

10545



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00AN/LSC/2014/0438**

**Property** : **2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats, 32  
Charville Road, London W14 9JH**

**Applicant** : **Ian James Ferns**

**Representatives** : **Hubbard Pegman and Whitney LLP**

**Respondent** : **Britstop Limited**

**Representative** : **Mr M J Bartlett MRICS, director**

**Type of Application** : **Determination of the liability to pay  
and reasonableness of service  
charges under section 27A of the  
Landlord and Tenant Act 1985**

**Tribunal Members** : **Miss A Seifert FCI Arb  
Mr M Mathews FRICS  
Mr O N Miller BSc**

**Date and venue** : **Hearing on 11<sup>th</sup> December 2014 at  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **22<sup>nd</sup> January 2015**

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**DECISION**

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## **The application and the hearing**

1. The properties, which are the subject of this application, are the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats, 32 Charleville Road, London W14 9JH (“the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats”).
2. An application dated 12<sup>th</sup> August 2014, was made by the tenant of the 2<sup>nd</sup> and 3<sup>rd</sup> Floors Flats, Mr Ferns, to determine the liability to pay and reasonableness of service charges payable under the leases of those flats, pursuant to section 27A of the Landlord and Tenant Act 1985. Mr Ferns also applied for an order under section 20C of the same Act restricting the costs of or in connection with these proceedings being added to the service charge.
3. A case management hearing was held on 9<sup>th</sup> September 2014. This was attended by Ms Bik Wong of Hubbard Pegman and Whitney LLP Solicitors on behalf of Mr Ferns. The respondent was represented by Mr James Ryan. Directions were issued by the Tribunal on the same date.
4. At the substantive hearing was held on 11<sup>th</sup> December 2014. Mr Ferns was represented by Ms Bik Wong of Hubbard Pegman and Whitney LLP. Mr Ferns confirmed the contents of his witness statement dated 26<sup>th</sup> November 2014 and gave additional oral evidence. Mr M J Bartlett MRICS, a director of Britstop Limited, represented the respondent. Mr Bartlett gave oral evidence and made submissions. Ms Joanna Falatycka, housekeeper, also attended the hearing and gave oral evidence.
5. At the hearing a copy of the registered title of the freehold interest in 32 Charleville Road (“the building”) was produced. This showed in the proprietorship register that the registered proprietor of the freehold interest is Britstop Limited, that company’s title having been registered on 15<sup>th</sup> December 1994. In the circumstances the tribunal directed that Britstop Limited be substituted as the respondent to the application in place of Mr Michael Bartlett, trading as Britstop Limited (rule 10 The Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013.
6. A further copy of the above registered title was provided under cover of a letter from Bartletts Solicitors Limited dated 20<sup>th</sup> January 2015 showing the freehold owner of the building as Britstop Limited. This was consistent with the position that Britstop Limited is the appropriate respondent to the application as referred to in paragraph 5 above.

7. In respect to the leasehold interest in the 2<sup>nd</sup> Floor Flat, a copy of the registered title of the 2<sup>nd</sup> Floor Flat showed the registered proprietor of as Ian James Ferns. His title was registered on 17<sup>th</sup> December 2007. The lease was for the term of 99 years from 8<sup>th</sup> April 1980 and was made between Michael Jacques Bartlett and Carolyn Elizabeth Bartlett as landlords of the first part, Nigel Dare Jamieson as tenant of the second part and Bowerham Property Management Company Limited as Maintenance Trustee of the third part.
8. A copy of the registered title of the 3<sup>rd</sup> Floor Flat showed the registered proprietor of the leasehold interest as Mr Ferns. His title was registered on 20<sup>th</sup> August 2008. The lease was for the term of 99 years from 29<sup>th</sup> September 1980. The landlords were the same as for 2<sup>nd</sup> Floor Flat. The tenant was Denyse Faulkner and the Maintenance Trustee was named as Bowerham Property Management Company Limited.
9. The leases of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats were substantially in the similar terms.
10. The tribunal did not consider it necessary to inspect 32 Charleville Road (“the building”) or the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats.

