12129

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2016/0443**
Property	:	**Flat 1, Beta Court, 117 Sydenham Road, Croydon CR0 2EZ**
Applicant	:	**Ms A Akindele**
Representative	:	**Mr F Akinbisehin**
Respondent	:	**Solarbeta Management Company Limited**
Representative	:	**Mr J Wragg, Counsel**
Also present	:	**Ms S Daniel and Ms S Morris, managing agents**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge P Korn** **Mr A Harris LLM FRICS FCIArb**
Date and venue of Hearing	:	**21st February 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**31st March 2017**

DECISION

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Decisions of the Tribunal

(1) The £30 administration fee for 2014 is not payable.

(2) The Applicant's share of the £138.00 charge for investigating cracking in flats 17 and 18 is not payable. As regards the £796.80 charge (the Chequers Electrical & Building Services invoice dated 17th December 2013), only £738.00 of this sum is properly payable and the Applicant's share of this charge is reduced accordingly.

(3) All other charges which are the subject of this application are payable in full.

(4) The Tribunal declines to make a Section 20C order. The parties should also note the Tribunal's decisions/observations contained in paragraphs 60 and 62 of this determination.

Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the payability of certain service charges levied by the Respondent and a determination pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") as to the payability of certain administration charges levied by the Respondent.

2. The disputed charges are as follows:-

- Refuse and Bulk Item Removal Charges for 2014 and for 2015
- Tribunal Proceedings Costs for 2013 and 2015
- Maintenance and Repair Costs for 2014 and 2015
- Estimated General Minor Repair Costs for 2016
- Administration Fees for 2014 (£30) and 2016 (£40)
- PDC Debt Recovery Fee.

In addition, the Applicant is questioning whether the Respondent had the power to change the service charge accounting year.

3. The relevant statutory provisions are set out in the Appendix to this decision. The Applicant's lease ("**the Lease**") is dated 30th November 2006 and was made between Ruskin Homes Limited (1), the

Respondent (2) and the Applicant (3). The Respondent, as the management company, covenants under the Lease to provide the services and the Applicant covenants to pay the service charge to the Respondent.

4. The Applicant was represented at the hearing by Mr Akinbisehin, who informed the Tribunal that he was not legally qualified but had a law degree. The Respondent was represented by Mr Wragg of Counsel.

5. The Tribunal has noted the various points made by the parties in written submissions, the most pertinent of which are referred to in this determination.

The issues

Refuse and Bulk Item Removal – Applicant's case

6. The Applicant submits that these costs are not recoverable under the Lease, and she has referred the Tribunal in this regard to clauses 5.9 and 5.21 of the Lease. She also argues that there is a designated area in which to place refuse and which is maintained by London & Quadrant Housing Trust at no cost to leaseholders.

7. At the hearing, Mr Akinbisehin queried three specific invoices from Chequers Contract Services Ltd. In his submission, invoice 88009 was not payable because it covered the same matters as invoice 113895. Invoice 102894 should not be included under refuse and bulk item removal and should instead fall under cleaning. Invoice 102734 looked similar to invoice 102894 and again should fall under cleaning.

Refuse and Bulk Item Removal – Respondent's case

8. Mr Wragg noted that the specific points regarding particular invoices had not previously been raised by the Applicant. In any event, as regards invoice 88009, his instructions were that this related to different activities from the ones covered by invoice 113895. Regarding invoices 102894 and 102734, these also related to different activities and did in fact relate to bulk items.

Tribunal Proceedings Costs – Applicant's case

9. Mr Akinbisehin said that these costs are legal costs incurred by the Respondent in connection with previous proceedings against the Applicant in the LVT (as it was then). The Respondent was refused its costs by the LVT but still put those costs through the service charge. In Mr Akinbisehin's submission, these costs are not recoverable under the Lease, and he referred the Tribunal to clauses 4.7, 4.9 and 5.4 of the

Lease. In addition, those previous cases arose out of the Respondent's own failings.

Tribunal Proceedings Costs – Respondent's case

10. In written submissions, the Respondent states that these costs comprise (i) £250.00 in respect of a notice of appeal to the Upper Tribunal, (ii) a court hearing fee of £250.00 for the Upper Tribunal and (iii) £500.00 for the work carried out by a director of the Respondent company in successfully appealing the LVT's decision. In relation to the recoverability of the director's expenses, the Respondent relies on paragraphs 26-34 of the Upper Tribunal's decision in that case and clause 6.2.1 of the Lease and paragraph 3 of the Fourth Schedule to the Lease.

