UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2017] UKUT 57 (LC)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charges – administration charges – costs orders under rule 13, Property Chamber Rules 2013 and s.20C, Landlord and Tenant Act 1985 – appellant successful in majority of issues – whether appellant's conduct unreasonable – whether just and equitable to make a section 20C order – whether appellant unreasonable to refuse mediation – appeal allowed in part

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

PRIMEVIEW DEVELOPMENTS LIMITED

Appellant

and

(1) MR R AHMED AND DR M H JAVAID
(2) MRS JUMBO
(3) MR FRADE
(4) MRS KELLY

Respondents

Re: 1 St Cloud Road,
London SE27 9PN
and
18 Hubbard Road,
London SE27 9PG

Determination on written representations

The following cases are referred to in this decision:

PGF II SA v OMFS Co 1 Limited [2014] 1 WLR 1386
Halsey v Milton Keynes General NHS Trust [2004] 1 WLR 3002
Cain v London Borough of Islington [2015] UKUT 117 (LC)
Ridehalgh v Horsefield [1994] Ch 205
Willow Court Management Company (1985) Limited v Alexander [2016] UKUT 290 (LC)
Cancino v Secretary of State for the Home Department [2015] UKFTT 59 (IAC)
HLB Kidsons v Lloyds Underwriters [2007] EWHC 2699 (Comm)
J Murphy & Sons Limited v Johnston Precast Limited (No.2) [2008] EWHC 3104 (TCC)
Multiplex Constructions (UK) Limited v Cleveland Bridge UK Limited [2008] EWHC 2280 (TCC)
St John's Wood Leases Limited v O'Neil [2012] UKUT 374 (LC)
Tenants of Langford Court (Sherbani) v Doren Limited LRX/37/2000 (Lands Tribunal)
Daejan Properties Limited v Griffin [2014] UKUT 206 (LC)
Valentine v Allen [2003] EWCA Civ 915
Hurst v Leeming [2002] EWHC 1051 (CL)
Tanfern Ltd v MacDonald [2000] 1 WLR 1311

Introduction

1. This is an appeal by way of review against a decision of the First-tier Tribunal ("FTT") dated 15 January 2016 by which it ruled on liability for costs following the determination on 30 November 2015 of an application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act").

2. Permission to appeal was granted by the Tribunal on 8 April 2016. Permission was also granted to the respondents to cross-appeal on one aspect of the FTT's decision.

3. The appellant, Primeview Developments Limited ("Primeview"), is the freeholder of a building at 1 St Cloud Road and 18 Hubbard Road, London SE27; despite its separate addresses the building is a single end of terrace house converted into four flats.

4. On 4 August 2015, when Primeview made its application under section 27A of the 1985 Act, the long leaseholders of the four flats were:

Flat 1A: Mr L Frade;

Flat 1B: Mr Z R Ahmed and Dr M H Javaid;

Flat 1C: Mrs N P Jumbo; and

Flat 1D: Mrs J F Kelly.

5. The only respondents named in the application by the appellants were the leaseholders of Flat 1B (Mr Ahmed and Dr Javaid) ("the first respondents"). The other leaseholders were subsequently joined as respondents by the FTT. The first respondents assigned their lease of Flat 1B to Mr Shibber Ahmed in March 2016, but he chose not to become a respondent.

6. The appeal was determined under the Tribunal's written representation procedure. Representations were prepared by counsel, Mr James Sandham on behalf of the appellant and Ms Amanda Gourlay on behalf of the respondents.

The facts

7. The proportions in which the leaseholders are required by clause 3 of their leases to contribute to the cost of works and services provided by Primeview are: Flat 1A - 20%; Flats 1B and 1C - 25% each; and Flat1D - 30%.

8. On 28 October 2013 Primeview's agent, D & S Management Services Limited ("D&S"), consulted the leaseholders regarding its intention to enter into a qualifying long term agreement ("QLTA") which would enable a single contractor to be engaged to carry out works for which Primeview was responsible under their leases.

Following the consultation Primeview entered into the QLTA with Bali Homes Limited.

9. On 22 July 2014 Primeview undertook a further consultation concerning works it intended to carry out to the roof of the building at an estimated cost (including a managing agent's fee of 15%) of £23,453.10. The works did not proceed but in November 2014 Primeview undertook a further "specific consultation" about the same works rather than relying on the QLTA. Bali Homes Ltd was then awarded the contract at its previous quotation of £20,394 including VAT.

10. Following the conclusion of the specific consultation Primeview asked all the leaseholders to enter into a formal agreement acknowledging that:

(a) the works were required;

(b) they had been consulted about the works;

(c) the estimate provided was a reasonable price for the proposed works; and

(d) they would each contribute the percentage specified in their leases to the cost of the required works and management fee.

11. The then leaseholder of Flat 1B, London and Capital Housing Limited ("LCH"), signed the agreement on 26 January 2015. LCH then sold the lease to the first respondents at auction on 14 April 2015. On that day Primeview demanded that LCH make a payment on account of 25% of the estimated cost of the major works by 18 May 2015.

12. The leaseholder of Flat 1D (Mrs Kelly) signed a similar agreement on 29 April 2015 having purchased her flat on 20 March 2015. Neither Mr Frade (Flat 1A) nor Mrs Jumbo (Flat 1C) appear to have signed the agreement.

13. The first respondents completed their purchase of Flat 1B on 11 May 2015 but they did not make the payment on account demanded of LCH. There followed protracted email correspondence between Primeview and the first respondents in which the first respondents questioned the validity of the consultation process and which failed to resolve the parties' differences. In the course of those exchanges the respondents made repeated requests for meetings with their landlord or for mediation, but each of these was refused by Primeview.

The relevant statutory provisions

14. Section 27A(1) and (3) of the 1985 Act enable an application to be made to the FTT for a determination whether a service charge is payable or whether, if costs for services, repairs, maintenance etc were incurred, a service charge would be payable.

If a service charge is, or would be payable, the Tribunal may determine the amount of that charge.

15. By section 27A(4) no application may be made under subsections (1) or (3) in respect of a matter which has been agreed or admitted by the tenant.

16. Section 27A(6) provides that an agreement by a tenant (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination either in a particular manner or on particular evidence of any question which may be the subject of an application under subsection (1) or (3).

