9942

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BB/LSC/2014/0008
Property	:	Flat 16, Field Point, Station Road, Forest Gate, London, E7 0AF
Applicant	:	London Borough of Newham
Representative	:	Prince Evans, solicitors
Appearances for Applicant:	:	(1) Mr J Browne, counsel (2) Ms Sultana Khan, senior leasehold officer, Swan Housing
Respondent	:	Mr Mohammed Salim Yasin
Representative	:	Lillywhites & Williams Solicitors
Appearances for Respondent	:	(1) Mr E Ross, counsel (2) Mr D Gowlett, solicitor (3) Mr Asif Yasin
Type of Application	:	Liability to pay service charges and an application for a determination that a breach of covenant of a lease has occurred

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Tribunal Members	:	(1) Judge A Vance (2) Mr K Cartwright, JP FRICS (3) Mrs L West
Date and venue of Hearings	:	19th May 2014 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	

DECISION

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Decision of the Tribunal

1. The tribunal makes the determinations as set out under the various headings in this Decision and determines that the following sums are payable by the Respondent to the Applicant by way of service charge:

Service Charge Year	Amount £
2007/8	929.48 (actual cost)
2008/9	861.09 (actual cost)
2009/10	906.69 (actual cost)
2010/11	666.53 (actual cost)
2011/12	1,364.34 (actual cost)
2012/13	941.93 (actual cost)
2013/14	1,447.58 (interim cost)

2. The tribunal determines that the Respondent breached clause 5(16) of his lease in failing to provide the Applicant with Notice of Assignment and/or Transfer of the lease to him within the time period specified in that clause.

3. The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

4. Since the tribunal has no jurisdiction over ground rent, county court costs and fees, this matter should now be referred back to the County Court.

Introduction

5. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge years ending 2007/8 to the year ending 2012/13 as well as the interim service charge for the 2013/14 service charge year.

6. Proceedings were issued in the Bow County Court under claim number 3BO03064 on 01.10.13. The claim was transferred to this tribunal, by order of Deputy District Judge Wilson on 27.11.13.

7. The relevant legal provisions are set out in the Appendix to this decision.

8. Numbers appearing in square brackets in this decision refer to pages in the hearing bundle.

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9. The Respondent is the lessee of Flat 16, Field Point, Station Road, Forest Gate, London, E7 0AF ("the Property") and sub-lets it to tenants. Mr Asif Yasin, the Respondent's son manages the Property for his father, the Respondent, and has done so since before the Respondent's acquisition of the leasehold interest in the Property in around July 2005. Mr Asif Yasin also managed the Property on behalf of the previous lessee of the Property, Mr Goldstein. This management is carried out through a firm of letting agents, Elliott Davis Properties, of which Mr Asif Yasin the senior partner.

10. The freehold interest in the Building is vested in the Applicant who, since around February 2009, has appointed Swan Housing Association as managing agents for the estate of which the Property forms part.

11. An oral case management hearing took place on 23.01.14, attended by counsel for the Applicant and Mr Gowlett for the Respondent. Directions were issued to the parties on the same day. Mr Asif Yasin also attended. A month's stay in the directions timetable was directed as both parties wished to attempt to settle the dispute. Attempts have been made but these were unsuccessful.

Inspection

12. Neither party requested that the tribunal inspect the Property and the tribunal did not consider this to be necessary or proportionate.

The Lease

13. The relevant lease is dated 12.12.88 and was entered into between the Applicant and Henry and Rosemary Fletcher for a term of 125 years. The Respondent has the benefit of the unexpired residue of that term.

14. The relevant provisions of the lease can be summarised as follows:

    (i) In clause 5(2) the lessee covenants to pay, by way of further or additional rent, and by way of service charge, a proportionate part of the expenses and outgoings incurred by the lessor in respect of the repair, maintenance, renewal and insurance of the wider estate and for the provision of services and other heads of expenditure are set out in the Third Schedule of the lease.

    (ii) Clause 5(2)(a) requires the amount of service charge to be ascertained and certified by a certificate signed by the lessor's Director of Finance, or other authorised person, as soon as practicable after the end of the lessor's financial year. The service charge year runs from 1 April to 31 March in the following year (or such other annual period as the lessor may, in its discretion, determine).

