12185

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2016/0391 and LON/00AM/LDC/2017/0034**
Property	:	**33c Kenninghall Road, London E5 8BS**
Applicant	:	**Overmark Limited**
Representative		**Ms R Ackerley-Counsel**
Also in attendance	:	**Ms Jacqueline Ault-Director** **Ms Jennifer Clarke-Director**
Respondent	:	**Ms Kay Alison Cermornia Richards**
Representative **Also in attendance**	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Daley** **Mr H Geddes** **Mrs L West**
Date and venue of Hearing	:	**4 April 2017 at 10 am 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**29 May 2017**

DECISION

Decisions of the tribunal

The tribunal makes the determinations set out in paragraphs-: 34-37, 43-44, 47-48, 53-57, 61-64, 69 and 73-74

The application

1. On 13 October 2016, this matter was transferred from the Clerkenwell and Shoreditch County Court by order of DJ Sterlini, for a determination of the reasonableness and payability of the service charges in the sum of £9264.30. On 28 March 2017 the Applicant made an application for a dispensation under section 20ZA from the consultation requirements set out in section 20 following major works, this application was consolidated with the section 27A application.

2. Directions were given at a case management conference, on 15 November 2016, where it was stated that the following matters were in dispute-:

- *Service charge arrears alleged to be £8,699.74.*
- *Whether the landlord has complied with the consultation requirement under section 20 of the 1985 Act in respect of works to the stairs at the property.*
- *Whether the works are within the landlord's obligations under the lease/whether the cost of works are payable by the leaseholder under the lease.*
- *Whether the costs are payable by reason of section 21B of the 1985 Act.*
- *Whether an order under section 20C of the 1985 Act should be made.*
- *Whether the administration charge of £144 is payable.*
- *Solicitor's costs of the court proceedings shall be remitted back to the court at the conclusion of the case before this tribunal.*

The background

3. The premises which are the subject of this application, are a three storey Victorian terrace which have been converted to comprises three flats. Ms Ault has her own separate entrance and the other two leaseholders share a communal entrance. The freehold is owned by the Applicant, a company controlled by the lessees (each being a shareholder of the company). However two of the leaseholders, Ms Ault and Ms Clarke, have essentially brought this application, by issuing proceedings in the county court under claim no C93YJ496.

4. The premises are subject to a lease agreement dated 20 September 1991, which provides that the Applicant will provide services, the costs of which are payable by the leaseholders, (1/3 contribution) as a service charge.

5. Where specific clauses of the lease are referred to, they are set out in the determination.

The hearing

6. At the hearing the Applicant was represented by counsel, Ms Ackerley, the Respondent represented herself.

7. The service charges in issue were set out at paragraph 10 of the statement of case; the sums were service charges for the periods:- 1.01.2015-31.12.2015 and 1.01.2016-31.12.2016 in the sum of £960.00 for each period, reserve fund charges of £666.67 for 2015 and 2016. The costs of major works to the steps in the sum of £2230.40, the costs of sealing of the steps in the sum of £120.00 and administration charges, works to the porch floor in the sum of £300.00 and insurance excess in the sum of £1500.00.

8. The Tribunal decided that procedurally it would consider the major work together with the Application for dispensation as the first issue.

9. The Tribunal was informed that there had been issues with repairs at the property. Ms Ault stated that she had had problems with water penetration through her ceiling and had organised for temporary repairs being carried out at her own expense. However it became clear to her that a longer term, more costly solution was necessary.

10. Ms Ault stated that the water penetration was coming from Ms Richards' flat and that there were two major leaks from the waste pipe, and also

that "... any time anyone used water in the flat above" it caused water penetration into her property.

11. Ms Ault referred to photographs within the bundle which were of the area adjacent to her front door which she stated depicted damage caused by water penetration. This area was described as the door to the scullery.

12. On further questioning from the Tribunal it became clear that there were two issues with water penetration, one caused by damage/defects to the external stairwell that served the communal entrance to the premises which was immediately above Ms Ault's property and the other, which had been caused by defective pipes between Ms Ault's and Ms Richard's property. This had occurred as a result of a fault in the communal vertical waste pipes, which occurred inside the duct. However, Ms Ault stated that there were other incidents of water penetration which she considered were caused by defective plumbing in the Respondent's premises.