17. Section 20C of the 1985 Act permits an application to be made by a tenant for an order that all or any of the costs incurred by the landlord in connection with proceedings before the FTT or this Tribunal are not to be taken into account in determining the amount of any service charge payable by the tenant or any other person. On considering such an application the tribunal concerned may make such order as it considers just and equitable in the circumstances.

18. Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules") enables the FTT to make an order in respect of costs in a leasehold case if a person has "acted unreasonably in bringing, defending or conducting proceedings."

The applications

19. On 4 August 2015 Primeview made two applications to the FTT. The first was under section 27A of the 1985 Act to determine the first respondents' liability to contribute towards the cost of the roof works, while the second was an application under section 20ZA of the 1985 Act to dispense with the section 20 consultation requirements if they had not been fully complied with.

20. In its statement of case for the section 27A application Primeview's primary contention was a surprising one, namely that the FTT should decline jurisdiction to determine the amount of the payment due from the first respondents towards the cost of the works on the grounds that the agreement signed by their predecessor, LCH, on 26 January 2015 was an admission for the purpose of section 27A(4) of the 1985 Act.

21. In the alternative, if the FTT did have jurisdiction to hear the application, Primeview asked for a determination that the estimated cost of the works was reasonable and that the consultation requirements had been complied with or should be dispensed with under section 20ZA.

The FTT's substantive decision

22. The FTT's decision of 30 November 2015 dealt with the section 27A application, but postponed consideration of the issue of dispensation.

23. The FTT rejected Primeview's primary contention that it had no jurisdiction to determine the extent of the first respondents' liability to make the on account payments by reason of section 27A(4) of the 1985 Act and the agreement signed by LCH on 26 January 2015. It held that the agreements entered into by LCH and Mrs Kelly were formal legal documents which required the respondents to agree that they would not raise objections to the consultation process and would agree to the works, the prices, the contractor, and the management fee. The FTT concluded that such an agreement was rendered void by section 27A(6) of the 1985 Act, as it purported to provide for the determination of issues referred to the tribunal on particular evidence.

24. Having accepted jurisdiction the FTT next considered whether the replacement of the roof covering was justified and the estimated cost reasonable and concluded that they were. It determined that the first respondents were liable to pay the sum demanded on account for the roof works but with a management fee of 10% rather than 15%. The total amount payable was £5,608.35 instead of the £5,863.25 sought by Primeview, a reduction of 4.3%. The FTT made no formal determination in respect of the other respondents whom it had joined to the proceedings, apparently on the basis that there was no formal application requesting such a determination.

The FTT's costs decision

25. Following the receipt of further written submissions the FTT considered an application by the respondents under section 20C of the 1985 Act and rule 13 of the 2013 Rules.

The application under section 20C

26. By its decision of 15 January 2016 the FTT determined that only part of the costs incurred by Primeview in connection with the proceedings should be recoverable from the leaseholders through the service charge. Different proportions were specified as recoverable from each of the leaseholders.

27. In reaching its conclusions on apportionment the FTT considered the degree of success of each of the four respondents in relation to three issues, namely:

(i) the jurisdiction issue;

(ii) whether the renewal of the roof covering had been required or whether lesser repairs would have been sufficient; and

(iii) whether the payment on account first demanded of LCH was payable by the first respondents as its successors in title under the Landlord and Tenant Covenants Act 1995.

The FTT also took into account the reduction it had allowed in the management fee from 15% to 10%, and decided to approach the issues of relative success as if there had been formal applications under section 27A in respect of each of the respondents. Where a respondent had made a payment before becoming involved in the applications the FTT also reflected that fact in its apportionment.

28. The first respondents (Mr Ahmed and Dr Javaid) were successful on the first issue and also, to a limited extent, on the quantum of management fees. The FTT attributed 33% of the costs of the proceedings against them to the former issue and 5% to the latter, and on that basis restricted the proportion of Primeview's costs to which the first respondents should contribute to 60%.

29. The second respondent (Mrs Jumbo) was not concerned with issue (iii) and was successful in relation to issue (i) and partially successful on issue (ii). The FTT attributed 50% and 5% of Primeview's costs respectively to these issues. It then made a further allowance of 20% to reflect the fact that Mrs Jumbo had paid approximately 70% of the sum demanded before proceedings were issued. On that basis it considered it just and equitable that she be required to contribute to only 25% of Primeview's costs through the service charge.

30. The FTT found that the third respondent (Mr Frade) was in a similar position to Mrs Jumbo but had made no payment. He was therefore required to contribute towards 45% of Primeview's costs through the service charge.

31. Mrs Kelly had signed the agreement sent to her by Primeview and had unconditionally paid the whole amount demanded of her before the proceedings commenced. The FTT therefore considered it just and equitable that none of Primeview's costs should be recoverable from her through the service charge.

32. The proportions attributed by the FTT to each of the respondents were themselves then subject to apportionment in accordance with the percentage contribution provided for by each of their leases. Thus the actual proportion of its total costs recoverable by Primeview as a result of the FTT's decision was 30.25%, calculated as follows:

Mr Frade - Flat 1A:	45% of 20% = 9%
Mr Ahmed and Dr Javaid - Flat 1B:	60% of 25% = 15%
Mrs Jumbo - Flat 1C:	25% of 25% = 6.25%
Mrs Kelly - Flat 1D:	0% of 30% = 0%
Total recoverable:	30.25%

The application under Rule 13(1)(b)

33. The respondents applied for an order under rule 13(1)(b) of the 2013 Rules that Primeview pay their costs. The FTT made such an order requiring Primeview to pay the costs of the respondents' counsel so far as they related to the jurisdiction and successors in title issues and considered that one-third of the hearing had been concerned with these issues. It explained at paragraph 18:

> "The Tribunal finds that the landlord acted unreasonably in [its] conduct in relation to Issue 1. This is because it sought to oust the jurisdiction of the Tribunal by encouraging the respondents to enter into an agreement which on the face of it would have had that effect. Further, the landlord was professionally advised and the Tribunal finds that there is no reasonable explanation for this course of conduct."