    (iii) A copy of the Certificate is to be supplied by the lessor to the lessee upon written request and should contain a summary of the lessor's expenses and outgoings incurred during the relevant financial year together with a summary of the relevant details and figures forming the basis of the service charge (clause 5(2)(c)).

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(iv) Clause 5(2)(h) reads as follows:

> "As soon as practicable after the signature of the Certificate the Corporation shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there should be paid by the Lessee to the Corporation the amount of the service charge as aforesaid or any balance found payable or there should be allowed by the Corporation to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may require".

(v)Clause 5(16) contains the lessee's covenant that the Applicant submits has been breached. The clause reads as follows:

> "Within one month after every Assignment Transfer Mortgage Assent or Underlease affecting the demised premises to give notice thereof in writing to the Corporation and produce to them such Assignment Transfer Mortgage Assent Underlease or in the case of a devolution of the interest of the Lessee not perfected by an Assent within Twelve months of the happening thereof to produce to the Corporation the Probate of the Will or the Letters of Administration under which such devolution arises and to pay a registration fee of such reasonable amount (being not less than TEN POUNDS) and is from time to time charged by the Corporation in respect of each Assignment Transfer Mortgage Assent or Underlease or devolution.

The Hearing, Decision and Reasons

15. At the commencement of the hearing Judge Vance informed the parties as to a matter that had the potential to amount to a circumstance that could give rise to a perception of bias. This was that he had, for a period of 10 years, practiced as a sole practitioner in the Forest Gate area of East London close to which the Property is located where he specialised in housing matters. He had ceased to practice as a sole practitioner approximately five and half years ago. He had a very vague recollection of encountering a person named Mr Mohammed Yasin during his time in practice but has no recollection as to the context and did not know whether this person was

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the Respondent in this matter. He had considered looking for records that may assist but most of his files had been destroyed and this was not possible.

16. The hearing was adjourned for a short period in order for the parties to consider whether or not they wished to make representations as to whether or not Judge Vance should recuse himself from dealing with this case. Neither party considered this to be necessary. Judge Vance concluded that in the circumstances a fair-minded and informed observer, having considered the facts, would not conclude that there was a real possibility that he was biased. Recusal was therefore unnecessary.

17. There are two matters that the tribunal is required to determine:

(i) Whether or not the Respondent breached clause 5(16) of the lease by failing to provide the Applicant with notice of assignment of the lease to him in 2005; and

(ii) Whether or not he is liable to pay service charges for the service years in dispute in light of the Respondent's assertion that these have not been properly demanded from him.

18. The Applicant decided not to pursue the assertion set out in the Particulars of Claim in the County Court proceedings and in its statement of case in these proceedings that the Respondent had breached the terms of his lease by not obtaining a covenant from sub-lessees prior to assigning or underletting the Property. This was abandoned in light of evidence provided at the hearing that the Property had been sub-let prior to the Respondent acquiring his leasehold interest.

19. The tribunal heard evidence from Ms Khan and Mr Asif Yasin. Ms Khan's witness statement was included in the hearing bundle **[170]**. The Respondent did not serve any witness statements in these proceedings but the Applicant, out of caution, included in the bundle the statement Mr Yasin had provided in the county court proceedings **[213]**.

The Alleged Breach of Covenant

20. The relevant parts of s.168 of the Commonhold and Leasehold Reform Act 2002 Act are annexed to this decision.

The Applicant's Case

21. The Applicant's case is that the Respondent was registered as the leasehold proprietor of the Property in or about July 2005, as confirmed by Land Registry Office Copy Entries **[55]**. However, he failed to provide notification of the assignment or transfer of the Property within the one month period specified in clause 5(16) of the lease. This failure was, it says, only remedied in April 2014 as shown by a memorandum from the Applicant's legal department to Swan Housing dated 28.04.14 **[226]**.

22. Ms Khan, who joined Swan Housing Association in January 2012 and who has been the leasehold officer for the Property since February 2012, gave evidence on this point. She had initially thought that the Applicant was unaware that the Respondent had acquired the leasehold interest until early 2012 but, on further investigation, had recognised that a letter from her predecessor, Pauline Munson to the Respondent dated 14.02.12 **[198]** indicated that the Applicant had received such

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notice on 19.05.10. This was the date that Mr Browne submitted was the earliest date on which the Applicant received 'informal notification' of the Respondent's interest in the Property although formal notification as per the lease requirements only occurred last month. Ms Khan confirmed, in cross examination, that she had spoken to officers of the Applicant council and had confirmed that the Applicant had no record of receipt of any earlier Notice of Assignment or Transfer from the Respondent.

