Kibble and Ms V Freeman.
20. The Tribunal has regard in how it has dealt with this case to its overriding objective:

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to

participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

(a) exercises any power under these Rules; or
(b) interprets any rule or practice direction.

(4) Parties must:

(a) help the Tribunal to further the overriding objective; and
(b) co-operate with the Tribunal generally.

Ownership

21. Joyce Ogden and Charles Kibble are the owners of the freehold and, as such, the landlord. The proceedings were incorrectly brought in the name of a limited company they use to manage the property.

The Lease

22. The lease before the Tribunal is a lease dated 19 October 1964, which was made between Dorothy Frances Dubois as lessor and Edwina Mary Geach as lessee.

23. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

24. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. *When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the*

contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

25. The hallmark of a demand for payment is that it contains words which make it clear that a payment is being sought and ensure that the amount that is being required to be paid is sufficiently clear: **Marine Court Residents Association v Rother District Investment Ltd** CHI/21UD/LSC/2009/0094, LVT.

26. *Clause 2 (h) of the lease*

2 (h) To pay a fair proportion to be conclusively determined by the surveyor for the time being of the Lessor (including the reasonable fee of such surveyor for such determination) of the insurance against fire and tempest (including architects fees in connection with rebuilding and reinstatement) of the said block of flats and of the reasonable expense incurred by the Lessor in performing her covenant hereinafter contained regarding the repair and maintenance of the said block of flats (except as regards damage thereto to any pipes or sanitary or water apparatus or electric and gas Installations caused. by or resulting from any act or default or negligence of the Lessee her servants or licensees which damage the Lessee shall make good at her own expense)

4 (c) At all times during the said term to keep in tenantable repair structurally and decoratively the roof roof timbers and outside walls boundary walls fences and gates and entrance doors and other outside parts of the said block of flats and all

the drains and water pipes and sanitary and water apparatus thereof and the main electric and gas. installations thereof and the common entrance hall internal walls and ceilings and main timbers staircases landings and passages except as provided in Clause 2 (c) hereof

Procedural Issues

27. The Respondent raised a number of procedural issues.

Section 20 Landlord and Tenant Act 1985 Limitation of service charges: consultation requirements

28. The provisions of Section 20 apply where a landlord either enters into a **qualifying long-term agreement** or a **contract to carry out qualifying works**.
29. They provide that if the consultation requirements have not been complied with or dispensed with by a Tribunal, the amount of the relevant costs incurred on carrying out the works or under the agreement which may be recovered through the service charge is limited to the "appropriate amount". The application of the provisions is regulated by the *Service Charges (Consultation Requirements) England) Regulations 2003 – SI 2003/1987).*
30. The appropriate amount is –

    in respect of qualifying works, £250 per tenant.
31. The consultation requirements are not the way Parliament has chosen to protect residential leaseholders. As Dyson MR said in ***Francis v Phillips*** [2014] EWCA Civ 1395:

    > "The real protection . . .is that all service charges must be reasonable and reasonably incurred under section 19.".
32. Service Charges (Consultation Requirements) (England) Regulations 2003
    a. Schedule 4 Part 2 (Qualifying Works – no public notice)

    > "Stage 1: Notice of intention to do the works
    > Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates

The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about Estimates

The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons

Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected."

33. Under **Section 20ZA of the Landlord and Tenant Act 1985** (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the consultation requirements, where an application has been made by the landlord, "if satisfied that it is reasonable to dispense with the requirements."

Sections 47 and 48 Landlord and Tenant Act 1987

34. Under Section 47 and 48, a Service Charge demand is not payable if it does not contain the name and address of the landlord at which notices (including notices in proceedings) may be served on the landlord by the tenant.
The following case provides guidance: **MacGregor v BM Samuels Finance Group Plc** [2013] UKUT 471 (LC): A Landlord may retrospectively comply with statutory provisions, such as Sections 47 and 48 of the Landlord and Tenant Act 1987, by reissuing a further invoice or notification as the situation requires.

