10730

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2014/0307**
Property	:	**Flat 5, 19 Netherhall Gardens, London NW3 5RL**
Applicant	:	**Mr John Christopher Michael Peschmann**
Representative	:	**In person**
Respondent	:	**19 Netherhall Gardens Limited**
Representative	:	**Mr C Green (Agent for Brady Solicitors)**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mr E Flint DMS, FRICS** **Mrs L Hart**
Date and venue of Hearing	:	**23-24 March at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**9 April 2015**

DECISION

Decisions of the Tribunal

(1) Save that the Applicant is entitled to a credit in the sum of £85.33, the Tribunal determines that the service charge for 2006 is payable in full as demanded.

(2) Save that the Applicant is entitled to credits in the sums of £57.70 and £103.43, the Tribunal determines that the service charge for 2007 is payable in full as demanded.

(3) The administration charge of £58.75 levied on 6 June 2007 is payable.

(4) Save that the Applicant is entitled to credits in the sums of £6.00 and £85.86, the Tribunal determines that the service charge for 2008 is payable in full as demanded.

(5) Save that the Applicant is entitled to credits in the sums of £78.00, £95.24 and £1,150, the Tribunal determines that the service charge for 2009 is payable in full as demanded.

(6) The administration charge of £64.40 levied on 24 September 2009 is not payable.

(7) The Tribunal determines that the service charges for 2010, 2011 and 2012 are payable in full as demanded.

(8) Save that the Applicant is entitled to credits in the sums of £32.60 and £247.01, the Tribunal determines that the service charge for 2013 is payable in full as demanded.

(9) Save that the Applicant is entitled to credits in the sums of £28.80 and £32.60, the Tribunal determines that the service charge for 2014 is payable in full as demanded.

(10) The administration charge of £199.00 levied on 6 January 2014 is payable.

(11) The question of whether or not to make an order under Section 20C of the Landlord and Tenant Act 1985 does not arise because the lease does not permit the recovery of legal costs through the service charge. Whether the Respondent can recover such costs directly from the Applicant pursuant to the lease is to be determined by the Court or another Tribunal.

(12) The Tribunal declines to make an Order under paragraph 13(2) of the 2013 Tribunal Procedure Rules.

(13) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or costs.

The Application

1. The Applicant is the lessee of Flat 5 ("the Flat"), 19 Netherhall Gardens London NW3 ("the Building"). The Building comprises 5 flats. On or about 20 May 2014 the Respondent commenced proceedings against the Applicant for arrears of service charge "*for the period 1 October 2008 to 31 March 2014*". The Applicant served a Defence to the claim on 22 June 2014 and on 16 September 2014 District Judge Price transferred the claim to this Tribunal for the following issues to be determined: "*(a) The level of arrears said to be due and the method of accounting; (b) The reasonableness of service charges claimed and how they are claimed pursuant to the terms of the lease between the Claimant and the Defendant; (c) The level of administration charges claimed by the Claimant and their reasonableness*". Paragraph 3 of the District Judge's order provided that: "*This matter is to be considered by FTT in conjunction with other applications by the Defendant to FTT in respect of Flat 5, 19 Netherhall Gardens, London NW3*". This was a reference to the fact that on 30 May 2014 the Applicant made two applications of his own to this Tribunal, the first seeking a determination of his liability to pay and the reasonableness of service charges for the years 2006-2015, and the second seeking a determination of his liability to pay administration charges as specified in that application. By virtue of the order of the County Court transferring the Respondent's claim for service charges to this Tribunal and by virtue of the Applicant's applications dated 30 May 2014 the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

("the 2002 Act") as to the reasonableness and payability of certain service charges and administration charges charged to the Applicant. The relevant legal provisions of the 1985 Act and the 2002 Act are set out in the Appendix to this decision.

The Lease

2. The Applicant's lease ("the Lease") is dated 27 June 2003 and was originally between John Christopher Michael Peschmann as Lessor and John Christopher Michael Peschmann and Jennifer Israel as Lessee. The term of years is now vested in the Applicant and the Respondent is the current owner of the freehold interest in the Building. The Flat is on the third floor of the Building. The Lease was for a term of 999 years from 27 June 2003 at an annual rent of one peppercorn together with annual service charge, reserved as rent, calculated to the 25 December in each year "*on the basis set out in the Fourth Schedule hereto such payments to consist of interim payments to the Lessor in relation to the costs set out in the Fifth Schedule hereto as follows:*

(i) Interim payments quarterly on account of normally recurring expenditure in each accounting period such interim payments to be as the Lessor or its managing agents shall specify at their reasonable discretion to be fair and reasonable. Normally recurring expenditure shall include insurance cleaning and lighting of common parts entry phone rental managing agents fees and auditors fees. The Lessor shall request interim payments on the 1st January 1st April 1st July and 1st October in each year or as soon as practicable thereafter

(ii) Interim payments on account from time to time as the situation arises for irregular or extraordinary

expenditure a reasonable time prior to the work or services being commenced being items of an unforeseen nature or recurring less frequently than annually and to include the fees referred to in the Fourth Schedule".