The Respondent's Case

23. Mr Asif Yasin's evidence, as set out in his witness statement in the county court proceedings **[213]** was that he believed that the required Notice was given in time because he or his father had provided their solicitor, Mr Abdul Patel, with the funds to do so. He recalled having to pay his solicitor an additional sum of around £100-£150 which he thought was in respect of a 'Deed of Covenant'. He had made enquiries of Mr Patel but he had stated that the relevant file had been destroyed. Neither he, nor his father had retained a copy of the document in question.

Decision and Reasons

24. The tribunal is satisfied, on the evidence before it, that the Respondent breached clause 5(16) of his lease in failing to provide the Applicant with Notice of Assignment and/or Transfer of the lease within the time period specified in that clause.

25. It is clear that clause 5(16) is a covenant binding on the lessee and that the person who was required to provide such notice to the Applicant was the Respondent. It was tentatively suggested by Mr Ross that it was arguable that it was Mr Goldstein who should have provided the notice. The tribunal does not agree. The wording of the clause is unambiguous. As notice can only be given following an assignment or transfer the relevant lessee has to be the Respondent.

26. There is no documentary evidence whatsoever that this obligation was met. At its highest, Mr Asif Yasin's witness evidence really amounts to no more than a vague remembrance' of having to pay Mr Patel an additional fee. It is not at all clear what that fee was for or that a Notice was ever prepared or sent to the Applicant. No correspondence from Mr Patel relating to the need for this notice is before the tribunal. Nor is there a copy of the notice itself or any witness statement from Mr Patel or the Respondent. When asked by the tribunal, Mr Yasin stated that this fee would have probably have been paid by Elliott Davis Properties given the small amount of the fee but he had not searched his records or accounts to identify the sum paid to Mr Patel and if there was an indication as to what the sum may relate to. Any records may, he suggested, have been destroyed. The tribunal recognises that a statement from Mr Patel may be of limited use given the indication that his files have been destroyed but it may still have been of evidential weight in setting out his firm's practice regarding such lease obligations.

27. It is also surprising that no copy of the alleged notice has been retained by the Respondent or his son given the importance of such a document. That importance is

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one which the tribunal considers should have been appreciated by Mr Asif Yasin given his role as letting agent for the Property.

28. On balance, we are persuaded by the oral evidence of Ms Khan that her enquiries of the Applicant council had revealed that no such notice had been provided as required by clause 5(16) of the lease. There is no evidence to support the suggestion by Mr Ross that notice had been provided but not actioned by the Applicant.

Liability to pay service charges

29. Both parties agreed that the sum claimed within the county court particulars of claim comprise sums relating to the service charge years ending 2007/8 to 2012/13 inclusive together with the 2013/14 estimated sum demanded on account.

30. The tribunal's role is to determine whether or not the costs sought by the Applicant are payable by the Respondent. No argument is advanced by the Respondent as to those costs having been unreasonably incurred or that they are unreasonable in amount. The only issue concerns the Respondent's liability to pay these costs.

31. The amounts in dispute are as follows:

Service Charge Year	**Estimate £**	**Actual £**	**Total Sought £**
2007/8	712.77 **[146]**	216.71 **[143]**	929.48
2008/9	811.55 **[144]**	49.54 **[140]**	861.09
2009/10	962.49 **[141]**	-55.80 **[135]**	906.69
2010/11	867.63 **[138]**	-201.10 **[129]**	666.53
2011/12	955.19 **[132]**	409.15 **[123]**	1,364.34
2012/13	855.65 **[126]**	86.28 **[115]**	941.93
2013/14	1,447.58 **[119]**	-	1,447.58

The Applicant's Case

32. It was the Applicant's case that the first time it became aware that the Respondent had acquired the leasehold interest of the Property was on 19.05.10, the date specified in the letter of 14.02.12 **[198]**. As such, service charge demands issued prior to 19.05.10 continued to be sent to the previous lessee, Mr Goldstein at the correspondence address that the Applicant held for him at 247 Beehive Lane, Ilford, Essex, IG4 5ED. Ms Khan's oral evidence was that these demands were also sent to the address of the Property.