The Law

35. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold

Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.

36. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

37. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.

38. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

39. The Tribunal advises Mrs Ogden and Mr Kibble to study the Code before proceeding further. It gives very good advice on accounting practices and service charge demands and is essential reading for them as they are currently acting in breach of much that is advised.

40. "*If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the* ***Yorkbrook*** *case* **(Yorkbrook Investments Ltd v Batten** (1986) 19 HLR 25) *make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.":* **Schilling v Canary Riverside Development PTE Limited** LRX/26/2005 at paragraph 15.
41. The relevant statute law is set out in the Annex below.

Section 20 Works

The Applicant

42. The Applicant says that a Section 20 notice was sent to Vanessa Freeman on 24 September 2018 delivered by hand through the front door of flat D. She claims not to have received this but then followed up by sending two estimates from Bonnie Builders and Avocet, which were not specific to the work.
43. The work was eventually carried out in October 2019. The work was carried out by K Hull, Mr and Mrs Tonge's proposed contractor. All procedures were followed until they couldn't wait any longer due to the oncoming winter conditions. The Respondent tried to delay the work. Her claim of damage to her decking was not reported at the time to the insurance company. There is no damage caused by the scaffolding. She has a history of reporting damage by scaffolding on every job that has required scaffolding.

The Respondent

44. The Respondent says she has never received any form of consultation paperwork and she has made this clear to the Applicant on multiple occasions in person and by email. The Applicant has not provided any supporting documentation to the court to evidence their statement in this regard. Furthermore, the Applicant has falsified the Section 20 letter dated 24 September 2018 (page 3 of applicants' submission). She had never seen this document before it was provided to her at a leaseholder meeting chaired by the previous building manager, Mr Steve Opie, in Exmouth on 5 October 2020, this date being over a year after the works had been conducted by Mr

Kevin Hull. It is evident from sight of this document that her name has been subsequently added underneath that of the only other leaseholders at that time, these being Chris and Lisa Tonge (flat 21b).

45. No consultation relating to the scope of works was ever entered into prior to leaseholders Chris and Lisa Tonge (flat 21b) obtaining a price for works from their selected sole trader, which was swiftly accepted by the Applicant. No summary of right notice has ever been issued to her by the Applicant for this or any of the other works they have conducted to the building at any time. Since doing the redecoration works, Mr Kevin Hull has amended the details of his works in his revised estimates and invoices to comply with requests from the Applicant to suit their misrepresentation of works to the building. Items originally estimated by Mr Kevin Hull (B-40) have miraculously disappeared from his final invoice at the Applicant's stipulation and additional works were conducted which were not disclosed by the Applicant at any time, but which they are now claiming payment for under the Service Charge.

46. The initial quotes provided by Ogden and Kibble for the works they were proposing consisted of one price for the contractor they had already discussed their planned works with and wanted to use (K. Hull), plus two other quotes which were over a year old from other contractors dated in 2018.

47. The Applicant had instructed Mr Kevin Hull to undertake works in 2019, which were an exact replication of works previously conducted 7 years earlier by the Applicant's roofer, Mr Mark Leek. In 2012, she had made her feelings clear to the Applicant and again to the Tribunal at the Applicant's Section 20Za hearing; that she did not feel the works had been undertaken to a satisfactory standard. If her observation was incorrect in 2012, then why do the same works have to be replicated within a 7-year period by the Applicant's contractor Mr Kevin Hull?

48. In her email to the Applicant dated 23 July 2019 (B-18), she took issue with the fact that the Applicant was proposing to replicate the same works to the front of the building. The Applicant had refused to accept her concerns in relation to the suitability of their proposed tradesman, which she felt was evident from the scope of works Mr Kevin Hull had quoted to undertake in comparison to the necessary remedial works that were required.