11. At the hearing, Mr Wragg said that the Applicant had not made any section 20C application to challenge the Respondent's ability to put these costs through the service charge. As regards recovery of legal costs under the Lease, the Respondent was relying on clause 6.2.1 and paragraphs 3 and 9 of the Fourth Schedule. The Upper Tribunal's decision was that directors' expenses were recoverable under the Lease, and the same principle should apply to legal costs. In addition, in the case in respect of which the Respondent was seeking to recover its costs through the service charge it had succeeded on many points.

Maintenance and Repair Costs – Applicant's case

12. At the hearing, Mr Akinbisehin challenged a charge for £804.00 for the repair of a burst water main and associated damage repair on the basis that (a) this did not, in his view, fall within the Respondent's repairing obligations and (b) it should have been covered by insurance.

13. As regards invoice WE230914-10 from A.S. Decorating in the sum of £350.00, the narrative was simply "Payment for labour" and this was insufficient to show that it was properly payable. Similarly, in relation to invoice 1122990 from Chequers Electrical & Building Services in the sum of £796.80 the narrative was simply "Carry out works as per our quotation". Similarly, as regards invoice 114921 from Chequers Electrical & Building Services in the sum of £264.00 the narrative was simply "Re: 1-23 Solar Court ... Carry out works as part of quotation 25514 for door works at the above property".

14. As regards invoice 113521 from Chequers Electrical & Building Services in the sum of £78.00, this was not payable because it related to Solar Court (not to Beta Court). As regards the charge for £138.00 to investigate cracking to flats 17 and 18 and adjust front doors to both flats, the Applicant felt that the front doors were the responsibility of individual leaseholders. As regards the charge for £174.00, this had

been described in the Respondent's Repairs and Maintenance Analysis as being dated 04/03/2014 with Ref 41701, but the only copy invoice in the bundle for £174.00 was dated 19/06/2014 with Invoice Number 44242 (and Customer Ref WAR16).

15. As regards the charge for £414.00 for flat roof cleaning, this was not payable because the flat roof did not belong to Beta Court. As regards the Communal Door Key Credit charge for £9.00, this should have been charged to Dr Kavatha, as she was the one who benefited from it, and not added to the service charge. As regards the £92.40 charge for repairing a lock release and rewiring a panel, this looked similar to a £189.00 charge about 4 weeks later for replacing the front face panel on the main entrance panel of the door entry system and the Applicant felt that there will have been some duplication.

Maintenance and Repair Costs – Respondent's case

16. As regards the burst water main, the cost was recoverable under paragraph 6 of the Fourth Schedule in the context of the definition of "Amenity Land" and "Estate". As to whether this could have been covered by insurance, Mr Wragg said that the Respondent had had no notice that this sort of point was going to be raised at the hearing, but in any event Ms Daniel's and Ms Morris' understanding was that insurance would not cover this particular cost.

17. In relation to invoice WE230914-10 from A.S. Decorating in the sum of £350.00, this was for redecorating two double utility doors, one for the pump cupboard and one for the dry riser cupboard, and the Respondent later provided – at the request of the Tribunal – a copy of the Works Order relating to this work. Invoice 1122990 from Chequers Electrical & Building Services in the sum of £796.80, was for the replacement of a fire door, and the Respondent later produced a more detailed estimate. Invoice 113521 from Chequers Electrical & Building Services in the sum of £78.00 was for a gutter repair and the gutter formed part of the common parts. Invoice 114921 from Chequers Electrical & Building Services in the sum of £264.00 related to the adjustment of fire doors. Again, the Respondent later provided – at the request of the Tribunal – a copy of the Works Order relating to this work.

18. As regards the charge for £138.00 to investigate cracking to flats 17 and 18 and adjust front doors to both flats, the Respondent's managing agents speculated that this charge might have been included in the service charge because it was part of a more general building-wide cracking issue but they were not sure. As regards the charge for £174.00, the Respondent accepted that the wrong copy invoice had been provided but the correct one was available. As regards the charge for £414.00 for flat roof cleaning, this fell within the service charge definition in the Lease which was all that really mattered.

19. As regards the Communal Door Key Credit charge for £9.00, Dr Kavatha was a director and she provided the agents with an extra set of main doors keys and then recovered the cost through the service charge. As regards the £92.40 charge for repairing a lock release and rewiring a panel and the £189.00 charge for replacing the front face panel, these were completely separate jobs, the second one relating to a video entry panel.