34. The respondents also asserted that Primeview had behaved unreasonably by declining an invitation to mediate. The FTT rejected that submission because it considered that the prospects of success at mediation would have been slight, and a mediation would have been likely to take a day so the costs would have been disproportionate and similar to those of the hearing. The FTT had not directed mediation and Primeview had responded, albeit dismissively, to the request rather than ignoring it.

The appeal

35. Primeview chose not to seek permission to appeal the FTT's decision that the agreement signed by LCH on 26 January 2015 was void under section 27A(6) of the 1985 Act. It confined its appeal to challenging the FTT's orders under section 20C and rule 13(1)(b) and was granted permission by the Tribunal. As Primeview has not sought to challenge the FTT's determination on the issue of its jurisdiction, the Tribunal has not been called upon to consider whether the FTT's conclusion was correct. As the only issues before us relate to costs, no question of our own jurisdiction is engaged. For the purpose of addressing the costs issues we will assume that the FTT's conclusion on the effect of the agreement was correct, but nothing we say should be taken as a decision to that effect or as any endorsement of the FTT's view.

36. The respondents also sought and were granted permission to appeal to enable them to argue that Primeview's refusal to agree to mediation was unreasonable conduct which should have been taken into consideration by the FTT when it determined the applications under section 20C and rule 13(1)(b).

37. The following issues therefore arise for determination on the appeal:

(i) whether the FTT was wrong in principle to make an order for costs against Primeview under rule 13(1)(b);

(ii) whether the FTT was wrong in principle to make orders against Primeview under section 20C;

(iii) whether the FTT ought to have regarded Primeview's refusal to mediate as unreasonable behaviour, or as relevant to the order it made under section 20C; and

(iv) whether the Tribunal should make orders against Primeview under section 20C of the 1985 Act or rule 10(3)(b) of The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (as amended) ("the 2010 Rules") in respect of the appeal.

38. The approach which an appellate court or tribunal should take when asked to review a decision of a lower court or tribunal on an issue concerning costs is not in doubt. Before the appellate tribunal can interfere it must be satisfied either that the lower tribunal has erred in principle, or that, in exercising its discretion, it left out of account, or took into account, some feature that should, or should not, have been considered, or that the decision is wholly wrong because it did not balance the various relevant factors. The appellate tribunal '…should only interfere when they consider that the judge of first instance … has exceeded the generous ambit within which a reasonable disagreement is possible' (see *Tanfern Ltd v MacDonald* [2000] 1 WLR 1311).

The relevance of Primeview's refusal to mediate (issue (iii))

39. This issue forms the subject of the respondents' cross-appeal, but it is convenient to consider it first as if the appeal is successful it may have an impact on other issues. The respondents argue that the FTT erred in principle in its consideration of the appellant's approach to requests for mediation. They say that the FTT was wrong when it said Primeview's refusal to mediate "did not cause further loss so should not affect the overall [section 20C] orders." The respondents also submit that Primeview's refusal to mediate constituted unreasonable conduct which, in itself, justified an order under rule 13(1)(b).

40. In one of the appeals considered in its recent decision on the rule 13 jurisdiction (determined after the decision of the FTT in this appeal), *Willow Court Management Company (1985) Limited v Alexander* [2016] UKUT 0290 (LC), the Tribunal made the following observations on the relevance of a reluctance to mediate in service charge disputes of modest value (paragraph 102):

> "In a relatively modest dispute we do not necessarily regard an unwillingness to mediate by a party which considers themselves to have a strong case as evidence of unreasonableness; depending on the circumstances it may simply be evidence of an entirely reasonable assessment that the effort and expense of a day spent mediating, with no guarantee of success, is not justified when the comparable effort and expense of proceeding to a hearing will produce a much higher chance of a final resolution."

41. Before the FTT the respondents had relied upon *PGF II SA v OMFS Co 1 Limited* [2014] 1 WLR 1386 in which the Court of Appeal held that, in civil litigation, silence in the face of an invitation to participate in alternative dispute resolution is, as a general rule, of itself unreasonable. For its part the FTT focussed on *Halsey v Milton Keynes General NHS Trust* [2004] 1 WLR 3002 in which the Court of Appeal set out a number of relevant considerations in assessing the reasonableness and significance of a refusal to mediate. The FTT regarded two of these considerations as of particular importance in this case, namely the cost of going to mediation and the prospects of success at a mediation.

42. The respondents challenged the four grounds upon which the FTT reached its decision on this issue:

(i) *That the prospects of success were slight*. The FTT said that two of the three main issues were "essentially all or nothing points making a compromise unlikely". The respondents complained that this betrayed an unimaginative approach to mediation and that a skilled mediator could facilitate compromise from even the most entrenched position. The respondents had accepted Primeview's right to demand on-account payments under the leases and the first respondents had agreed to make such an on account payment provided they did not have to sign Primeview's proposed agreement. Mediation would have been an ideal opportunity to re-build the respondents' relationship with their landlord generally.

(ii) *That the costs would have been disproportionately high and a mediation as time consuming as the hearing.* The respondents rejected this point as effectively nullifying any reason to mediate. In this instance early mediation would have saved significant time and cost including time spent on preparing witness statements and a large trial bundle.

(iii) *The Tribunal did not order the parties to proceed to mediation.* The respondents dismissed this ground as being inappropriate since it was for the parties to decide whether to proceed to mediation in an attempt to resolve their differences. The fact that the FTT had not ordered the parties to mediate did not excuse Primeview's unreasonable conduct in not doing so.

(iv) *Primeview's dismissive response to mediation*. The FTT noted that the respondents' request for mediation "was not met with silence but with a dismissive response." The FTT did not explain why it did not find that response to be unreasonable conduct, especially since the respondents, who at that time were litigants in person, had made early offers to mediate and clearly wanted to discuss issues with their landlord. There was no difference in kind between saying nothing in response to a request to mediate and being dismissive of it.

43. Primeview responded to the cross-appeal as follows:

(i) The FTT was not invited to make a rule 13(1)(b) order by reference to the alleged failure to mediate; the application under rule 13 was directed to

Primeview's reliance on the void agreement. The question of mediation was only raised as a complaint in connection with the section 20C application.

(ii) There was no presumption in favour of mediation; Dyson LJ had stated in *Halsey* at paragraph 16:

> "The question whether a party has acted unreasonably in refusing ADR must be determined having regard to all the circumstances of the particular case."