49. Her concerns with their chosen contractor turned out to be valid. Despite her express discussion with Mr Hull on 17/09/19, asking him not to erect scaffolding onto her

decking as it was unsupported; he did the exact opposite (C-12 to C-17) and as a result has damaged the footings of the only post into the ground supporting her decking (C-31). He also placed a volume of scaffolding boards directly into her front flower border (C-10). It was evident from his worker's attitude towards her that the Applicant had provided a distorted view of her as a leaseholder and as such she was dismissed and disrespected on her own property by the tradesman working for Mr Kevin Hull.

50. She is entitled to see a scope of works first, before a contractor is selected. She is entitled to forward comments on it and to obtain her own estimates based on the agreed scope of works. Not the other way around. At no point would the applicants provide her with a schedule of works; she was simply told to use the Kevin Hull quote obtained by Chris & Lisa Tonge (flat 21b), to get revised quotes from her selected contractors and was given only 48 hours to do so.

51. On page 9 of the Applicant's submission, they are trying to indicate that all three other flats are in agreement apart from her. They are counting the two flats they own individually in an attempt to make it look like there was greater support for their actions. In fact, it was just the applicants and the leaseholders of flat 21b (Chris & Lisa Tonge) who had decided between themselves what they were going to do and then she was informed after their decisions had been made and prices had been obtained. This is not a democratic way to proceed, nor is it in compliance with Section 20 of the Landlord and Tenant Act.

52. Mr Kevin Hull has provided several different versions of the details relating to his works from the estimate provided to her by the Applicant in July 2019 (B-40), through to the invoices provided to her by the Applicant on 05/10/20 (pages 14 & 15 of Applicant's submission), which appear to have been tailored to fit with the Applicant's distorted account of what works were intended and what was then completed. Items originally shown on the estimate from Mr Kevin Hull were removed at the Applicant's request and additional works were conducted which were not disclosed by the applicants prior to the commencement of the works or at any time during the works.

53. It is clear from the Applicant's submission, that both of the other leaseholders in flats 21a (Sarah Higgins) and 21b (Chris & Lisa Tonge) appear unaware of the legal requirements set out in the Landlord and Tenant Act relating to leaseholder contributions and appear fully supportive of the Applicant's actions to prejudice her

if she does not follow along with what they as a collective group wish to do. The Landlord & Tenant Act and the Commonhold & Leasehold Reform Act are there to protect her as leaseholder from being bullied by the building freeholder and other leaseholders and they prescribe the required processes for contributions under the service charge.

54. The email signed from Chris & Lisa Tonge of flat 21b (page 21 of Applicant's submission) was contrived as a clear request by the Applicant. There is no merit whatsoever in the divisive comments made here by Chris Tonge.
55. No summary of right notice has been issued by the freeholders for this or any works they have conducted since buying the freehold in 2012.
56. She has never seen any Service Charge accounts for the building in the 10 years Ogden & Kibble have held the freehold, despite asking multiple times. No accounts were provided by them when they held the freehold in their personal names from 2012 to 2015. No accounts have been provided by them for the limited company Ogden Kibble Ltd., which holds the freehold currently.
57. The limited company Ogden Kibble Ltd., which holds the freehold, does not have a bank account.

The Tribunal

58. The Tribunal has concluded that, taking the Applicant's case at its strongest, there was a failure by the landlord to comply with the statutory Section 20 consultation procedure. Whether or not the single Section 20 "Consultation for qualifying works" letter of 24 September 2018 was posted through the door of the Respondent's flat, the procedure was defective in that Mrs Ogden and Mr Kibble failed to follow steps 2 to 4 inclusive, detailed in brief above. The consultation process was, accordingly, flawed.
59. Even had the process not been flawed, service charge demands were not made by the landlord; Mrs Ogden accepted that there had been no formal demand. A formal demand would require that the name and address of the actual landlord appeared on the demand and that the demand was accompanied by a summary of the rights and obligations of the tenant and that the document made clear that it was a demand and that the sum demanded was clear. A failure to comply with those requirements on the part of the landlord meant that the sums spent on the building works were not, in law, ever payable by the Respondent.