Estimated General Minor Repair Costs – Applicant's case

20. The Applicant felt that the estimated general minor repair charges seemed very high at £1,400.00 given the existence of various other heads of charge. When pressed, Mr Akinbisehin said that a reasonable figure would be between £350.00 and £500.00.

Estimated General Minor Repair Costs – Respondent's case

21. Mr Wragg said that general minor repairs could also be described simply as repairs and maintenance and had been so described in the service charge certificate for the year ending 31st December 2014. The actual charge had been much higher than £1,400.00 in 2014 but lower than £1,400.00 in 2015. The amount of £1,400.00 seemed a perfectly reasonable amount to budget for in 2016 in the circumstances.

Administration fees – Applicant's case

22. Mr Akinbisehin submitted that the two late payment fees were not justified as the reason for late payment was the existence of a genuine dispute as to payability. The reason for the second late payment was the parties' differing interpretations of the effect of clause 5.1 of the Lease and whether the Respondent had the power to change the service charge accounting year.

Administration fees – Respondent's case

23. As regards the first late payment, the charge was levied because the Applicant's account was in debit, and indeed the Applicant had been in arrears more or less throughout her tenancy. In this regard, Mr Wragg referred the Tribunal to the Respondent's agents' letters to the Applicant dated 7th and 24th February 2014 on the subject of her service charge arrears. He also referred the Tribunal to the agents' letter of 23rd May 2016 in connection with the second late payment charge.

24. As for recoverability of the late payment charges, Mr Wragg referred the Tribunal to clause 4.9 of the Lease.

PDC Debt Recovery Fee – Applicant's case

25. Mr Akinbisehin said that the debt recovery firm acted too hastily in pursuing the unpaid ground rent and service charges and also that they should not have contacted the Applicant's lender direct. The Applicant's representative had explained to PDC that the Applicant was out of the country at the relevant time. The service charge was not paid because of the dispute regarding the effect of clause 5.1 of the Lease and whether the Respondent had the power to change the service charge accounting year.

PDC Debt Recovery Fee – Respondent's case

26. PDC were instructed after the Applicant had been sent a demand by the Respondent's managing agents and the Applicant had failed to pay. The Respondent did not accept that PDC acted too hastily, and in Mr Wragg's submission it was perfectly reasonable for the arrears to have been pursued. As to whether the debt was disputed, the Respondent did not even know that it was disputed until the Applicant started proceedings at the First-tier Tribunal.

27. As regards recoverability, the Respondent relies on clause 4.9 of the Lease.

Change to service charge accounting year – Applicant's case

28. Mr Akinbisehin referred the Tribunal to clause 5.1 of the Lease and submitted that this sets the tenant's service charge period and that the Respondent had no power to change it.

Change to service charge accounting year – Respondent's case

29. Mr Wragg submitted that there was no such thing as a tenant's service charge period and that the Respondent could change the service charge accounting year pursuant to clause 6.3.1 of the Lease. In any event, service charge continued to be demanded on 24th June and 25th December in each year as envisaged by clause 5.1 of the Lease.

Witness evidence of Mr Akinbisehin

30. The contents of Mr Akinbisehin's witness statement are duly noted.

Witness evidence of Ms Morris

31. Ms Morris refers in her evidence to the Applicant usually having been unsuccessful in past proceedings between the parties. She also argues that (as at the date of her statement) the Applicant was not complaining

about the level of services, the reasonableness of the charges or the standard of any works and that the application at best seems to be very vague. She also argues that the Applicant takes issue with any professional (debt recovery) fees being added to the service charge but fails to realise that she is the only one causing the fees to be incurred.

32. Mr Akinbisehin was given an opportunity to cross-examine Ms Morris on her witness statement. He asked her whether the Respondent had taken action against other debtors, and she confirmed that the rules were the same for everyone. As regards the figure for service charge arrears in the service charge accounts, she said that the figure was high because it included different categories of debt, for example agreed stage payments.

Tribunal's analysis and determination

Refuse and Bulk Item Removal

33. The Applicant has referred us to clauses 5.9 and 5.21 of the Lease in support of her submission that this cost is not recoverable under the service charge, but in our view this argument is misconceived. These clauses contain regulations restricting antisocial behaviour by leaseholders, but it does not follow that the Respondent may not recover the cost of removal of refuse and bulk items through the service charge. In any event, the Applicant has brought no evidence to show that the Respondent knew – or could reasonably have known – who the culprits were or even that the issues have arisen (whether in whole or in part) as a result of one or more leaseholders being in breach of their leases. In our view, a combination of paragraphs 1, 3, 6 (to the extent that the issue affects Amenity Land) and 9 is easily sufficient to entitle the Respondent to recover this category of cost under the service charge.