3. The Fourth Schedule provides that the Applicant's share of the service charge is 20%. The Fifth Schedule identifies the costs to be included in the service charge. As is typical of modern service charge provisions, the Lease then provides for there to be an annual service charge account prepared by the Lessor's accountant or managing agents after the end of the relevant accounting period (in this case after 25 December in each year) which will show the actual annual service charge, all interim payments made in the relevant accounting period and any balancing payment due from the lessees in the event that the actual service charge exceeds the total of the interim payments. If, on the other hand, there is a surplus, that surplus is to be carried forward and credited to the account of the lessees in computing the interim charges in the succeeding period.

Preliminary Matters

4. The first matter which the Tribunal must mention is the state of the hearing bundles. The bundles for the hearing provided to us by the parties were in a totally unsatisfactory state. There were 4 large lever arch files, two from each side, in each case in no particular order, with a significant degree of duplication between the rival bundles. This made effective pre-reading virtually impossible. It also meant that half a day of hearing time was wasted whilst, at the Tribunal's insistence, the parties did what they should have done in the first place which was co-operate in producing an agreed bundle in a logical order. Whilst it is correct that the Directions dated 21 October 2014 gave the parties the option of each preparing their own bundle in the event that they were unable to agree a single bundle, it was not acceptable for the parties to

ignore the overriding objective and fail to agree a single bundle in circumstances where, as the Tribunal concluded, there was no good reason for their failing to agree a single bundle. The Tribunal wishes to emphasise Rule 3(4) in the 2013 Tribunal Procedure Rules (2013 No. 1169), too often ignored, which provides that:

> *(4) Parties must-*
>
> *(a) help the Tribunal to further overriding objective; and*
>
> *(b) co-operate with the Tribunal generally.*

5. The effect of the parties' failure to cooperate was that valuable time was lost but the Tribunal took the view that it would be disproportionate to reconvene and we therefore concluded the hearing within the time estimate of 2 days. However, as the Tribunal made clear to the parties, it made it that much more important that the parties directed the Tribunal to any document that they wished to rely on and assisted the Tribunal with focused submissions, particularly having regard to the fact that the Applicant's statement of case was 119 pages. The parties endeavoured to do this and in determining the issues in dispute the Tribunal took account of all relevant evidence and submissions presented by the parties.

6. The second preliminary matter to mention arises as follows. The above-mentioned Order of the District Judge transferring the Respondent's claim to this Tribunal suggested that this Tribunal might wish to determine "*the method of accounting*" used in calculating the service charge. However, as Judge Donegan pointed out in his case management directions made on 21 October 2014, "*it is not for the tribunal to undertake a forensic accounting exercise*". The Tribunal's function is to make a determination of the matters referred to in section 27A(1) of the 1985 Act. A large number of the Applicant's comments in the Scott Schedule in this case relate not to the substance of the dispute,

i.e. whether a service charge is payable and if so, the amount which is payable, but rather to his preferred method of accounting. Thus, for example, on page 2 of the Scott Schedule (Year 2007), under the heading "Applicant's Comments", the second entry, relating to surveyors' fees of £452.38, says: "*Wrongly charges to Normal account. Reduce to £0.00 and charge to Major Works account...*" The fourth entry in the same column then says: "*Credit adjustment £-458.32 needs to be added to TTL to cancel charge to Normal Account*". The Tribunal took the view that adjustments of this kind were unnecessary and unwarranted and that the Applicant's approach was unwieldy and unnecessarily complicated. Whilst it is the case that the Lease distinguishes between normally recurring expenditure on the one hand and irregular or extraordinary expenditure on the other, what matters is what is payable by way of service charge in any particular period and what is actually paid. Provided that there is no element of double-charging, and the Tribunal is satisfied that there was not, and provided that appropriate credit is given for all payments received from the Applicant, and the Tribunal is satisfied that this was the case, the Tribunal sees no need for any of the accounting adjustments of the type commended to us by the Applicant. The Tribunal repeatedly invited the Applicant to show how he had been over-charged or double-charged or otherwise suffered a loss by reason of the method of accounting for service charge used by the Respondent, but he was unable to show that he had. The Applicant also made repeated reference to the TTL (Tenancy Transaction Listing) at page 424 of Bundle 2, as somehow being fundamental to his complaint about the accounting methods used by the Respondent. However, the TTL is simply a snapshot of the state of the account between the Applicant and the Respondent on the date that it is printed out. The Tribunal is satisfied that the TTL in the bundle, dated 27 January 2014, is and was accurate as at that date, subject of course to the Tribunal's findings in this case. Accordingly, the Tribunal has focused on the challenges raised to particular service charge items in the Scott Schedule and has not undertaken any type of