The FTT had properly exercised its discretion and had considered all the relevant factors identified in *Halsey*.

(iii) Primeview had offered to accept payment by instalments before making its section 27A application. It had been necessary to reach a formal agreement for the purposes of section 27A(4) or otherwise there remained the possibility of future litigation. The first respondents had offered payment outside of the terms of the lease whilst declining to enter the agreement and thus preserving their right to challenge every head of the demands. Primeview and the respondents had reached an impasse that meant referral to the FTT was inevitable.

(iv) To be dismissive of mediation was not the same as arbitrarily refusing to mediate. Primeview did not wish to incur the disproportionate costs of privately funded mediation and was open to the low cost mediation service usually offered by the FTT but that was not made available in this case.

(v) A settlement had been explored in correspondence and in those circumstances the FTT was entitled to conclude that a refusal or failure to mediate should not sound in costs (the appellant referred to *Valentine v Allen* [2003] EWCA Civ 915).

(vi) The prospects of mediation were undermined by the respondents' refusal to compromise on any basis that ruled out future applications to the FTT. In circumstances where mediation was most unlikely to succeed a party was justified in refusing to mediate (the appellant referred to *Hurst v Leeming* [2002] EWHC 1051).

(vii) The cost of mediation was relevant and although the FTT acknowledged the potential for mediation to reduce the costs to parties in resolving the dispute they had found as a fact in this instance that those costs would be disproportionately high relative to the issues. The appellant referred to the Tribunal's observations in *Willow Court* to which we have already referred.

44. Primeview's interest in a negotiated settlement or in low cost mediation in the event that no such settlement could be reached was, at best, lukewarm. The correspondence demonstrates that the respondents were far more amenable to resolving their differences without having to go to the FTT. They made reasonable attempts to reach a compromise with Primeview but were rebuffed. The landlord's stance was a narrow but consistent one: there could be no compromise unless it precluded future challenges to the on-account or final demands in connection with the

work to the roof. That condition led to an impasse that meant mediation was likely to be difficult and uncertain.

45. The FTT concluded that Primeview's refusal to mediate did not cause further loss despite considering Primeview's reasons "inappropriate". Unlike the silent defendant in *PGF II SA* Primeview did engage in some correspondence, albeit cursory, to explain why it refused to participate in mediation.

46. The decision of the Court of Appeal in *Halsey* was concerned with the question whether a refusal to mediate was conduct which should result in a successful party being deprived of costs to which, in civil litigation, it would otherwise have been entitled to. That is a different question from whether a party has behaved unreasonably in conducting tribunal proceedings so as to merit a sanction under rule 13(1)(b), or should be deprived of a contractual entitlement under section 20C. Nevertheless the factors which the FTT took into account, and which it derived from *Halsey*, were not irrelevant to either issue. In particular the FTT recognised that, despite its advantages, there is no presumption in favour of mediation; as Dyson LJ said at paragraph 16 in *Halsey* "mediation and other ADR processes do not offer a panacea and can have disadvantages as well as advantages." We are therefore satisfied that the respondents are wrong to suggest that the FTT erred in principle by not treating a refusal to mediate as unreasonable behaviour.

47. Whether a person has acted unreasonably in refusing ADR must be determined by having regard to all the circumstances of the case. The FTT was cognizant of this fact and was in a much better position than this Tribunal to assess the significance of the appellant's refusal. It took into account the Court of Appeal's guidance in *Halsey* and applied it in an appropriate manner when deciding that the two most relevant factors in this case were cost and the prospects of success. It was entitled to conclude from the evidence before it that the prospects of success were slight and that the costs of mediation were likely to be disproportionately high. It follows that the FTT was entitled to determine that Primeview's refusal to mediate should not be sanctioned by an order under rule 13 of the 2013 Rules. As for section 20C, having had the refusal to mediate drawn to its attention there is nothing to justify the suggestion that it was overlooked as a factor to be weighed in the balance when the FTT exercised that jurisdiction either.

48. We therefore dismiss the respondents' cross-appeal.

Issue (i): Whether the FTT was wrong in principle to make an order for costs against Primeview under rule 13(1)(b)

The case for the appellant

49. Primeview relied on four grounds of appeal:

(i) That the FTT had impermissibly relied on Primeview's conduct prior to the proceedings as being unreasonable rather than focussing solely on its

behaviour in bringing or conducting the proceedings themselves. The FTT criticised Primeview for encouraging the respondents to enter into the agreements but this occurred before the proceedings such that even if it was objectionable (which the appellant denied) it could not be relied on as the basis of an order under rule 13(1)(b). In refusing permission to appeal the FTT had suggested that Primeview had acted unreasonably by *continuing* to rely on the agreements during the hearing, but this reasoning had formed no part of its costs decision.

(ii) That the FTT had confused the evidential status of the agreement (so far as it related to the question of whether the on-account demands were reasonable) with its legal effect. Reliance on the agreement per se was not unreasonable conduct. It was open to the FTT to give the agreement *some* evidential weight as part of the factual matrix to determine questions of reasonableness. If an adverse finding pursuant to section 27A(6) of the 1985 Act resulted in a rule 13 costs order that would deter landlords from seeking agreements with leaseholders under section 27A(4) and thereby avoiding the need to refer disputes to the FTT.

(iii) The agreements represented a prima facie admission for the purposes of section 27A(4) and Primeview had merely asserted the statutory consequence that the FTT did not have jurisdiction to consider the reasonableness or payability of the on-account charges. The validity of the agreements was an arguable and proper point, and advancing it, even unsuccessfully, could not be unreasonable conduct under rule 13. Primeview argued that all it had done was to lose an arguable case, and referred to the observations of Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 205, 232 that "conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently."

(iv) The issue of whether the agreements were void under section 27A(6) was introduced by the FTT and as the respondents' counsel's fees had been incurred before the start of the hearing it had added nothing to the respondents' costs.

50. Primeview also submitted on the basis *of Willow Court* that a rule 13 order was an exceptional remedy, that the standard of behaviour demanded by the FTT ought not to be unrealistic and that the emphasis should have been on a search for a reasonable explanation for Primeview's conduct which needed to be considered objectively. Had such an approach been adopted Primeview's conduct could not have been considered unreasonable.