34. In relation to the Applicant's specific challenges, we do not agree with these. We are conscious that the Respondent was not given any advance notice of these specific challenges, but in any event we do not accept that there has been duplication – the invoices are all sufficiently different that on the balance of probabilities they all relate to different items. As regards invoice 102894, the Applicant has not satisfied us that this should be categorised as cleaning rather than refuse and bulk item removal, but even if she is correct the charge is still payable. As regards there being a designated area, even if this is accurate it does not affect the Respondent's ability to arrange removal of bulk items from the estate and to put the cost through the service charge.

35. Therefore, the charges for refuse and bulk item removal are payable in full.

Tribunal Proceedings Costs

36. The Applicant notes that the Respondent was not awarded penalty costs by the relevant tribunal at the time, but the test for being entitled to penalty costs is wholly different from – and not relevant to – the question of whether costs can be put through the service charge.

37. The Applicant refers to clauses 4.7, 4.9 and 5.4 of the Lease in submissions, but none of these clauses is relevant to the question of whether these costs can be put through the service charge.

38. The Applicant does not dispute that the relevant costs were incurred and nor does she claim that the amount of any of these costs was unreasonable. The remaining issue, therefore, is whether they are recoverable under the Lease. As regards the notice of appeal and court hearing fee, in our view these are recoverable under paragraph 8 of the Fourth Schedule but possibly also under clause 6.2.1 of the Lease or paragraph 3 or 9 of the Fourth Schedule. Clause 6.2.1 allows for the cost of collecting the rent and service charge, and pursuing an appeal relating to service charge arrears could arguably be covered by this. Paragraph 3 of the Fourth Schedule refers to the provision of services and discharging of obligations and functions as reasonably considered necessary or expedient for the use and occupation of the flats and the landlord's adjoining premises. Paragraph 8 is in our view the most directly relevant provision in that it allows the Respondent "to take reasonable steps to enforce a proper contribution to the Management Company's expenses by all persons required to contribute". Paragraph 9 is a sweeper provision relating to such other services or functions as the Respondent shall think fit for the upkeep and enhancement of the estate or for the benefit of the flats.

39. As regards the director's expenses in connection with the appeal, the Applicant does not take specific issue with their being director's expenses rather than legal expenses. The issue of the recoverability of director's expenses was the specific subject of the appeal to the Upper Tribunal in relation to this Property and these parties, the case reference being (2014) UKUT 0416 (LC). In that case HHJ Gerald took the view that the Lease was wide enough to allow for the recovery of director's expenses. We have not received any arguments to persuade us that these particular director's expenses should be treated any differently, and therefore these expenses are recoverable under clause 6.2.1 of the Lease and/or paragraph 3 of the Fourth Schedule and/or paragraph 9 of the Fourth Schedule.

40. Therefore, the tribunal proceedings costs are payable in full.

Maintenance and Repair Costs

41. On the basis of the information available to us, we consider that the charge for £138.00 to investigate cracking to flats 17 and 18 and adjust front doors to both flats is not recoverable through the service charge. We are conscious that the Respondent did not have much notice of the Applicant's challenge to this invoice, but the challenge is a fairly obvious one and – having supplied a copy of the invoice and included it in the hearing bundle – the Respondent could have made some attempt to check why it had been included in the service charge. It was clear at the hearing that the Respondent's agents did not know why it had been included in the service charge, and therefore on the balance of probabilities it is not recoverable.

42. The charge for £796.80 is based on an invoice from Chequers Electrical & Building Services dated 17th December 2013 which states "carry out works as per our quotation". The Respondent has, subsequent to the hearing at the Tribunal's request, produced a copy of the quotation but the quotation is for £738.00 inclusive of VAT. The Respondent has not explained this discrepancy. Whilst this is not wholly satisfactory, we are forced to conclude on the basis of the information provided that the invoice should have been for £738.00 and therefore that only £738.00 is payable. Therefore, the Applicant only has to pay her percentage of the reduced figure of £738.00 (rather than £796.80).

43. In relation to the other items challenged by the Applicant, in our view they are all payable in full. We agree with the Respondent that the cost of repairing the burst water main is recoverable under paragraph 6 of the Fourth Schedule to the Lease, and on the other issues we are more persuaded by the Respondent's evidence than by the Applicant's evidence.