forensic accounting exercise of the type that the Applicant appeared to have in mind.

7. Finally, the Tribunal proposes to address the issue of limitation raised by the Applicant at this stage because it appears to the Tribunal to be obviously without merit and not dependent on our detailed findings as to the service charges payable. The Applicant relied on section 19 of the Limitation Act 1980, not section 20B of the 1985 Act. As is apparent from the terms of the Lease set out above, service charge is reserved as rent in the Lease. The Respondent's claim for arrears of service charge is therefore to be treated as a claim for arrears of rent and so is subject to a limitation period of 6 years: s.19 Limitation Act 1980. So far as the claim transferred from the County Court is concerned, it was commenced on 20 May 2014 and relates only to arrears "*for the period 1 October 2008 to 31 March 2014*" so there is no limitation issue. So far as the Applicant's claim in this Tribunal is concerned, the Applicant has made a number of part payments of the service charge demanded, initially on various dates between 17 July 2007 and 4 July 2007, and more recently on 7 February 2014, 2 June 2014 and 11 March 2015. It is clear from the TTL that the earlier payments were appropriated to the then outstanding arrears with the result that the account did not again fall into arrears until October 2008 which explains the basis of the county court claim. Accordingly there were no statute barred arrears when the Applicant brought his claim in the Tribunal.

The Issues

8. Following concessions made by the Respondent during the completion of the Scott Schedule, to which reference will be made, and ignoring accounting issues of the type referred to above, the following matters remained in dispute between the parties:

Surveyors' Fees/Insurance/Management Fees/Accountancy Fees/ Administration Charge (2007)

Surveyors' Fees (2008)

Surveyors' Fees/Scaffolding costs/ Administration Charge (2009)

Surveyors' Fees/Management Fees (2010)

Management Fees (2011)

Gardening Costs/Pest Control/Management Fees (2013)

Administration Charge (2014)

2006

9. According to the accounts for the period ended 25 December 2006, the service charge expenditure on normally recurring items was £4,163. The Applicant's share was therefore £832.60. However, the Respondent agreed a credit of £85.33 in the Scott Schedule. Accordingly, the service charge payable by the Applicant in respect of normally recurring expenditure in the year ended 25 December 2006 was £747.27.

2007

10. According to the accounts for the period ended 25 December 2007, the service charge expenditure on normally recurring items was £5,765.52. The Applicant's share was therefore £1,153.10. There were a number of challenges to items in this year, some of which were conceded by the Respondent. There were challenges to items amounting to £6.00 and £51.70 in respect of what were described as "internal costs of freehold company" and the Respondent agreed a credit of £57.70 in respect of these costs. There was a challenge to the professional fees claimed of £2,585.63 based on a "special arrangement" that the Applicant said he had negotiated with the Respondent. The fees of £2,585.63 were based on a percentage charge of 12.5%. The Applicant's complaint was that

the fee should have been based on a percentage of 7.5% because he claimed that the fees had been capped at this level as a result of an agreement said to be contained in correspondence: see Applicant's letter dated 2 February 2008 and Respondent's agents' letter dated 13 February 2008. The Respondent had previously agreed to cap the charge at 10% of the contract value plus VAT (see letter dated 21 December 2007) but the Applicant contended that the Respondent had gone further by accepting the solicitor's undertaking offered in the Applicant's letter dated 2 February 2008. However, by accepting the offer of an undertaking, essentially an offer of security, the Respondent did not thereby waive any claim to the balance of the fees above 7.5%. There was no "cap" at 7.5% as contended for by the Applicant. The Tribunal therefore finds that the Applicant is entitled to a credit of £103.43 which was accepted by the Respondent (based on 10%) but not a further credit to reduce this item to 7.5%.