13. The repair to the defective duct had been paid for by a claim against the insurance, which had provided for work to be undertaken in Ms Ault's flat for repairs to the damage caused in the kitchen and bathroom. However as a result the insurance excess had increased to £1500.00.

14. Repairs had been undertaken to the external steps in 2009. Ms Ault's father had repaired them in 2009 and in 2011 and, when Ms Clarke was having building work undertaken, her builder had also affected a repair.

15. In 2014, it had been decided that a more long term solution was necessary and that major work had to be undertaken. At this stage the local authority enforcement officer Richard Hasler had become involved, and as a result the local authority had stated that unless work was undertaken they would serve an enforcement notice.

16. In paragraph 11 of her witness statement Ms Ault stated-: *"... The reason for the urgency in dealing with the state of the property was that the floor boards in my lobby were spongy and falling apart and there was mould on the walls. A door had fallen apart I was unable to enter or leave my premises with ease as the front door had swollen to such an extent that I needed to twist my mortice key in the lock to attempt to open the front door. This was all as a result of water ingress via damaged steps... This had been the third ceiling that had had to be put up since 2012 due to water entering the lobby. Despite my efforts to address this issue with Jennifer and the Respondent with regard to the state of the property, the Respondent failed to engage with me, accordingly I contacted Richard Hasler Hackney Council to address this issue as my property continued to deteriorate, despite temporary repairs to the steps by myself and Jennifer."*

17. The Tribunal were referred to an email dated 28.02.2014 from Mr Hasler of the Private Sector Housing –Stoke Newington London Borough of Hackney in the email he stated that he had been contacted by Ms Ault, who " *is currently suffering the damaging effects of significant water penetration to her front lobby area. This appears to be due to cracks in the stone steps serving the main entrance to the building which allow the rain water into her home*". In the email Mr Hasler concludes by stating that "*...If prompt action is not taken to agree remedial works to the stone steps, I have a duty to ensure that Ms Ault's home is safe for her to live in and this will mean I use the legislation under the Housing Act 2004, to carry out enforcement action by serving a notice on the freeholder, Overmark Ltd, which I believe you are all shareholders of. It is my hope that such action by me is unnecessary and that common sense will prevail...*"

18. The Applicant's counsel referred to photographs of the steps which depicted their worsening condition. In particular there were steps which had rotted to reveal the internal support underneath the steps.

19. In her witness statement dated 16 March 2017, Ms Clarke set out a chronology leading to the repair of the steps. The chronology stated that on 31/03/2014 the Respondent sent an email with details of three contractors who were able to carry out the work. One of the contractors was Eurolay, and all three of the leaseholders agreed to use Eurolay to carry out the work. However notwithstanding the agreement, Ms Richards wanted confirmation from the other two leaseholders that they were prepared to pay 1/3 of the costs of the repairs to the steps.

20. The repair was due to be carried out on 11 April 2014. It was Ms Richards' case that as she did not receive the confirmation that she requested by 31.3.14, it was too late to confirm the agreed repair date, and the contractor did not turn up. Unfortunately it was not possible to re-book within the time scale that the leaseholders required and the condition of the steps deteriorated in the interim so that a major wholescale replacement became necessary. As a result Ms Clarke obtained a quotation from English City Stone.

21. On 14 May 2014 after receiving a full quotation, she contacted both Ms Ault and the Respondent to gain a consensus on whether to replace one step or whether a more extensive repair was needed, such as a replacement of the whole flight of steps.

22. The Tribunal was informed that as a result of Mr Hasler's email, there was a deadline of the parties having to nominate a contractor by 15 May 2014, as otherwise Hackney Council would take default action under the Housing Act 2004.

23. The Tribunal was referred to an email dated 14 May 2014 sent by Ms Clarke to the other leaseholders asking for responses to the proposals

by 23 May 2014. Counsel stated that Ms Ault responded, however no response was received from Ms Richards. As a result of her failure to respond, the other leaseholders made the decision to go ahead with the option of total replacement, as this was considered to be more cost effective in the long run. The Tribunal was informed that by this stage the deterioration of the steps had resulted in a partial collapse.