44. Therefore, the Applicant's share of the £138.00 charge relating to flats 17 and 18 is not recoverable and the Applicant's share of the £796.80 charge is reduced to £738.00, but otherwise these costs are all recoverable in full.

Estimated General Minor Repair Costs

45. In our view, there is no substance to the Applicant's claim that the estimate is too high. It is a reasonable and sensible estimate in the context of previous actual charges and the Applicant has brought no evidence to indicate that those previous charges were unreasonable.

46. Therefore, this estimated charge is payable in full.

Change to service charge accounting year

47. The Applicant's argument regarding clause 5.1 is in our view wholly misconceived. There is no such thing as a tenant's service charge period as distinct from a service charge accounting year, and the position is governed by clause 6.3.1 of the Lease. The Respondent was entitled to change the service charge accounting year in the way that it did, and the Applicant's submissions on this issue – seemingly the central plank of her case – are without merit.

48. Therefore, the Applicant's challenge on this issue fails and is not a basis for reducing, or delaying payment of, any of the service charges.

Administration fees

49. In relation to the 2014 charge of £30.00, it would seem from the evidence that this was an administration charge for chasing payment of service charges which were determined by either the First-tier Tribunal or the Upper Tribunal to be payable in full. The Respondent relies on clause 4.9 of the Lease as its contractual basis for making the charge, this being an indemnity clause in respect of costs/liabilities etc incurred by the landlord/management company in connection with any breach or non-observance by the tenant of the lease covenants.

50. However, Mr Akinbisehin has stated that the dispute in relation to the relevant service charges was a live dispute at the time when the £30.00 charge was levied, and the Respondent has not contested this point. Whilst neither party has brought any legal authority on the point, in our view a clause such as clause 4.9 does not entitle a landlord/management company to chase service charge arrears and to levy a charge for doing so when it is aware that there is an ongoing and apparently bona fide dispute as to the payability of the relevant service charges. Therefore, on balance we are of the view that this £30.00 charge is not payable. However, the position would be different if there was no live dispute between the parties, and the position might also be different if there was evidence to indicate that the dispute had essentially been manufactured simply in order to deter the landlord/management company from taking normal steps to chase the arrears.

51. In relation to the 2016 charge of £40.00, the evidence indicates that the Applicant had by this stage been in service charge arrears for a considerable period, and the Applicant has brought no evidence to show that the Respondent was or should have been aware of the existence of a genuine dispute when levying the charge. We are satisfied that clause 4.9 is sufficiently wide to cover the levying of a charge of this nature for the costs incurred by the Respondent in chasing these arrears and we consider £40.00 to be a reasonable charge in the circumstances. Therefore the £40.00 charge is payable in full.

PDC Debt Recovery Fee

52. We prefer the Respondent's evidence on this issue. On the basis of the information provided we are satisfied that PDC's actions were reasonable and proportionate and that the charge is a reasonable one. The fee is therefore payable in full.

General point

53. We would just add that we consider this application to have been, in large part, quite confused. The submissions regarding the change to the service charge accounting year are in our view wholly misconceived, and the Applicant's written submissions – whilst expressed in forceful terms – have generally lacked clarity. The Applicant is of course entitled to apply to the First-tier Tribunal for a determination in respect of any genuine disputes falling within its jurisdiction, but the Applicant should first satisfy herself at a basic level that there is substance to any such disputes and should try to ensure that the basis for any dispute is articulated as clearly as possible.

Cost Applications

54. The Applicant has made an application for a Section 20C order, this being an order that the Respondent may not include in the service charge either all or part its costs incurred in connection with these proceedings. As the Respondent has been successful on virtually every issue and its sole purpose is to manage the building, there is no basis for making such an order.

55. The parties have also asked us to make a determination as to whether the Respondent's legal costs are recoverable under the Lease. The Applicant has referred us to the Upper Tribunal cases of *Fairbairn v Etal Court Maintenance Limited (2015) UKUT 639 (LC)* and *Geyfords Limited v O'Sullivan and others (2015) UKUT 683 (LC).* The Respondent relies on clause 6.2.1 of the Lease and/or on paragraphs 3, 8, and 9 of the Fourth Schedule to the Lease and has referred us to the Upper Tribunal case relating to this Property and between the same parties referred to earlier, namely *Solarbeta Management Company Ltd v Ms A Akindele (2014) UKUT 0416 (LC).*

56. In *Fairbairn*, the Upper Tribunal quoted from the Supreme Court decision in *Arnold v Britton (2015) UKSC 36* in stating that the Tribunal's task was to identify what the language used by the parties means by reference to what a reasonable person – having all the background knowledge available to the parties – would have understood them to be using the language to mean. The Upper Tribunal concluded in that case that the obligation or entitlement of the landlord under the lease to "do all other acts and things for the proper

management administration and maintenance of the blocks of flats as [it] in its sole discretion shall think fit" was insufficiently wide to entitle it to put the specific legal costs concerned through the service charge. The Upper Tribunal accepted that the provision was wide enough to cover legal costs in principle, but on the particular facts of the case the steps required to be taken by the landlord were the result of a breach of its own obligations under the lease.