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33. The service charge statement of account for the Property **[113]** shows that the interim service charges demanded for the 2005/6; 2006/7 and 2008/9 service charge years were paid in full but that the only payment received after 26.06.08 was the sum of £450 paid on 17.01.12. Mr Asif Yasin's explanation as to how these sums came to be paid was that Mr Goldstein must have passed on the demands to his father and he or his father then paid the sums demanded to the Applicant.

34. Once the Applicant became aware of the Respondent's interest on 19.05.10 it started writing to him directly setting out the outstanding balance of service charges due. An example is the letter of 05.09.11 from Ms Munson **[208]**.

35. On 20.03.12 Ms Khan sent a letter to the Respondent in response to his enquiries for a breakdown of the outstanding service charges. In that letter she purports to enclose copies of the estimated and actual invoices for the period 2008 – 2013. She states that invoices prior to 2008 were not available as the Property was being managed by the Applicant council at that time.

36. In her oral evidence Ms Khan stated that the enclosures with that letter were not just the demands but also any additional documentation such as covering letters and a breakdown of the charges. For example, the actual service charge demand for 2012/13 **[115]** would have been accompanied by the document giving details of how to pay **[116]**; the covering letter dated 30.09.13 **[117]** and the breakdown of estimated and actual charges **[118]**.

37. Ms Khan stated that the Applicant stopped sending service charge demands to Mr Goldstein in about February 2013 and that since that date they have been sent to the Property address and to the Respondent at the address of Elliott Davis Properties. However, because the Respondent had not provided Notice of Assignment or Transfer of the lease London Borough of Newham were unwilling to amend their records to specify him as being the lessee. Service charge demands therefore continued to be addressed to Mr Goldstein but were actually sent to the Respondent and payment was demanded from him.

38. It was Mr Browne's submission that:

(i) The Applicant cannot be criticised for sending service charge demands to Mr Goldstein prior to 19.05.10 as throughout this period it was unaware that the lease had been assigned. Such demands were, he says, served in accordance with the provisions of the lease and the Respondent is liable to pay for the service charges demanded in this manner prior to 19.05.10. It would, he says, be inequitable for the Respondent to be able to escape such liability as a result of his failure to give notice of assignment/transfer to the Applicant

(ii) The Respondent received copies of all relevant service charge demands outstanding at that time under cover of the letter from Ms Khan dated 20.03.12. Those costs had therefore, in any event, been properly demanded from him by that date. Subsequent demands have been sent to him directly.

(iii) All the service charge demands served complied with the requirements of the lease which only requires that an 'account' of the service charge payable is provided to the lessee following certification by the Applicant (clause

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5(2)(h)). This, he says, is all that is required in order for the amount to be payable. That requirement has been met through the provision of accompanying documentation sent by the Applicant together with the invoice. There is no requirement for the Certificate itself to be sent to the lessee unless this was requested in writing.

The Respondent's Case

39. The Respondent's position was that the Applicant was provided with notice of the assignment/transfer of the lease in 2005 and that any demands sent to Mr Goldstein were insufficient to render him liable to pay the sums demanded.

40. As to the letter from Ms Khan dated 20.03.12, Mr Arif Yasin's oral evidence was that he was not sure what was enclosed with this letter but the indication from his letter in reply dated 29.03.12 **[194]** refers only to invoices and he could not recall receiving any breakdown of the costs.

41. It was the Respondent's case that he had only received two invoices from the Applicant. One dated 05.02.10 relating to the service charge year ending 31.03.09 and the other dated 30.09.10 for the period ending 31.03.11.

42. Mr Ross conceded, contrary to what was asserted in the Respondent's statement of case, that the lease did not require a copy of a Certificate to be sent to the Respondent, only an account as per clause 5(2)(h). However, in his submission the Respondent had no liability to pay the sums in question as:

(i) Any demands sent to Mr Goldstein were not demands properly demanded from the Respondent. To be properly demanded a demand had to be addressed to the Respondent. Nowhere in the hearing bundle was there an invoice directed to him.

(ii) There was no evidence that a summary of rights and obligations as required by Commonhold and Leasehold Reform Act 2002, Section 15 had been served in respect of any of the demands relied upon by the Applicant.