24. On 6 June 2017, an email was received from KC Law Chambers Solicitors acting on behalf of the Respondent; in the letter KC Law Chambers Solicitors sought confirmation that the work would cease, and that a directors' meeting would be convened within a reasonable time, and that a schedule of maintenance would be agreed for urgent and also short term work, and that competitive quotes would be sought from third parties.

25. The email further stated-: *"...You are therefore put on notice, that in the event that you proceed to instruct English & City Stone or any other company to carry out work based on the quotation provided, you will be deemed to be in breach of your Fiduciary Duty as Director of OVERMARK..."* the email further stated *"... Further, should you proceed with the scheduled work; you are put on notice, that our client will not be liable to any contribution towards incurred cost..."*

26. In her witness statement at paragraph 17 Ms Ault stated that -: " *the Respondent eventually agreed that she had no objections to work going ahead with English City Stone but that she would not be responsible for the cost of the porch."*

27. The Respondent asked why the other leaseholders had not been willing to have a meeting. In reply Ms Ault stated that Ms Clarke was away in America and that as there were time constraints it was not possible to arrange a meeting.

28. Ms Richards' complaint was that she had not been consulted and that had the leaseholders had a meeting then it would have been possible to find a cheaper alternative such as concrete steps. She stated that she had obtained the quotation from Eurolay, which was originally acceptable to the other leaseholders, however the other leaseholders had not confirmed that they agreed to pay 1/3 of the costs of the staircase replacement, On 30 March she had asked for confirmation of Ms Clarke's willingness to confirm payment of 1/3 of the costs. Ms Richards stated that as this confirmation was not received on time it was not possible to confirm the appointment.

29. She had believed that the three leaseholders were going to meet to discuss the scope of the work, and other maintenance work to be undertaken at the property, and that no work would be carried out without the agreement of all the leaseholders, and plans for future work had been discussed.

30. There was an email from Ms Richards dated 03 April 2014, in which she stated that "Kerry would start work on or before the 11 April weather permitting". However Ms Richards reiterated that as confirmation was not forthcoming Mr Kerry did not commence the work on 11 April and shortly after that, as a result of domestic issues, he was no longer available. Ms Richards submitted that had the leaseholders confirmed on a timely basis, then the work would have been carried out on the 11 April, at a cost of approximately £4,000.00 as the condition of the steps would not have deteriorated. Accordingly although Ms Richards accepted that she was liable to contribute towards the costs of the steps, she asserted that her contribution should be limited to 1/3 of the sum of £4000.00, as this was the sum that would have been payable to Eurolay had the work been undertaken at that stage.

31. Ms Richards also believed that the steps were concrete rather than stone and that a like for like replacement could have been carried out at a lower cost. However, when questioned by the Tribunal, Ms Richards offered no evidence such as surveyor's reports or reports from contractors in support of her submission. In respect of the quality of the workmanship the only matter that Ms Richards raised was that in her opinion the stairs were crooked and that as a result there should be a deduction to reflect this. In her submission the steps should cost no more than £6000-£7000.00 rather than the £8000.00 invoiced by English City Stone.

32. It was conceded on the Applicant's behalf that Section 20 consultation had not taken place, and the Applicant had submitted a section 20ZA application in respect of the major works.

33. The Section 20ZA Application which was dated 27 March 2017, *stated " (A)all 3 lessees were fully aware of the proposed works and time frame. Procedures under section 20 of the said Act were followed to the extent that the First Respondent was informed at each stage regarding the work required to be done to the steps, the need for the works, estimates regarding the work (the First Respondent having provided estimates herself) and the decision as to the contractor to be employed to carry out the work. Whilst formal section 20 notices had not been served it is the Applicant's submission that the spirit of the consultation process had been followed and as such the First Respondent has not suffered any prejudice as a result of the Applicant not complying with section 20 consultation requirements..."*

The Decision of the Tribunal on whether to grant a dispensation under 20ZA of the Landlord and Tenant Act 1985

34. The Tribunal heard evidence from the parties and considered the submissions from Counsel on the Applicant's behalf, in particular her reliance on *Daejan Investment Ltd –v- Benson and others* [2013] 1 WLR 854 including her submission of lack of prejudice to the

Respondent. The Tribunal also heard from the Respondent in person. Accordingly, the Tribunal makes the following findings on the application to dispense with section 20ZA.