#### **The service charge years in question as noted in the Directions**

11. The service charge years in question as noted in the directions were for the 2<sup>nd</sup> Floor Flat, service charge years 2007 to 2008 to 2014 to 2015 inclusive. For the 3<sup>rd</sup> Floor Flat the service charge years in question were stated to be 2009 to 2010 to 2012 to 2013 inclusive. The service charge is from 1<sup>st</sup> April in each year until 31<sup>st</sup> March in the following year.
12. For the hearing the applicant’s Solicitors provided a schedule setting out the service charges remaining in dispute. In respect of each of the flats the service charge years in question were 2009 to 2010, 2010 to 2011, 2011 to 2012 and 2012 to 2013. The respondent had not provided comments in response in the column provided for this is the schedule.

#### **The issues**

13. The relevant issues identified for determination were:
  - 13.1 The payability and reasonableness of the Management fees.
  - 13.2 The payability and reasonableness of the cost of cleaning the common areas of the building.

- 13.3 The payability and reasonableness of the cost of electricity to the common areas of the building.
- 13.4 The payability and reasonableness of the buildings insurance.
- 13.5 Whether an order under section 20C of the Landlord and Tenant Act 1985 should be made.
- 13.6 Whether an order for reimbursement of application / hearing fees should be made.

There were also a number of additional concerns raised at the hearing in respect of the service charge percentage, the Maintenance Trustee and some other matters, which the tribunal has referred to in the reasons for the decision.

### **The tribunal's decision**

14. The tribunal reached the following decisions:
  - 14.1 No sums are due and payable in respect of Management fees.
  - 14.2 No sums are due and payable in respect of cleaning of common areas.
  - 14.3 No sums are due and payable in respect of electricity to the common areas.
  - 14.4 No sums are due and payable in respect of buildings insurance.
  - 14.5 The tribunal considers it reasonable to make and order under section 20C of the Landlord and Tenant Act 1985, and makes such an order.
  - 14.6 The tribunal directs that the respondent reimburse the applicant £440 fees paid by the applicant for this application.

### **Reasons for the tribunal's decision**

15. Mr Ferns stated that the building, 32 Charleville Road, is a substantial terraced house, which when originally built comprised one substantial dwelling. Mr Ferns said that he purchased the leasehold interest in the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats to let as investment purposes. He last lived in the flats in September 2013. These are currently rented out. He attends the building most weeks to collect mail.
16. Amongst other provisions, Mr Ferns referred to Clause C(i) of each of the leases which refer to the "maintenance contribution" as a sum equal

to the percentage proportion appropriate to the flat as specified in Parts I and II of the Third Schedule.

17. Part 1 of the Third Schedule sets out specifically the percentage of annual maintenance provision payable in respect of each flat as maintenance contribution. The relevant percentage for each of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats was stated to be 20%.
18. Mr Ferns was concerned that the respondent had subdivided flats it had retained in the building and that this affected the maintenance percentage under the leases. The tribunal considered that whether or not the retained flats had been altered, this did not affect the percentage of the service charge costs payable under the leases of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats, which is 20% for each of those flats.
19. Mr Ferns stated that despite the provisions in the leases in respect of a Maintenance Trustee, there was no Maintenance Trustee in place. He had never received any correspondence from Bowerham Property Management Company Limited named in the leases.
20. In respect of the Management Trustee, Mr Bartlett said that Bowerham Property Management Company Limited was dissolved in the mid 1990's. Merbar Limited was appointed as the Maintenance Trustee for the building in April 2007. Mr Bartlett said that Mr Ferns had insisted that a Maintenance Trustee was in place when he purchased his interest in the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats. Mr Bartlett said that he is a director of both Britstop Limited and Merbar Limited.
21. Mr Ferns highlighted various provisions of the leases about which he was concerned. This included clause 4. This clause provides a covenant by the Maintenance Trustee with the lessor and with the tenant that it would:

“(i) Employ and pay the remuneration of a Chartered Surveyor or Chartered Auctioneer and Estate Agent (in this Lease called “the Surveyor”) to manage the Building and the residential premises and to carry out such other duties as may from time to time be assigned to him by the Maintenance Trustee or are otherwise imposed on him by the provisions of the Lease. The Surveyor may (but need not) be a member director or employee of the Maintenance Trustee or of the Lessor and his remuneration hereunder shall not be more than is reasonably commensurate with his services in relation to the Building and Residential Premises.”