60. One effect of the non-payability of the sums is that interest cannot run for the County Court claim, there being no date from which the sums were due.

61. Similarly, failings admitted by Mrs Ogden in respect of the "demand" for insurance means that again interest cannot run for the County Court claim, there being no date from which the sum was due. That does not give the Respondent grounds either to seek any repayment of the insurance monies or to seek to set them off against the cost of the building works.

62. If the Applicant landlord still wishes to recover a quarter share of the costs of the building work, Mrs Ogden and Mr Kibble would need to make an application to the Tribunal under Section 27ZA of the 1985 Act; if successful, they could then serve a formal demand complying with the law as stated. The Tribunal can give no advice as to the likely success of such an application. Alternatively, Mrs Ogden and Mr Kibble could choose to formally demand £250 from the Respondent, the sum prescribed by the Section 20 legislation, again the demand needing to comply with the law as stated.

Insurance

The Applicant

63. The Applicant says that the Respondent refused to pay the difference in premium due to inoccupancy. She still refuses to inform her freeholders her intentions regarding her property, which has stood empty for 5 years with no heat or ventilation. This is still causing a problem, with many insurers refusing to insure the building because of the inoccupancy. All Leaseholders apart from her are having to pay for inoccupancy of Flat D.

64. The Applicant accepts that the sum due has now been paid, but complains that the Respondent has not paid the interest claimed in the County Court.

The Respondent

65. The Respondent asserts that she has paid all that is due for the insurance, which became more costly only when the Applicant gave the insurance a true account of the circumstances.

The Tribunal

66. The Tribunal has commented upon this above. Interest cannot run for the County Court claim, there being no date from which the sum was due.

Section 20c and Paragraph 5A Application

67. The Respondent has made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Applicant's costs incurred in these proceedings.

68. The relevant law is detailed below:

Section 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 … … leasehold valuation 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 or any other person or persons specified in the application.

69. *The … tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

Commonhold and Leasehold Reform Act 2002 Schedule 11 Paragraph 5A Limitation of administration charges: costs of proceedings

(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.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

Section 20C

70. The Tribunal first examines the lease to determine whether the Applicant is able to recover its costs via the Service Charge in accordance with the lease.
71. No provision in the Lease enables the Landlord to recover legal costs it has incurred from the tenant.
72. The Tribunal, accordingly, allows the application under Section 20C of the Landlord and Tenant Act 1985. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

Paragraph 5A

73. For the same reason that the Tribunal allows the Respondent's application under Section 20C above, the Tribunal allows her application under Paragraph 5A, so that the costs incurred by the Applicant in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Respondent in this or any other year.

County Court – Issues and Decision

74. Judge A Cresswell, sitting alone as a judge of the County Court exercising the discretion of a District Judge, heard those matters that fall within the jurisdiction of the Court.

Claim including Interest

The FTT has determined that the Defendant is not liable to pay the sums claimed as service charges.

The Court orders that the claims are dismissed.

The Defendant has paid the insurance claim, which was not payable in accordance with the law.

Accordingly, the claims for interest are also dismissed.

Costs

The Claimant has sought to recover its court fee.

The Court proceeded to deal with costs under the principles set out in CPR 27.14. The claim was allocated to the Small Claims Track. The Court may order a party to pay to the other the fixed costs attributable to issuing a claim.

The Court does not order the Defendant to pay the Claimant the court fee, the Court having dismissed the claim against her.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court

An application for permission to appeal may be made to the Judge who dealt with your case when the decision is handed down. Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal. Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined accordance with, the regulations is limited to the amount so prescribed or determined.

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.

Landlord and Tenant Act 1987

47 Landlord's name and address to be contained in demands for rent etc

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the Landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [or (as the case may be) administration charges] from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

48 Notification by landlord of address for service of notices.

(1)A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2)Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3)Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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.

19 Limitation of service charges: reasonableness

(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.

27A Liability to pay service charges: jurisdiction

(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-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 postdispute 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 of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.