35. The Tribunal having considered the oral evidence and written submission of the parties has determined that it is appropriate to grant the order for dispensation in accordance with guidance provided by the Supreme court in *Daejan Investment Ltd –v- Benson and others* [2013] 1 WLR 854 At paragraph 44 of *Daejan* Lord Neuberger gave the following guidance for the exercise of discretion by the Tribunal on applications for dispensation-: " *Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(I) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – i.e. as if the requirements had been complied with...*"

36. At paragraph 53-54 the Supreme Court gave further guidance as to how an application for dispensation could be applied, Lord Neuberger considered the contention put forward by the respondent. "*... [O]n an application under section 20ZA (i), the LVT has to choose between two simple alternatives: it must either dispense with the requirements unconditionally or refuse to dispense with the requirements... 54. In my view, the LVT is not so constrained when exercising its jurisdiction under section 20ZA(i): it has power to grant a dispensation on such terms as it thinks fit-provided, of course, that any such terms are appropriate in their nature and their effect...*"

37. The Tribunal noted that although Ms Richards had sourced a cheaper repair with Eurolay, the repair was not carried out on 11 April, despite the fact that this repair was essential for three of the steps. In the interim the condition of the stair case deteriorated, and the repair became increasing urgent. The Tribunal noted that this limited the Applicant's ability to source the repair from a wider pool of contractors which may have resulted in some saving, and provided the opportunity for some further discussion and consultation between the leaseholders. However the Tribunal is satisfied that there is no evidence before it that it would have been possible to carry out the work more economically as the quotation from Eurolay is for a more limited repair and was for only three of the steps whereas all of the steps were replaced for £8000.00. The Tribunal is also satisfied that the work to the steps was urgent.

Accordingly the Tribunal grants dispensation on the terms sought by the Applicant.

38. The Tribunal is also satisfied that although the Respondent noted that the stairs were crooked, there was no evidence before the Tribunal to substantiate this. The Respondent having raised no other issues concerning the standard of the workmanship, nor queried whether the sum is payable in accordance with the terms of the lease, the only issue in respect of payability is the reasonableness of the costs of the work. The Tribunal has noted the circumstances in which the works were carried out, and the lack of evidence upon which to base a finding that the costs of the works were excessive. **Accordingly on a balance of probabilities, the Tribunal finds that the sum of £8699.70 for the total costs of the work payable by the Respondent is reasonable and payable.**

39. The Tribunal has noted that the costs occasioned by the work to the porch, was as a result of the damage caused by the water penetration from the defective stone staircase. Accordingly the Tribunal determines that the costs associated with this work are reasonable and payable.

The Service charge contribution to the reserve fund

40. Counsel referred the Tribunal to clause 3 (b) (IV) of the lease which states-: *"... In providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the landlord shall reasonably deem necessary for the general benefit of the Building and its tenants whether or not the Landlord has covenanted to incur such expenditure or provide such services facilities and amenities or carry out such works."*

41. The reserve fund contribution was in the sum of £666.67. Ms Richards pointed out that the planned maintenance which was included in the 2015 budget included a provision for internal decoration, which had not been carried out in the sum of £2000.00.

42. Counsel stated that this was due to a lack of funds for this work, and also informed the Tribunal that the reserve fund had been established at the suggestion of the managing agents. Ms Richards stated that she had not been a party to the appointment of the managing agent.

The Decision of the Tribunal on the reserve fund

43. The Tribunal noted that the provision in the lease allowed for the establishment of a reserve fund. The Tribunal has also considered whether such a fund was necessary and whether the contribution to the fund was excessive. Given that the parties have given evidence of failings in the maintenance of the building and the difficulty in

arranging funding, the Tribunal is both satisfied that the wording of clause 3(b) (iv) permits the establishment and payments to be made to a reserve fund in particular the use of the wording "otherwise incurring expenditure as the landlord shall reasonably deem necessary..." and satisfied that such a fund is necessary.