Mr Ferns stated that so far as he was aware no Chartered Surveyor had been employed to manage the building since he became a leaseholder.

22. Also included in clause 4 were repairing obligations (clause 4(iii)), obligations to keep staff to provide services (clause 4(vi)), obligations to pay the costs and fees incurred for auditing the accounts of the Maintenance Fund, and obligations in respect of buildings insurance (clause 4(xii)). Mr Ferns highlighted the various clauses which he submitted had not been complied with.
23. Mr Ferns was concerned that the service charge mechanism under the leases had not been followed. He submitted that there had been a complete failure by the landlord or any Maintenance Trustee to account to him or provide proper explanations for service charge expenditure claimed. He was particularly concerned with the landlord's or Maintenance Trustee's failure to disclose the current buildings insurance policy. He pointed out that clause 4(xii) and 4(xiii) make it clear that insuring the building is the respondent's responsibility and that this should be reviewed annually. He stated that he suspected that the building was not insured at all. Further he was concerned that the service charge accounts had not been audited.
24. Mr Ferns referred to letters from his Solicitors dated 3<sup>rd</sup> and 24<sup>th</sup> October 2014 addressed to Mr Bartlett on behalf of the respondent, requesting disclosure of the current insurance policy for the building. Despite this, the respondent had not disclosed any insurance policy as such, but only the standard terms and conditions of a template insurance policy which did not relate to the building. Some further documents had been provided a few days before the hearing, but not the insurance schedules for the years in question.
25. Amongst Mr Ferns's other concerns was the respondent's failure to provide proper service charge accounts. Mr Ferns pointed out that clause 3 of the Third Schedule to the leases imposes an obligation on the respondent or Maintenance Trustee to disclose to the tenant within two months following the end of each maintenance year, the amount payable. The sum should have been certified by a Surveyor at the relevant time. Mr Ferns stated that this has not occurred.
26. In respect of the obligation to keep the common parts suitably furnished, lighted, cleaned and carpeted, Mr Ferns stated that a cleaner comes to the building periodically, but she does not clean the entire common parts.
27. Mr Ferns stated that he found Mr Bartlett to be uncommunicative and evasive. No Service charge invoices/demands had been given to Mr Ferns until 5<sup>th</sup> September 2013. These were delivered outside the time prescribed in the leases. Mr Ferns said he had not paid the requested charges because there had been no explanation how these figures were made up. He described the management provided as 'non-existent'. He referred to clause 4(v) of the lease of the 3<sup>rd</sup> Floor Flat in respect of obligations of the Maintenance Trustee regarding the water supply, and

his correspondence regarding this, which concerns he stated had not been addressed. Mr Ferns also provided copies of correspondence between himself and Susan Threlfall of Bartlett Management Limited in relation to the leases and service charge issues, which he considered to be unsatisfactory.

28. Mr Ferns also referred the respondent's intention to install a communal smoke detection system for which a quotation had been obtained, and expressed his concern that there had been no section 20 consultation in respect of this. However at the hearing Ms Bik Wong said that the fire detection system was no longer an issue.
29. In his evidence Mr Bartlett said that the buildings insurance was subject to a block policy for the Bartlett Group. Mr Ferns responded that he had not seen block policy documents specific to the building. A broker's letter from Besso Limited, produced a few days before the hearing, stated that insurance was in place. However he would have expected to see insurance certificates specifically relating to the building, but these had not been produced despite written requests.
30. It was not in dispute that there had been no service charge invoices until September 2013. Amongst these documents was a copy of an email from 'Bartlett Group', dated 5<sup>th</sup> September 2013. This read as follows:
- "Dear Mr Ferns, We have been looking into your service charge and rent account and note that you have not been invoiced for some years from the top floor and second floor flats that you own. We attach invoices for the amounts due, please let us know if you have any queries. Kind regards Bartlett Group...."
31. Copies of the invoices dated September 2013 were provided in the hearing bundle. These were from Britstop Limited and were in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats. The invoices for the 2<sup>nd</sup> Floor Flat were for the year 2007 to 2008, 2008 to 2009, 2009 to 2010, 2010 to 2011, 2011 to 2012, 2012 to 2013 and were addressed to Mr Ferns. In respect of the 3<sup>rd</sup> Floor Flat, these were for the service charge years 2009 to 2010, 2010 to 2011, 2011 to 2012 and 2012 to 2013.
32. The charge for the 'Management fee' in each year for each of Mr Fern's flats was £500, the charge for 'Cleaning common areas' was £80, and the charge for 'Electric to common areas' was £65.
33. In respect of 'Buildings insurance' the charges were:

2 <sup>nd</sup> Floor Flat:	
2007 to 2008	£244.05
2008 to 2009	£251.66

2009 to 2010	£259.87
2010 to 2011	£266.23
2011 to 2012	£272.56
2012 to 2013	£281.86

3<sup>rd</sup> Floor Flat:

2009 to 2010	£259.87
2010 to 2011	£266.23
2011 to 2012	£272.56
2012 to 2013	£281.86

34. In her skeleton argument and in her oral submissions at the hearing Ms Bik Wong submitted that the service charges claimed were not due under the provisions of the leases as the respondent had not followed the contractual mechanism for claiming the service charges. She submitted that there had been no proper estimates in respect of the service charges and no Surveyor's certificate confirming not later than 30<sup>th</sup> June in each year, whether the estimate had been exceeded. The service charges accounts had not been audited. The services of a Chartered Surveyor had not been engaged when needed. It was entirely unclear how the 'Management fee' or other charges had been calculated. The Management fee claimed bore no relation to the provisions of the leases which provide for 4% of the amount actually expended on maintenance works less some deductions. There was no detailed information in respect of what services had been carried out in each service charge year and there was a worrying lack of clarity in respect of the buildings insurance.
35. Even if the lease mechanism had been complied with (which was disputed), and even if the amounts claimed had been incurred at all, and were reasonable and reasonably incurred (which was disputed), some of these claimed costs were not recoverable as being claimed out of time.
36. Under section 20B of the Landlord and Tenant Act 1985 as amended, 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 section 20B(2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred. Under section 20B(2) subsection (1) does not apply if within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and he would subsequently be required under the terms of his lease to contribute to them by payment of a service charge.
37. It was not in dispute that there had been no demands for service charges in respect of the sums claimed in the September 2013 demands and that Mr Ferns had not been notified that these would subsequently be required for the purposes of section 20B(2) in respect of the September 2013 claims. Accordingly even if the charges would



otherwise have been due, any of these incurred more than 18 months before the September 2013 demands were irrecoverable.

38. A further reason why the sums claimed in the September 2013 were not due from Mr Ferns, was that there was failure to comply with the requirements of section 21B of the Landlord and Tenant Act 1985 as amended. Under this provision a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. A tenant may withhold payment of a service charge which has been demanded from him if this requirement is not complied with in relation to the demand. No such summary of rights and obligations was served. (This argument also applied to the replacement invoices from Merbar Limited served a few days before the hearing, which are referred to later in this decision.)
39. A copy of a letter from the insurance broker Besso Limited dated 5<sup>th</sup> December 2014 and received on 10<sup>th</sup> December 2014, was provided to the tribunal by Mr Bartlett. Mr Ferns said that he received a copy of this letter about a week before the hearing. It was stated that the premiums that had been charged and paid for 32 Charleville Road through AXA under a policy number stated for the last six years were:
- 2014 - £988.07  
2013 - £948.05  
2012 - £948.05  
2011 - £939.11  
2010 - £939.11  
2009 - £939.11  
2008 - £714.06
40. Mr Bartlett stated that insurance specific to the building had now been arranged. Amongst the documents produced was a quotation for Merbar Ltd for the renewal dated 26<sup>th</sup> November 2015 for the building.
41. Mr Ferns commented at the hearing that these figures did not equate with the sums charged in the September 2013 service charge invoices when the above sums were divided by the 5 flats in the building. The figures had been overstated in the invoices for each of the years. There was still no certificate of insurance for the individual property in evidence and the broker's letter did not take the position as to whether there was buildings insurance specific to the policy in the relevant service charge years as claimed, any further.
42. In respect of costs of cleaning services to the common areas, Joanna Falatycka, housekeeper, gave evidence at the hearing. She said that she had worked for Mr Bartlett for 14 years. She had worked at the building for 6 or 7 years. She goes to the building once or twice a week and sometimes more often if there is something wrong. She had seen Mr Ferns once. She stays at the building for about 1 ½ hours per visit. She mainly cleans the hallways and the kitchen to the first floor and the