57. In *Geyfords*, the relevant lease provision was a power to recover "all other expenses (if any) incurred by the Lessors or their managing agents in and about the maintenance and proper and convenient management and running of the Development". The Upper Tribunal's conclusion was that whilst this provision could include obtaining legal and other professional advice in the right circumstances it did not include proceedings to enforce the obligation of a leaseholder to make a payment to a landlord.

58. In *Solarbeta*, the Upper Tribunal decided that the Lease was wide enough to allow for the recovery of the management company's directors' expenses. HH Judge Gerald noted that the management company was a single-purpose tenant-owned company without any source of income other than the service charge, and he regarded it as too technical to draw a distinction between management of the estate and management of the company. Accordingly, he took the view that these expenses were recoverable under either clause 6.2.1 of the Lease or under paragraph 3 or 9 of the Fourth Schedule.

59. We can distinguish the present case from *Fairbairn*, as the present case is not one in which the Respondent has incurred costs as a result of its own breaches of covenant. However, the *Geyfords* decision is potentially relevant. In that case, the Upper Tribunal expressly concluded that the relevant lease wording was not wide enough to include proceedings to enforce the obligation of a leaseholder to make a payment to a landlord.

60. The wording in the Lease relied on by the Respondent in the present case includes all or any of the following:-

Clause 6.2.1

The Management Company may employ at the Management Company's discretion a firm of managing agents to manage the Estate and discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Estate and the cost of computing and collecting the Rent and Service Charge but if the Management Company does not appoint such managing agents it shall be entitled to include all administration costs incurred as part of the costs of providing the Services.

Paragraph 3 of the Fourth Schedule

To provide such other services and discharge such other obligations or functions as the Management Company shall reasonably from time to time consider necessary or expedient for the use and occupation of the flats in the Buildings and the Landlord's adjoining premises.

Paragraph 8 of the Fourth Schedule

To take reasonable steps to enforce a proper contribution to the Management Company's expenses by all persons required to contribute.

Paragraph 9 of the Fourth Schedule

Such other services or functions as the Management Company shall think fit for the up keep and enhancement of the Estate or for the benefit of the flats erected thereon.

61. We accept, particularly in the light of the *Geyfords* decision, and also based on the analysis in *Arnold v Britton* quoted in *Fairbairn*, that there is arguably a basis for concluding that neither clause 6.2.1 of the Lease nor paragraph 3 or 9 of the Fourth Schedule to the Lease is sufficiently wide to cover legal costs incurred in connection with tribunal proceedings. However, in our view paragraph 8 of the Fourth Schedule to the Lease is clearly sufficiently wide to cover such legal costs, and we are satisfied on the basis of the evidence that the Respondent has taken reasonable steps to enforce a proper contribution by the Applicant to its expenses as contemplated by the said paragraph 8. Therefore, the wording of the Lease in this case can be distinguished from the wording of the lease in *Geyfords* and the Respondent is in principle entitled to put through the service charge its legal costs incurred in connection with these proceedings.

62. The *Solarbeta* decision related to directors' expenses rather than legal costs, and in our view one should be cautious about drawing an analogy between the two. A leaseholder who could be expected to have agreed to fund directors' administrative costs cannot necessarily also be expected to have agreed to part-fund the (potentially considerable) cost of enforcing other leaseholders' breaches of covenant. However, whilst HH Judge Gerald was partly influenced by the fact that the management company (the Respondent in the present case) is a single-purpose tenant-owned company, our decision in relation to the recoverability of the legal costs is based on the wording of paragraph 8 of the Fourth Schedule to the Lease.

63. Neither party has made any submissions as to the reasonableness of the costs themselves, and therefore we are not in a position to make a

formal determination as to whether the amount of the Respondent's costs is reasonable. It is open to either party to make a supplemental application for a determination as to the reasonableness or otherwise of these costs if that party wishes to do so.

Name: Judge P Korn **Date:** 31st March 2017

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

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.