The case for the respondents

51. The respondents' submissions were as follows:

(i) Rule 13(1)(b) applied where a person had acted unreasonably in bringing proceedings as well as in conducting them. The FTT found the agreement was

void under section 27A(6) so it should never have formed part of the application.

(ii) The evidential value of the agreement was not explored by the FTT, and there was no discussion at the hearing of its significance on the issue of the reasonableness of the works, their costs or whether the consultation requirements had been satisfied. The FTT was diverted into considering its effect and allowed inadequate time to investigate other issues.

(iii) It was unreasonable for Primeview to try to deprive the respondents of access to the FTT by relying on the agreements, whose primary purpose was to oust the FTT's jurisdiction.

(iv) The agreements were not signed willingly by the respondents who had been pressurised into signing them by Primeview. (The respondents referred to other FTT decisions and to Primeview's "history of trying to oust the jurisdiction of the tribunal by use of an agreement" but we give no weight to those submissions).

(v) The respondents accepted that counsel's fees had been incurred before the jurisdiction issue was raised by the FTT, and that the agreement would have been a feature of the case in any event. The agreements and the rights they sought to oust were central to the case and the respondents were entirely successful on the point regarding the FTT having jurisdiction. The FTT was therefore correct to award the respondents 33% of counsel's brief fee.

52. The respondents also submitted that the FTT had implicitly followed the three stage approach described in *Willow Court*. It had reviewed Primeview's conduct, found no reasonable explanation for it, considered its discretion to make a rule 13 order and, having decided to exercise that discretion, proceeded to assess quantum.

Conclusion

53. It is clear from Primeview's statement of case to the FTT that the primary purpose of its section 27A application was to seek a ruling from the FTT that, as a result of the agreement signed by LCH, it should "decline jurisdiction" to determine the first respondents' liability to make the on-account payment demanded of their predecessor,. Although the statement of case did not refer in terms to section 27A(6) of the 1985 Act, a proper consideration of the jurisdiction question required the FTT to consider the effect of the agreement, which took it to the question of whether section 27A(6) was engaged.

54. Primeview says it wanted certainty about the status of the agreements signed by LCH on 26 January 2015 and by Mrs Kelly on 29 April 2015, and that its section 27A application was an opportunity for the FTT to rule that they were admissions for the purposes of section 27A(4). One difficulty with that approach is its inherent contradiction: if a service charge has been agreed or admitted by a tenant no application *can* be made under section 27A in respect of it. So by making a section

27A application Primeview was invoking a jurisdiction which, on the basis of its own argument, the FTT did not have.

55. Before Primeview made its application in August 2015, LCH and Mrs Kelly had signed the form of agreement and Mrs Kelly had paid the amount said to be due. The first respondents, Mr Ahmed and Dr Javaid, queried whether LCH's agreement was binding on them, including in an email to the appellant's agents on 11 June 2015 in which Mr Ahmed stated that he would be seeking legal advice on that issue.

56. The second respondent, Mrs Jumbo, had made a payment of 70% of the amount demanded but had not signed the agreement, while Mr Frade, the third respondent, had not paid any money or signed the agreement. It is therefore apparent that if it wanted to be sure of its entitlement to recover the cost of the roof works it proposed to carry out, Primeview would have needed to make the section 27A application in any event, even had it relied upon the signed agreements in respect of the first and fourth respondents.

57. A landlord's desire to clarify its entitlement to recover significant but contentious service charge expenditure is understandable. In view of the range of responses to its proposed agreement and the demands for payments on account it does not seem to us to be unreasonable for Primeview to have sought that clarification by making its application to the FTT. It seems likely that if it had not made its application when it did, either it or one or more of the leaseholders would have done so in due course.

58. We do not accept the FTT's conclusion that Primeview acted unreasonably by seeking "to oust the jurisdiction of the Tribunal" by encouraging the respondents to enter into an agreement. The statute specifically envisages that the effect of an agreement will be to deprive the tribunal of jurisdiction. Reaching agreement is a legitimate objective for parties seeking to avoid the need to refer service charge disputes to the FTT and it is the policy of the Act that where agreement has been reached the jurisdiction of the tribunal is ousted. The only agreement which the Act treats as objectionable is one which provides for the resolution of a continuing dispute otherwise than by the FTT (such as an agreement that the determination of the landlord's surveyor shall be final on an issue), or which seeks to limit the evidence which may be relied on before the FTT (such as an agreement that accounts audited by the landlord's accountant are to be taken to be accurate).

59. Despite the absence of any challenge to the FTT's conclusion that the agreement was void by reason of section 27(A)(6), a conclusion on which we express no view, we respectfully consider that the FTT was wrong in principle to regard the appellant's reliance on the agreement as unreasonable conduct. At the very least there was a respectable argument that in Mrs Kelly's case the agreement had achieved its purpose, and there was also a real issue on the effect of the agreement with LCH on the position of the first respondents. There is nothing unreasonable in advancing a

respectable argument, or relying on an agreement the effect of which may be that a tribunal has no jurisdiction.

60. Nevertheless, having examined the correspondence passing between Primeview and the respondents concerning the agreement, all of which was made available to the FTT, we see the force in the respondents' submission that those who did so were pressurised into signing the agreements. There is nothing which could support an argument that the agreements were entered into under duress such that they could be set aside on common law principles, but Primeview persistently adopted an unattractive hectoring tone when dealing with the leaseholders. Although its approach was blunt and uncompromising, we do not consider that it is capable of providing grounds for the making of an order under rule 13(1)(b). We do not think, on balance, that it can fairly be described as vexatious and designed to harass the leaseholders rather than advance the resolution of the case. It was an aggressive negotiating style which clearly antagonised the respondents but it is notable that the FTT did not rely on the manner in which agreement had been procured in support of its finding of unreasonable conduct. It based its conclusion on what it regarded as unreasonable conduct in relying on the agreement. We are satisfied that it was not entitled to do so.

61. In our judgment therefore there was nothing in Primeview's conduct which amounted to unreasonable behaviour in the bringing or conduct of the proceedings. The FTT therefore had no jurisdiction to make a rule 13 order. The behaviour relied on was pre-application conduct, or at least had its origin in a pre-application agreement, the effect of which was highly debateable but whose object was consensus rather than dispute. The leaseholders may have felt pressured to sign but they were free to refuse, as some did. We therefore allow the appeal on this issue.