11. The next item challenged for this year was insurance. This was not included in the accounts but had been included in a demand dated 22 January 2007 for interim service charge. The Respondent had not produced a certificate of insurance and the Applicant contended that there was no evidence that the premium had in fact been paid. The Respondent produced an insurance schedule from Norwich Union showing a premium due of £2,525.10. The Respondent also produced a copy cheque (No. 107113) and the corresponding bank statement showing this sum as having been paid by cheque (107113). Accordingly, the Tribunal was satisfied that the premium had belatedly been paid, albeit later than it should have been.

12. The Applicant also challenged the management charge for this year of £411.24 (£2,056.18). He did so on the basis of what he said was "maladministration" and relied on the facts and matters set out in his chronology marked JCP04. The Applicant complained of management errors and billing errors and what he described as a number of careless mistakes resulting in inconvenience to him. He produced no alternative

costings and claimed that no sum was payable. The Tribunal have considered what the Applicant has said but have concluded that the fees, albeit at the high end, were reasonable in amount and reasonably incurred. In a building comprising only 5 flats, it is inevitably the case that fixed management costs have to be spread between fewer flats. The Tribunal considered that ultimately the management function had been performed to a reasonable standard and the requisite services had been provided to a satisfactory standard, if not always to the Applicant's satisfaction.

13. The next item challenged for this year was accountancy fees (£728.50), the Applicant's share being £145.70. The Respondent had conceded a reduction of £51.70 (see paragraph 10 above) but did not accept any further reduction. The Applicant contended that the whole fee should be extinguished because the accounts prepared were professionally negligent for the reasons identified in his statement of case (see internal page 24). The Applicant did not call any expert accountancy evidence and, in the absence of such evidence, the Tribunal were not prepared to find that the accountants had acted negligently.

14. The final challenge for this year related to an arrears administration charge of £58.75 levied on 6 June 2007. The Applicant accepted that he would have been in arrears at this date such as to warrant incurring an administration charge but claimed that he was entitled to set off against his liability for service charge sums due to him from other tenants in the Building in his previous capacity as lessor. On this basis he denied any arrears. The Tribunal were not shown the contract whereby the Applicant disposed of his freehold interest and there was nothing to indicate that he was entitled to set off sums due to him from other tenants in respect of the period when he was the lessor against his liability to the new freeholder for service charges accrued due. On the available evidence, the Tribunal is not satisfied that the liability of these tenants became a liability of the new freeholder and entitled the

Applicant to a set-off. Accordingly, he was in arrears and the administration charge was reasonable.

15. The Tribunal was not persuaded of any of the alleged arithmetical errors relied on by the Applicant or of the need for any adjustments to the service charge for this year.

2008

16. The Respondent agreed a credit of £6.00 on the same basis as previously.

17. The Respondent also agreed a credit of £85.86 on the same basis as previously (i.e. 10%) in respect of surveyor's fees of £1,826.95 + VAT = £2,146.67 but for the same reasons the Tribunal rejects the Applicant's case based on 7.5%.

18. The Tribunal was not persuaded of any of the alleged arithmetical errors relied on by the Applicant or of the need for any adjustments to the service charge for this year.

2009

19. There were challenges to items amounting to £3.00 and £75.00 in respect of what were again described as "*internal costs of freehold company*" and the Respondent agreed a credit of £78.00 in respect of these costs.

20. The Respondent also agreed a credit of £95.24 on the same basis as previously (i.e. 10%) in respect of surveyor's fees of £2,070.55 + VAT = £2,381.13 but for the same reasons the Tribunal rejects the Applicant's case based on 7.5%.

21. The Applicant also challenged "*the charge made for extended scaffolding hire at £680.00 per week*": see Note 1, internal page 37 of

Applicant's statement of case. This amounted to £5,750 inclusive of VAT. He drew our attention to the contract documentation and made the points that there was no provision for such a charge in the contract and that the successful tenderer had obtained the job on the basis of the contract documentation. Mr Green on behalf of the Respondent contended that there was no evidence as to what caused the delay or who was to blame and that it was reasonable for the contractor to charge for the over-run and it was reasonable for the employer to pay and pass the charge on through the service charge. He also made the point that the final cost of the project had been lower than the successful tender. The Tribunal were entirely unpersuaded by Mr Green's arguments and take the view that in circumstances such as these, and having regard to the contract terms, the builders must bear the costs (if any) of the over-run in terms of scaffolding costs. Accordingly, the Applicant is entitled to a credit of £5,750/5 = £1,150.