44. The Tribunal is satisfied that the sum of £666.67 is sufficient to allow for the building of a fund for planned maintenance. Accordingly the Tribunal determine that the sums claimed by way of reserve fund contributions are reasonable and payable.

The Service charge contribution in the sum of £960.00

45. In respect of the other item of claim this was for service charges of £960.00. The Tribunal was informed that this sum was made up of the costs of cleaning the hallway and health and safety reports which had been commissioned by HML Hathway AMP Management, from 4 Site Health and Safety. This was for a fire risk report in the sum of £160.00. (A copy of the invoice was included in the bundle). An asbestos survey was also carried out by 4 Site Health and Safety.

46. The Respondent stated that she had not been provided with a copy of the fire risk assessment and she also queried the need for an Asbestos survey given that no asbestos had been found at the premises.

The Decision of the Tribunal on the service charges in respect of the surveys and other items

47. The Tribunal heard no evidence that cleaning was undertaken at the premises, neither was there any evidence that the Respondent had been charged for this head of charges. If the Tribunal is wrong about this – ie if a charge was raised but no work carried out - then any sums charged should be reimbursed.

48. The Tribunal has noted that in the demand it was set out that the sums claimed for the surveys were unlikely to reoccur. The Tribunal accepts that the context in which these sums were incurred was that new managing agents had been appointed. In this Tribunal's knowledge and experience, it is not unusual where there are no reports which confirm the status of the premises, for newly appointed managing agents to obtain such reports, as a one off, to confirm that there are no issues, in relation to the safety of the building. Accordingly the Tribunal accepts that it was reasonable for this cost to be incurred and given the wording of clause 3(b) (IV), the Tribunal is satisfied that such expenses are in accordance with the terms of the lease. **Accordingly the Tribunal is satisfied that the costs incurred are reasonable and payable.**

The Service charge contribution to the managing agents' fees

49. There was an invoice from the managing agents in the sum of £250.00 for the period 1/04/2016 to 30/06/2016 and £750.00 for the previous year.

50. Counsel referred to the Respondent's statement which had been made in response to her application to set aside judgement, she noted that in paragraph 13 & 14 the Respondent had stated that "*...it was provisionally agreed that a managing company should be appointed*". In her statement she stated that although it was agreed she was unaware that an appointment had occurred.

51. The total sum outstanding for management fees was £2000.00 in total, £1000.00 for each of the years in issue. The Tribunal understood that the appointment had subsequently been terminated.

52. Counsel stated that the Respondent was aware that an appointment would take place. It was noted that the Respondent had stated in her statement that because of the distance of her teaching appointment that she spent time away, and was not currently staying at the property.

The Decision of the Tribunal on the Management fees

53. The Tribunal heard submissions from the Respondent and from Counsel on this issue.

54. It appeared to the Tribunal that the objection raised by the Respondent was about the manner in which the appointment of the managing agents had been made. In her response dated 4 February 2017 she stated that "...As a director and shareholder of the Applicant", she ought to have been involved in the decision making of the management of the property. It was also stated that the Applicant had failed to comply with the Articles of Association for the company. It was stated on behalf of the Applicant that the other leaseholders had tried to keep the Respondent involved in the decision making, however she had not always been available to be consulted or responsive to emails.

55. The Tribunal noted that it had no alternative figures before it upon which to assess the reasonableness of the management fees, although it appeared to the Tribunal that other than the insurance, budget and the survey reports little management was needed at the premises. The Tribunal considers that there may well have been scope for some

reduction in the managing agent's fees, however no alternative figures have been provided to the Tribunal. The Tribunal based on its knowledge and experience is aware that it can be difficult to obtain the services of managing agents for smaller properties, as in many cases it will not be economically viable to obtain the services of managing agents.

56. The Tribunal was also aware that the leaseholders had tried to self-manage and that this had proved to be problematic, accordingly the engagement of managing agents appeared to be a sensible approach. Although the sums charged are at the higher end of that which was considered reasonable, for the scope of management and size of property, in the absence of alternative figures for managing agents' fees, the Tribunal is not inclined to interfere with the managing agents' fees.