Issue (ii): The section 20C order

The case for the appellant

62. Primeview submitted that the FTT approached the exercise of its jurisdiction under section 20C in an irrational way by penalising it for relying upon the agreements. It also failed to recognise that it had been substantially successful in its application, and was awarded 95.7% of the amount it was seeking. The FTT followed a rigid and formulaic approach to determining the application for a section 20C order which did not produce a just and equitable result.

63. Primeview said that the ultimate questions for the FTT were whether the on-account payment was chargeable under the service charge provisions of the lease and, if so, when? Section 27A did not extend to determining the validity of an agreement as an issue in isolation and the FTT only had jurisdiction to determine the validity of the agreements as a subsidiary question to determining whether or not the monies demanded were due. The FTT should have approached the section 20C application by considering the parties' relative degree of overall success. Had they done so it would have been obvious that the 30.25% of its costs that the FTT allowed Primeview

to recover was too low compared with its 95.7% success. The respondents contested the whole of the amount demanded and had forced the matter to a hearing but had failed almost completely. There was no reasonable or proper basis for finding that the respondents had succeeded overall.

64. Primeview relied on a number of authorities on the proper approach to awarding costs in the civil courts in support of a submission that the FTT had been wrong to adopt an issues based approach to the section 20C application. For example, in *J Murphy & Sons Limited v Johnston Precast Limited (No.2)* [2008] EWHC 3104 (TCC) Coulson J said at paragraph 10:

> "In civil litigation it is almost inevitable that there will have been some point or argument, raised by the otherwise successful party but rejected by the judge, which would have added to the length of the trial. In my view, the mere fact that the successful party was not successful on every last issue cannot, of itself, justify an issue-based costs order."

65. Primeview also submitted that the FTT should have had regard to the principles set out by Jackson J in *Multiplex Constructions (UK) Limited v Cleveland Bridge UK Limited* [2008] EWHC 2280 (TCC) at paragraph 71, in particular principle (viii):

> "In assessing a proportionate costs order the judge should consider what costs are referable to each issue and what costs are common to several issues. It will often be reasonable for the overall winner to recover not only the costs specific to the issues which he has won but also the common costs."

66. Primeview said that as the costs of the final hearing represented 7.5% of the overall bill, the application of the FTT's approach suggested that at most a reduction of one third of 7.5%, i.e. 2.5% should have been applied.

The case for the respondents

67. In her representations Mrs Kelly said that she had been informed by Primeview that it had recovered all of its legal costs associated with the FTT's substantive decision of 30 November 2015 from the first respondents. She submitted that in those circumstances Primeview's appeal in relation to the FTT's section 20C determination was redundant.

68. The other respondents said that there was no authority for Primeview's suggestion that the starting point for determining a section 20C application should be the parties' relative degree of success. Section 20C required an assessment of what was just and equitable in the circumstances. They referred to *St John's Wood Leases Limited v O'Neil* [2012] UKUT 374 (LC) in which the Tribunal, His Honour Judge Gerald and Mr N J Rose FRICS, applied the principles upon which the discretion under section 20C should be exercised that were set out by His Honour Judge Rich in

the *Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000 (Lands Tribunal):

> "28. In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.
>
> 29. I think that it can be derived from [*Iperion*] that where a court has power to award costs, and exercises such power, it should also exercise its power under s20C, in order to ensure that its decision on costs is not subverted by the effect of the service charge."

The Tribunal in *St John's Wood Leases* concluded at paragraph 37 that:

> "… by exercising its discretion on the basis that the Respondent had 'overall succeeded' [the LVT] betrayed an approach to the exercise of discretion as one in which costs automatically follow the event without providing any explanation or analysis for the reasons behind its finding or why in *this* case it was just and equitable that costs should follow the event."

69. The respondents submitted that the FTT had stated clear reasons for its decision on the section 20C application and could not be said to have exercised its discretion in a manner that was plainly wrong.

Issue (ii): conclusion

70. It is clear from its statement of case that Primeview's primary purpose in issuing its application against the first respondents was to establish that the FTT did not have jurisdiction to consider the issue of their liability to pay the on-account charge. It was only if the FTT found against it on this point (as it did) that the question of whether a service charge was payable became relevant. Primeview failed in its primary argument and there has been no appeal from that aspect of the FTT's decision.

71. The FTT approached the section 20C application by analysing the extent to which each leaseholder was concerned with each of the three issues and by giving credit where a leaseholder had paid some or all of the amount demanded. As to the first element of that approach, there is nothing objectionable in an issues based approach in principle, provided it does not lose sight of the extent to which individual issues were simply steps on the way to a determination of the extent of each leaseholder's liability. The authorities relied on by the respondents discouraging issue based costs awards are not directly in point, but they emphasise that one significant factor which should be in the mind of any court or tribunal making such an award is the extent to which issues are discrete rather than simply individual components of a single, larger dispute. The same factor is relevant when a tribunal considers whether it is just and equitable that an order should be made under section 20C of the 1985 Act.

72. The FTT determined that the hearing was equally concerned with three issues, one of which (jurisdiction) Primeview lost, while in the other two it was either successful or substantially successful. That being so the FTT's approach to apportionment produces a surprisingly unbalanced result which, it seems to us, cannot be regarded as fair. The effect of the FTT's decision was that Primeview could recover 30.25% of its costs through the service charge despite having succeeded in two out of three issues and been found entitled to recover almost all of the sum in dispute (even adopting the FTT's percentages, it had succeeded proportionately by over 61%). The reason for the discrepancy is due first to the FTT assuming that none of Primeview's costs should be charged to any leaseholder if that leaseholder was not involved in disputing an issue; and secondly to the FTT crediting leaseholders who had paid some or all of the amounts demanded.

73. Each leaseholder covenanted under clause 3 of the lease to contribute and pay a stated percentage of *all* costs, charges and expenses incurred by Primeview in providing the facilities and services set out in the Fifth Schedule of the leases. That schedule is concerned with the costs etc as they relate to the "Building". There is no provision that a leaseholder shall contribute to the landlord's costs only if those costs relate to an issue directly involving that leaseholder rather than the Building or the leaseholders as a whole. We therefore consider that it was wrong in principle for the FTT to adopt an approach to the section 20C assessment which relieved leaseholders of any liability for expenditure on issues with which they were not directly concerned.