22. The final item under challenge for this year was a further arrears administration charge of £64.40 levied on 24 September 2009. As at this date, there were, according to the TTL, arrears of £348.90. However, the Tribunal is satisfied for the reasons set out above that there were credits due to the Applicant which exceeded this amount. Therefore we conclude that this administration charge is not payable.

2010

23. The Applicant sought a reduction of two-thirds in the management charge for this year of £476.00. He sought this "*due mainly to the lack of any corrective action*" by the agents following his meeting with them on 13 October 2009 and his letter to them of 21 September 2010 (see internal page 73 of his statement of case). However, the Respondent's agents did, albeit somewhat belatedly, send a detailed reply dated 26 January 2011 to the Applicant's letter and offered certain concessions which have been reflected in certain of the credits which have been referred to above. The Respondent did therefore reply and did take

some corrective action, if not necessarily to the Applicant's satisfaction, and ultimately the Tribunal is satisfied that the management function was performed to a reasonable standard and the requisite services were provided to a satisfactory standard. The Tribunal therefore makes no reduction in the management charge.

24. The Applicant again sought a reduction in the surveyors' fees to reflect the cap of 7.5% but for the reasons previously given the Tribunal is satisfied that there was no cap. The claim for fees was based on 10% in this year so there is no need for any further reduction.

2011

25. The Applicant sought a reduction of 50% in the management charge for this year of £476.00 on the basis that the Respondent had not engaged properly with his ongoing complaints (see internal page 88 of his statement of case). However, the Tribunal is satisfied by the evidence contained in the statement of Beth Lomax dated 27 February 2015 and the documentary evidence in the bundle (see e.g. Benjamin Mire's email dated 18 January 2011 that the Respondent and/or its agents did engage properly with the Applicant on his complaints and we see justification for reducing the management charge on this account or any other basis for doing so.

2012

26. The Tribunal were not persuaded that there was any justification for the adjustments contended for by the Applicant in the Scott Schedule.

2013

27. The Applicant sought a reduction in respect of what he said was unreasonable garden expenditure. The figure in the accounts was £1855.07 = £371.01 per flat. The Applicant sought a reduction of £247.01 per flat to reduce the costs to £124.00. The Tribunal noted that

the gardening costs had historically been quite low (£300 in 2010 and £342 in 2011) before rising to £1080 in 2012 and then £1855.07 in 2013. The Tribunal noted that a large proportion of this cost related to what was essentially a make-over of the garden enjoyed by the lessee of the garden flat. According to an invoice dated 31 May 2013 from Communal Grounds Maintenance (UK) Limited, almost £1,000 (£979.07) was spent on 12 bamboo plants, a large plant pot and associated labour in effecting this make-over and the Tribunal consider this unreasonable. Accordingly, the Tribunal reduces the gardening costs to £124.00 per flat.

28. There was an agreed reduction of £32.60 in respect of internal costs of the freehold company.

29. There was then a challenge to the cost of anti-moth treatment in the sum of £518.40 (£103.60 per flat), the Applicant contending that it was of little or no lasting effect and was therefore a waste of money. However the Tribunal was satisfied that the Respondent acted on professional advice from a reputable pest control company (see Report from DPC Discreet Pest Control at JPC 13) and that the costs were reasonably incurred and reasonable in amount.

30. The Applicant again challenged the management fee for this year, this time seeking a reduction of £120.00 to reduce the charge from £510 to £390 for the reasons set out in his statement of case (see internal page 109). These related to a 6 week delay in sending out the certificated accounts for 2013 and the absence of a service charge certificate for Flat 5 when the 2013 accounts were sent out. The Tribunal were not satisfied that either of these reasons justified the claimed or any reduction. The Applicant had the accounts and could have divided the relevant figures by 5.

2014

31. The accounts for 2014 were obviously not available until after the year end of 25 December. They have however now been prepared and are dated 6 March 2015. The Applicant intimated a possible challenge to certain items in those accounts in an addendum to the Scott schedule (see pages 28-29 of Applicant's Scott Schedule) but ultimately did not pursue his challenge on the Respondent confirming by Mr Green that the sums of £163.00 (company secretarial service) and £144.00 (Professional fees) would not be pursued from the Applicant through the service charge. For the avoidance of doubt, the Applicant is entitled to credits in respect of these items in the sums of £28.80 and £32.60.