staircase to the second floor landing. She charges £265 per month. A list of services was provided, but she said that some of these are not applicable to the building. She said that she spends 20 minutes cleaning the communal kitchen of the basement flat and about 45 to 50 minutes cleaning other parts of the building on the ground and First Floor landing which have nothing to do with the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats. She spends approximately 15 minutes cleaning the staircase from the top of the building to the ground floor. The majority of the time she spends at the building is cleaning relating to the landlord's retained flats.

43. In respect of the 'Management fee', Mr Bartlett said that there was a 24/7 service in that a tenant can telephone and contactors can be arranged within a short time. The management includes arranging a cleaner, arranging an improved fire system, paying electricity bills.
44. In respect of the charges for electricity to the common parts, an email from British Gas dated 3<sup>rd</sup> December 2014 to the Bartlett Group gave some information about units used between 1<sup>st</sup> February 2014 and 3<sup>rd</sup> December 2014, and there was also a handwritten note on this email about 'Bulb Changes'. Apart from this no bills or proper explanations were provided to support the costs claimed.
45. During the hearing Mr Bartlett said that the September 2013 service charge demands (which are the subject of this application to the tribunal) should be regarded as withdrawn by the respondent. Mr Bartlett referred to a letter to Mr Ferns from Merbar Limited dated 8<sup>th</sup> December 2014 (a copy of which was received by the tribunal on 10<sup>th</sup> December 2014 the day before the hearing). This stated as follows:

"I write to confirm to you that all previous service charge invoices are cancelled on the grounds that they are unacceptable and have been issued incorrectly by my office in the name of Britstop limited the owner of the ground and basement rental flats when of course the expenditure falls on the maintenance trustee, Merbar limited".
46. This letter contained various documents. These included documents signed by Mr Bartlett as a director of Merbar Limited each dated 3<sup>rd</sup> December 2014 in respect of the service charge years in issue and also 2013 to 2014 in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats, stating the 'We hereby certify that it our opinion the amount charged for the service charge' is 'fair and reasonable as provided under the lease terms...'. Also provided were service charge 'demands' for the various years headed Merbar Ltd and addressed to Mr Ferns.
47. In each of the Merbar Ltd 'demands' the Management fee charged was £250 (instead of the figure of £500 previous claimed in the September 2013 Britstop Limited invoices). The item 'cleaning common areas' remained at £80 per annum as previously. The item 'Electric to common areas' remained at £65 per annum. The figures for the item 'Building insurance' were stated to be the following:

2<sup>nd</sup> Floor Flat:

2008 to 2009	£251.66
2009 to 2010	£259.87
2010 to 2011	£266.23
2011 to 2012	£272.56
2012 to 2013	£281.86
2012 to 2014	£189.61

3<sup>rd</sup> Floor Flat:

2008 to 2009	£251.66
2009 to 2010	£259.87
2010 to 2011	£266.23
2011 to 2012	£272.56
2012 to 2013	£281.86
2013 to 2014	£189.61

The figures were as previously apart from the exclusion of the 2007 to 2008 service charge year for the 2<sup>nd</sup> Floor Flat and the addition of the 2013 to 2014 year for both flats.