74. Furthermore the FTT's arithmetical method of calculating success produces anomalies. For instance in its section 20C order it appears to disallow over 40% of Primeview's total costs in respect of the jurisdiction issue when, by its own analysis, the FTT say that this issue accounted for only 33% of those costs.

75. The second aspect of the FTT's approach was to give credit to the two leaseholders who had made payment of the amounts demanded either in whole (Flat 1D) or in part (Flat 1C) and to make an allowance in their favour equal to 20% of Mrs Jumbo's liability and 100% of Mrs Kelly's liability. Making a payment is expressly said in section 24A(5) not to constitute an agreement or admission for the purposes of section 27A(4). It is a neutral act and allows leaseholders to comply with the terms of their leases by paying on demand and on-account without prejudicing their ability subsequently to challenge the reasonableness of the sum demanded. The FTT's approach of giving credit or an allowance to those leaseholders who chose to pay on demand but who subsequently exercised their right to dispute their liability therefore seems to us to be wrong in principle. The costs to which the section 20C order related were the costs of the dispute, which were not avoided by the payment. If the FTT had been consistent it should have penalised the leaseholders who did not pay on demand in respect of those issues where Primeview succeeded by awarding Primeview a higher percentage of its costs.

76. We are therefore satisfied that, in exercising its discretion under section 20C, the FTT adopted an approach which was wrong in principle. A just and equitable determination of the application should have more closely reflected Primeview's

degree of success, should not have treated some issues as of concern only to certain leaseholders, and should not have made an allowance for prior payment of sums which were subsequently disputed. We therefore allow the appeal on this issue and set aside the FTT's section 20C decision. In view of the fact that the costs of the FTT proceedings appear now to have been paid in full, by the first respondents rather than through the service charge, there is no reason to remit the issue to the FTT for further consideration. However, in view of Primeview's general approach to the recovery of costs we consider that it would not be safe to assume that no further charge will be added to the service charge account and we therefore make an order that 40% of Primeview's costs of the proceedings before the FTT shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the leaseholders.

Issue (iv): The section 20C and rule 10(3)(b) applications in the appeal

77. The respondents have applied for orders in respect of the costs of the appeal under both section 20C of the 1985 Act and rule 10(3)(b) of the Tribunal's 2010 Rules (as amended), the equivalent of the FTT's rule 13(1)(b).

78. The respondents submitted that the appeal was unnecessary once the first respondents had paid the sums demanded by the appellant's managing agents on 11 and 18 January 2016 respectively pursuant to clause 2(r) of their lease. By that provision each tenant covenanted with the landlord to pay on demand all proper costs, charges and expenses (including without limitation and on an indemnity basis, legal costs, and surveyors' and managing agent's fees) of and incidental to the recovery of the rents and other money payable under the lease.

79. The sums demanded by the appellant's agents were £23,739.50 and £1,800 including VAT. It appears that these amounts were paid in full by the first respondents at or around the time they assigned their lease to Mr Shibber Ahmed on 1 March 2016. On 27 May 2016 the agents wrote to Mrs Kelly informing her that there would be no charge to the service charge in respect of these sums.

80. In the light of that acknowledgement the respondents made an offer of settlement to Primeview on 6 June 2016 pointing out that as Primeview had recovered the costs of their section 27A application in full from the first respondents the only matter left in dispute between the parties was the sum of £1,569 payable by Primeview pursuant to the FTT's rule 13 order. The respondents made an open offer to waive their entitlement to that sum, to withdraw their cross-appeal, and to contribute the sum of £1,569 towards Primeview's costs of the appeal.

81. The respondents' offer of a settlement was not accepted. Primeview argued that by the time the offer was made they had already incurred substantial costs with regard to both the appeal and in responding to the respondents' cross-appeal.

82. Primeview submitted that the FTT's decision on the issue of jurisdiction was wrong but they had not appealed against it because "it made no financial difference". The rule 13 order on the other hand required the payment of money and was therefore appealed. Primeview suggested that if the FTT had not made the rule 13 order they would not have appealed against the section 20C order.

83. Primeview submitted that they had "stated from the outset" that the costs incurred with regard to pursuing the first respondents would be charged to them under the terms of their lease. They referred to an email to Mr Ahmed dated 10 June 2015 in which they had told him that "in the event the monies remain outstanding…. the landlord will seek to recover [them] from you under clause 2(r)(ii) of your Lease." Consequently, Primeview suggested, there had been no need for the respondents to make a section 20C application to the FTT.

84. Primeview challenged the respondents' argument that the only reason they had contested Primeview's appeal was the threat that it would charge them £25,539.50 through the service charge and described the argument as "merely a thinly veiled attempt to secure a section 20C and rule 13 order with regard to this appeal." The respondents concern arose from a paragraph in Primeview's submissions to the FTT on the respondents' application for a section 20C order:

> "9. With regard to the remaining leaseholders in the Building, the Second, Third and Fourth Respondents, they have all decided to join the First Respondents as Respondents to the Application thus could not be considered to be unfairly prejudiced by any costs not recovered directly from the First Respondent being added to the Service Charge for the Building."

The respondents submitted that this showed it was in the contemplation of Primeview to rely upon the service charge provisions of the leases to recover its costs and that therefore it was necessary for them to respond to Primeview's appeal.

85. Primeview also submitted that it had been open to the respondents to ask it what costs were intended to be charged to the service charge. Had they done so it would have confirmed that the costs would be recovered as administration charges from the defaulting leaseholders. Primeview suggested that as the respondents were in communication with each other they should have been aware that the costs had been demanded as an administration charge". When the appeal was made no service charge demand had been rendered for the costs of the section 27A application.