32. The final item challenged was an administration charge of £199.00 levied on 6 January 2014. The Applicant accepted that he had been warned that an administration charge would be levied in a letter dated 1 November 2013 unless he settled the arrears but complained that he was not told in advance what the amount of the charge would be. The Tribunal is satisfied that the Applicant owed very substantial arrears as at this date. We note that as at 6 January 2014, the Applicant had last paid any service charge on 4 July 2008. Against this background, the Tribunal is satisfied that it was reasonable at this stage to refer the matter to solicitors to take action and the charge levied was reasonable in amount.

Cost Applications

33. The Tribunal's directions dated 21 October 2014 notified the parties that any costs applications, whether under section 20C of the 1985 Act or for reimbursement of fees, would be dealt with at the conclusion of the hearing, At the conclusion of the hearing the Applicant applied for an order under section 20C of the 1985 Act that the Respondent should not be entitled to add the costs incurred in connection with these proceedings to the service charge. He clarified that he was making such

application only on his own behalf, not on behalf of the other tenants. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). The Tribunal must also consider the overall financial consequences of any order it may make: *Conway v. Jam Factory Freehold Ltd* [2013] UKUT 0592.

34. We start by considering the terms of the Lease because the question of discretion only arises if the Respondent is, in principle, entitled to recover legal costs via the service charge. Having regard to the terms of the Lease set out above, as well as the provisions in Fifth Schedule, in particular paragraph 8 thereof, the Tribunal is satisfied that the Respondent is not so entitled. There is nowhere any specific reference to legal costs as such, and we are satisfied that the language of paragraph 8 is not sufficiently "*clear and unambiguous*" as to confer such an entitlement, referring as it does only to "*the costs of management of the building*" and "*all proper professional charges and other charges reasonably incurred in connection with the employment of managing agents and the costs of carrying out such management*": see e.g. *Sella House Ltd v. Mears* (1989) 21 HLR 147; *St Mary's Mansions Ltd v. Limegate Investments Co Ltd* (2003) HLR 24. The Tribunal has had regard to other cases (e.g. *Iperion Investments Corporation v Broadwalk House Residents Ltd* [1995] 2 EGLR 47 and *Plantation Wharf Management Ltd v. Jackson* [2011] UKUT 488 (LC) but no two cases are the same and ultimately we must be guided by the language used in *this* Lease. On that basis the Tribunal considers that the Lease does not permit recovery of legal costs through the service charge.

35. Section 20C does not therefore arise but if we are wrong as to the construction of the Lease, we indicate that we would not have made a section 20C order. The Applicant has succeeded but only to a limited extent having regard to the level of arrears when the proceedings were commenced as compared with the deductions secured as a result of this determination. Furthermore, as noted above, until the Applicant made

a payment of £2,000 on 7 February 2014, he had not paid any service charge since July 2008. He has since made further payments of £3,000 on 2 June 2014, i.e. after the court proceedings were commenced, and £3,500 on 11 March 2015. The Respondent's position has been substantially vindicated by these payments and the findings that we have made. An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances: *Re Cleveland Mansions and Southwold Mansions* [2014] UKUT 0058. Having considered all the relevant circumstances, the Tribunal considers that it would not have been just and equitable to make a section 20C order. However, for the reasons set out above, the issue does not arise. The Applicant also made an application for reimbursement by the Respondent of the application and hearing fees under paragraph 13(2) of the 2013 Tribunal Procedure Rules. For substantially the same reasons as are set out above, the tribunal declines to make any order. No other applications or issues relating to costs were raised by either party at the hearing and no updated or other details were provided of any other claims for costs. We therefore proceed on the basis that the claim made by the Respondent in its Particulars of Claim for costs under Clause 2(9) of the Lease is a matter for the County Court or another Tribunal in due course, in the event that that claim is quantified and pursued and then challenged by the Applicant: see e.g. *Barrett v. Robinson* [2014] UKUT 0322.

36. We would hope that the parties should now be in a position to resolve this long running dispute about service charges based on the Tribunal's findings as to what is and is not payable, credit of course being given for the sums already paid by the Applicant.

Name: Judge W Hansen **Date:** 9 April 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

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

Section 27A

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

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11

5(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to:

(a) The person by whom it is payable
(b) The person to whom it is payable
(c) The amount which is payable
(d) The date at or by which it is payable and
(e) The manner in which it is payable.