(iii) If the tribunal were to determine that the historic service charge demands were properly demanded from the Respondent by virtue of being enclosed with the letter from Ms Khan dated 20.03.12 then any costs incurred prior to 18 months from that date were not recoverable in any event because of the operation of S20B of the 1985 Act.

Decision and Reasons

43. The tribunal determines that all of the costs set out in the table above for the service charge years ending 2007/8 to 2012/13 inclusive together with the 2013/14 estimated sum are payable by the Respondent and that they have all been properly demanded from him.

44. It considers that the service charge demands sent to Mr Goldstein prior to 19.05.10 were properly demanded from the lessee of the Property even though at the time the

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Respondent was the registered proprietor of the leasehold interest. The tribunal has determined above that the Respondent did not provide notice of assignment/transfer in 2005. Formal notification was given last month. Therefore throughout the period up to 19.05.10 the Applicant was unaware that the lease had been assigned.

45. In the absence of any evidence of a contractual arrangement to the contrary between the former lessee and the incoming lessee, the tribunal's view is that a service charge demand sent to a former lessee after assignment or transfer of a lease but before notice of assignment/transfer is provided to the lessor (as required by the terms of the lease) is payable by the incoming lessee. The tribunal accepts Mr Browne's submission that it would be inequitable for the Respondent to escape such liability as a result of his own default in failing to give notice of assignment/transfer to the Applicant.

46. If that is incorrect as a matter of law then, in any event, the tribunal considers that the amounts in question were properly demanded from the Respondent when Ms Khan sent the Respondent her letter of 20.03.12 seeking payment of the outstanding balance. The tribunal accepts her evidence that when that letter was sent she enclosed not only the invoices but also a breakdown of the sum demanded. The tribunal found her to be a credible witness and there is no reason to suppose that this information was not included.

47. The Respondent had previously sent an email to the Applicant dated 09.09.11 **[204]** in which he requested a breakdown of service charges that the Applicant had asked him to pay. In his letter in response to Ms Khan's letter of 20.03.12 dated 29.03.12, Mr Asif Yasin does not seek a breakdown of the sums referred to in the invoices that accompanied her letter and it is noteworthy that nowhere in the bundle is there a letter or email from the Respondent or his son sent after 29.03.12 asking for such a breakdown. The tribunal considers that this is likely to be because such information had already been received under cover of the letter of 20.03.12.

48. The tribunal is also satisfied that all that was required under the terms of the lease to trigger liability to pay is the service of an account as referred to in clause 5(2)(h) of the lease. That requires the Applicant to specify the service charge payable by the lessee for the year in question taking into account any interim payments made by the lessee for that year.

49. The tribunal concludes that the requirements for service of an account were met in the information supplied by the Respondent both when service charge demands were sent to Mr Goldstein and as demanded in the documents accompanying Ms Khan's letter of 20.03.12 and in the demands sent to the Respondent after that date. Appropriate breakdowns sufficient to constitute an account are included in the bundle at the following pages:

2008/9 **[140]**

2009/10 **[137]**

2010/11 **[131]**

2011/12 **[125]**

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2012/13 **[118]**

50. As for the 2007/8 service charge year, the tribunal was informed that a detailed account was not available as the Applicant was managing the Property itself at this time. However, all clause 5(2)(h) requires is for the Applicant to provide an 'account' of the service charge payable by the lessee for the year in question. In the tribunal's view whilst it would be preferred practice for this account to set out details of each head of expenditure and the variance between the estimated and actual sums demanded this is not what the clause requires. In the tribunal's view it is sufficient to specify the actual sum due taking into account any interim payments made by the lessee. That requirement is met in this case. The invoice at **[146]** sets out details of the estimated charge for this year and the invoice at **[143]** provides details of the adjusted service charge. No payments are shown as having been made by the Respondent.

51. The breakdown for 2008/9 is in an old format but correctly shows the outstanding balance payable by the Respondent of £49.54 (the Respondent having paid the interim demand of £811.55 on 26.06.08).

52. The breakdown for 2009/10 is in a different format to subsequent years and rather than showing the final actual sums shows the variance between those sums and the estimated demand. However, the tribunal does not consider this renders it defective as an account. It is obvious that the figures stated are not the total sums expended during that year. It would make no sense for the costs of matters such as building insurance and repairs to have negative total costs. Ms Khan confirmed in evidence that these figures were variances from the estimated costs and the tribunal accepts her evidence.