48. It was noted that service charge estimates for the periods 1<sup>st</sup> April 2014 to 31<sup>st</sup> March 2015 dated December 2014 from Merbar Limited were also included.
49. Having considered the evidence and submissions as a whole, the tribunal reached the following conclusions in respect of the payability of the service charges which are the subject of this application, which can be summarised as follows.
50. Management fees
- 50.1 The tribunal finds that no sum is currently due and payable from the tenant under the leases of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats for management fees for the service charge years (up to and including 2013 to 2014).
- 50.2 In respect of sums incurred prior more than 18 months prior to the service charge invoices dated September 2013, these are irrecoverable as a consequence of the provisions of section 20B of the Landlord and Tenant Act 1985.
- 50.3 Further, the sums claimed are not currently recoverable from the tenant due to failure to provide the summary of rights and obligations under section 21B of the same Act.
- 50.4 Further, the latest invoices from Merbar Ltd do not comply with the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987 for instance in respect of the provision of the landlord's name and address.

- 50.5 The sum claimed in each of the years in issue was initially £500 in respect of each flat. This has been reduced to £250 per year for each flat.
- 50.6 Under the provisions of Part II of the Third Schedule to each of the leases, a the mechanism for determining the remuneration of the Maintenance Trustee is set out, The minimum annual fee should not be less than £30 (subject to pro rata increases (which cannot be calculated due to lack of information).
- 50.7 The tribunal finds on the evidence that the level of management undertaken was minimal.
- 50.8 In respect of any of the service charges for which recovery is not barred by section 20B above, subject to proper demands being made in respect of Management fees (complying with the terms of the lease and statutory information requirements) in respect of 'Management fees', the tribunal considers that a reasonable amount payable would have been £30 per annum for each of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats.

51. Cleaning common areas

- 51.1 No sum is due and payable from the tenant under the leases of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats for management fees for the service charge years up to and including 2013 to 2014.
- 51.2 The tribunal repeats paragraphs 50.2 to 50.4 in respect of this item.
- 51.3 The tribunal has had regard to the evidence in respect of the work carried out at the building. The tribunal assesses that the amount of work undertaken which referable to the building common areas was approximately 30 minutes per week for 52 weeks a year. At the charge rate of £6.25 per hour as stated in the evidence, this resulted in an amount of approximately £32.50 for each of the 5 flats.
- 51.4 In respect of any of the service charges for which recovery is not barred under section 20B above, subject to proper demands being made (complying with the provisions of the lease and the statutory requirements) in respect of 'Cleaning common areas', the tribunal considers that a reasonable amount payable for this item would have been £32.50 per annum for each of the 2<sup>nd</sup> and 3<sup>rd</sup> Floor Flats.

52. Electric to common areas

- 52.1 No sum is due and payable from the applicant to the respondent in respect of 'Electric to common areas'.
- 52.2 There was insufficient evidence to support the respondent's contention in respect of the specific sums claimed incurred for electric to the common areas for any of the service charge years which are the subject of the application or 2013 to 2014.

52.3 Further for the same reasons as set out in paragraph 50.2.to 52.4 above no sum is currently due for this item from the applicant.

53. Section 20C application

The respondent has failed to show that the sums claimed were due and payable from the applicant, or were reasonable or reasonably incurred. The tribunal considers that in the circumstances it is reasonable for an order to be made that all the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable. Accordingly the tribunal makes an order under section 20C.

54. Reimbursement of fees

The tribunal considers that it is reasonable in all the circumstances to make an order requiring the respondent to reimburse the applicant the whole of the fee of £440 paid in respect of this application (rule 13(2) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). Accordingly the tribunal makes such an order.

55. Prospective costs application under rule 13

The tribunal has noted that the applicant indicated at the hearing that he may wish to make an application for costs under rule 13 of the above rules. For clarification the tribunal has not made any determination in this decision in respect of rule 13 costs. Any such application must be made within the time limits under the rule.

Name: A Seifert

Date: 22<sup>nd</sup> January 2015

Judge of the First-tier Tribunal

## **Appendix**

### **Landlord and Tenant Act 1985**

#### **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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

#### **Section 20C** Limitation of service charges: costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before court, residential property tribunal, or leasehold valuation 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,