Issue (iv): Conclusion

86. Primeview's argument that it was unnecessary for the respondents to apply to the FTT for a section 20C order does not sit comfortably with its submissions to the FTT opposing the grant of such an order. The first paragraph of those submissions stated that they were made without prejudice to Primeview's entitlement to seek costs from the first respondents pursuant to clause 2(r)(ii) of their lease. That statement is no demonstration that "from the outset" Primeview intended to recover its costs only by way of an administration charge. Primeview's reliance on one line of a one and a

half page email in part of a protracted correspondence is also flimsy support for its contention that they had made clear that they would only charge the costs as an administration charge. The respondents were right to be wary of Primeview's intentions in view of its submissions to the FTT on the section 20C application. Additionally, if it was unnecessary for the respondents to make a section 20C application it must equally have been unnecessary for Primeview to appeal against the resulting order.

87. We note also that Primeview has already sought to recover its costs of this appeal through the service charge. On 10 August 2016 its agents demanded a payment on-account from Mrs Kelly described as being:

> "On account payment towards the landlords' costs of instructing a managing agent/solicitor regard to appealing the decision of the First Tier Tribunal dated 15/01/16 said costs being a cost of management of the Building for the period 1st April 2016 to 31st March 2017 payable on demand in accordance with clause 3(3)(a) and 3 (5)(a) of your Lease."

This demand suggests that the respondents were right to be sceptical of Primeview's assurances about how they intended to deal with the costs as an administration charge "from the outset".

88. As soon as the respondents became aware that the costs of the section 27A application had been settled by the first respondents, and following Primeview's confirmation that there would be no charge to the service charge regarding the same, the respondents offered to settle the appeal and to withdraw their cross-appeal. This was refused by Primeview in the light of the costs that it had incurred up until that point, despite the respondents offering a contribution of £1,569 towards those costs.

89. It is clear to us that the appeal against the section 20C order was academic once the first respondents had settled the demand for payment of Primeview's costs. Primeview cannot recoup the same costs twice; once as an administration charge and once as a service charge.

90. Even before the costs were paid in full, on Primeview's own argument the appeal against the section 20C order was always otiose if, as it says, it always intended to recover its costs as an administration charge. Primeview therefore had nothing to gain by making and continuing the appeal against the section 20C order. It is no answer for Primeview to say that as it was going to continue with the appeal against the rule 13 order in any event it might as well continue with the appeal against the section 20C order. That merely incurred unnecessary further expense for both parties.

91. In our judgment it is just and equitable that a section 20C order should be made in respect of a proportion of Primeview's costs of the appeal. It has succeeded in its appeal against the FTT's rule 13 order and has secured a token success in respect of the section 20C order but no meaningful benefit. The section 20C appeal should have

been discontinued, at the latest when the costs were recovered in March 2016. After that date the sole purpose of the appeal was to relieve the appellant from liability for the sum of £1,569 which it had been ordered to pay under rule 13(1)(b). They could have achieved that result by accepting the offer made by the respondents on 6 June 2016.

92. We take into account that the respondents have lost their cross-appeal, but any separate costs incurred by the appellant should have been avoided after March 2016. Doing our best we attribute 50% of Primeview's costs of the appeal and cross appeal to the rule 13 and cross-appeal issues and 50% to the section 20C issues. We order that no more than half of the costs incurred by Primeview in connection with the proceedings in this Tribunal (including the applications for permission to appeal and cross appeal) up to 6 June 2016 may be treated as relevant costs for the purpose of any service charge payable by the leaseholders. After that date we consider that it just and equitable that none of Primeview's costs of these proceedings should be treated as relevant costs, and we so order.

93. For the avoidance of doubt we make no determination as to whether the balance of Primeview's costs constitute relevant costs in connection with the matters for which the service charge is payable under clause 3 of the leases or whether those costs (and the other 50%) constitute a variable administration charge under Schedule 11 to the Commonhold and Leasehold Reform Act 2002. We have received no argument on those issues.

94. The respondents also apply for their costs under rule 10(3)(b) of the Tribunal's 2010 Rules. In our judgment, assuming Primeview's intentions were as it says they were, it was unreasonable of it to appeal against the FTT's section 20C order; whatever its intentions it was unreasonable not to withdraw that part of the appeal in March 2016 once it became academic. After 6 June 2016 it had ample opportunity to do so on the favourable terms offered by the respondents, including waiver of their rule 13 costs entitlement. We strongly suspect that Primeview pursued this appeal after 6 June 2016 to make a point and to deter the respondents from challenging future demands, but we do not base our decision on that suspicion but on the fact that, in any event, its continuation of the appeal after 6 June 2016 was unreasonable. The ostensible reason for refusing the respondents' offer of settlement (costs having already been incurred in the appeal) was unconvincing, as no costs have been awarded in the appeal in Primeview's favour, nor could they ever have been (absent unreasonable behaviour). We do not suggest that Primeview acted unreasonably in responding to the cross-appeal or in appealing against the FTT's rule 13 order but these issues could and should have been disposed of on the terms offered in June last year.

95. We are therefore satisfied that Primeview's conduct of this appeal has been unreasonable. We are satisfied that it is appropriate to make an order under rule 10(3)(b). Rather than apportioning costs by reference to specific dates (which would involve disproportionate detailed investigation into what is likely to be a small sum) we make a broad assessment in respect of the whole of the respondents' costs and

order that Primeview shall pay 50% of the respondents' costs of the appeal and cross appeal. The Tribunal will make a summary assessment of those costs on the standard basis and the respondents are directed to provide a statement of the amount of costs they have incurred within 28 days of the date of this decision; the appellant will then have 21 days to make any observations on the sum claimed.

Disposal

96. We therefore determine the issues in this appeal as follows:

(i) The appellant's appeal against the FTT's rule 13 order is allowed.

(ii) The appellant's appeal against the FTT's section 20C order is allowed and we substitute an order that 40% of the appellant's costs of the proceedings before the FTT shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the leaseholders.

(iii) The respondents' cross-appeal is dismissed.

(iv) The respondents' applications under section 20C is allowed and we order that (a) not more than half of the costs incurred by the appellant in connection with the proceedings in this Tribunal up to 6 June 2016 and (b) none of its costs after that date, may be treated as relevant costs for the purpose of any service charge payable by the leaseholders.

(v) The respondents' application under rule 10(3)(b) is allowed and the appellant shall pay 50% of the respondents' costs of the appeal and cross appeal, such costs to be the subject of summary assessment on the standard basis.

A J Trott FRICS
Member, Upper Tribunal (Lands Chamber)

Martin Rodger QC
Deputy Chamber President

7 March 2017