53. The demand for 2013/14 is an interim demand and so the provisions of clause 5(2)(h) are not relevant. No point was taken as to the quantum of these or any of the costs.

54. As to the points raised by Mr Ross in respect of the asserted lack of service of a summary and rights of obligations and potential impact of s.20B of the 1985 Act neither of these points are pursued in the Respondent's statement of case and the Applicant therefore did not have notice that of the Respondent's case prior to the hearing. Mr Ross pointed out that the impact of s.20B was raised as an issue to be determined at the case management hearing **[167]**. However, it does not form part of the case advanced by the Respondent.

55. If Mr Ross had identified both of these points at the start of the hearing and sought permission to amend the Respondent's statement of case there may possibly have been sufficient time for him to set out his case and for Mr Browne to seek instructions and respond. However, the s.20B issue was mentioned for the first time after Ms Khan had given her evidence and the summary and rights of obligations point was raised in his closing submissions after all witness evidence had been heard. This meant that Mr Browne was unable to ask Ms Khan questions arising out of the s.20B issue. Nor was he able to ask her or Mr Yasin questions on the summary

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and rights of obligations point. In addition, as pointed out by the tribunal, for the Respondent to succeed on the s.20B point the Respondent would need to establish what costs were incurred more than 18 months from service of the letter of 20.03.12 and the Applicant had not had the opportunity to elicit evidence on that point as the issue was not advanced by the Respondent in its statement of case. Furthermore, the tribunal would need to address whether or not the escape route in s.20B(2) is available to the Applicant and clearly the Applicant had not had the opportunity to consider and respond to this point.

56. In the tribunal's view these issues should have been properly and fully advanced by the Respondent in its statement of case and if appropriate, in witness evidence. The tribunal has, in any event, determined that all the service charge demands have been properly demanded and so the s.20B point appears to be otiose. Regardless of that, it is the tribunal's view that it would be inequitable for the Respondent to be able to rely upon s.20B to assert that any costs incurred prior to 18 months from the date of the letter of 20.03.12 were not recoverable from him. This is because it would, again, unjustly allow him to benefit from his own breach of the covenant at clause 5(16) of the lease.

57. As to the summary and rights of obligations point the tribunal does not consider that on the evidence available at the hearing and given the very late stage in the proceedings that this was raised that it can be satisfied that this requirement was not met. If the Applicant had been put on notice that this was to be raised as an issue it would, no doubt, have addressed it in evidence. It had not had the opportunity to do so and the tribunal cannot determine this point in the Respondent's favour based on the evidence available and the prejudice caused to the Applicant by the late raising of this issue. Nor did it consider it proportionate to the issues in dispute to invite the parties to make written representations on this point after the hearing but before making its decision. Nor did Mr Ross invite it to do so.

Application under Section 20C

58. The Respondent sought an order that the costs incurred by the Applicant in connection with these proceedings should not be regarded as relevant costs when determining the amount of service charge payable by him. Mr Ross argued that there had been no proper attempt by the Applicant to engage in the Respondent's correspondence prior to issue of the county court claim.

59. When exercising its discretion as to whether or not to make a s.20C order the tribunal has 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 degree to which the Respondent has succeeded in this application.

60. The Applicant has been wholly successful in this application and weighing up all the above factors the tribunal does not consider that it is just and equitable for it to make an order under section 20C of the 1985 Act. Nor is it satisfied that the Applicant had failed to engage substantively with the Respondent's correspondence.

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Letters from Ms Khan and her predecessor, Ms Munson, included in the bundle indicate otherwise.

The next steps

61. The tribunal has no jurisdiction over ground rent or county court costs and this matter should now be returned to the County Court. The parties should ensure that an explanation is provided to the court as to the amount payable by the Respondent to the Applicant for the service charge years in question in light of conclusions reached in this determination.

Name: Amran Vance **Date:**

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Annex

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 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.

Section 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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

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Section 20B

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

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

Section 20C

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

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

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

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Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

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

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

[......]

<u>Commonhold and Leasehold Reform Act 2002</u>

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The relevant parts of s.168 Commonhold and Leasehold Reform Act 2002 ("the Act" provide as follows:-

> (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
>
> (2) This subsection is satisfied if—
>
> (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
>
> (b) the tenant has admitted the breach, or
>
> (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
>
> (3) ....
>
> (4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

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