57. **Accordingly the Tribunal finds that the managing agent's fees are reasonable and payable.**

The Insurance premium and excess

58. The Tribunal was referred to the next item which was insurance. The Tribunal was informed that the budget for insurance was £900.00 for the year ending 31 December 2015 .The sum budgeted for insurance for 2016 was £900.00. Ms Richards did not object to this charge. However it was noted that the actual insurance for 2015 was £1885.49, which was in excess of the total sum budgeted. For the period 2016/17, the insurance actual cost was £2193.57. This was reflective of the claims that had been made at the property. It was noted that there was a sum payable on account of the roles and responsibilities undertaken by the leaseholders as directors and shareholders of the applicant company, and this was in the sum of £153.00 for directors' liability insurance.

59. The Respondent did not object to the insurance, however it was proposed by Ms Ault and Ms Clarke that the excess for insurance in the sum of £1500.00 should be paid by Ms Richards as the leak which had occurred in 2014 had emanated from her flat. A claim was made on the insurance, and the first £1500.00 was payable by the leaseholders. This sum was claimed from Ms Richards.

60. The Tribunal asked for information confirming the cause of the water leaking, as there was a history of water leaking at the premises. There did not appear to be agreement as to the cause of the water leak as there was a history of a defective waste pipe. Ms Ault did not think that the water had been waste water, although no evidence as to what had caused the leak was before the Tribunal.

The Decision of the Tribunal on the Insurance

61. The Tribunal carefully considered the submissions from both parties on the issue of the insurance. Counsel in her submissions appeared to rely on clause 3(2) of the lease, which stated-: "To pay all rates taxes assessments charges impositions and outgoings which at any time during the said term be assessed..."

62. The Tribunal has noted that the insurance charges are high; however this is related to the claims history of the building. The Tribunal noted that Ms Richards accepted that insurance was payable however the main issue appeared to relate to the insurance excess. The Tribunal noted that although the leaking appeared to be from Ms Richards' flat, it appeared that the leaks had largely by-passed flat B, there was also no evidence before the Tribunal upon which it could be satisfied that the cause was attributable to pipes within the Respondent's control. On a balance of probabilities, the Tribunal is not satisfied that liability for any issues arising from the leaks is solely attributable to the Respondent and accordingly the costs of the excess should be shared by all of the leaseholders on an equal basis. The Tribunal also does not accept that the wording of clause 3(2) creates a liability in the manner asserted by Counsel.

63. The Tribunal determined that there was in accordance with established law no obligation on the Respondent to go for the cheapest insurance cover, and that the obligation to obtain insurance is satisfied where the cost of the insurance is reasonably incurred notwithstanding that cheaper insurance cover could be obtained.

64. **In respect of the insurance premium, the Tribunal is satisfied that the sums due for the insurance premiums are reasonable and payable.**

The Admin fees

65. The Tribunal noted that there were three admin fees one payable on 15.6.15 in the sum of £144.00 and on 16.03.15 in the sum of £102.00 and a fee for £30.00.

66. It was submitted on the Applicant's behalf that costs are payable by the Respondent in accordance with clauses 3(2), 3(12) and 3(19) of the lease.

67. The Respondent's case in relation to these charges, appeared to be that she was unaware of the reason for these charges.

68. The Applicant's statement of case stated at paragraph 16, that " *...Due to the setup of the building and limited tenants it is imperative that all tenants pay their service charges to allow services to be carried out...*"

69. The Applicant further states that these costs were incurred as a result of the arrears, and that these proceedings were issued as a precursor to forfeiture proceedings. The Tribunal is satisfied that clause 3(12) is sufficiently wide to enable recovery of the costs incurred. The Tribunal finds on a balance of probabilities that such sums are recoverable in accordance with the lease.

70. The Tribunal noted that at the hearing, the Respondent did not advance a case that the service charge demands did not comply with section 21B, that is that the demand was served more than 18 months after the expense was incurred; accordingly the Tribunal has made no determination on this issue.

Application under s.20C and refund of fees

71. At the hearing Ms Richards made an application under Section 20C, on the basis that had the leaseholders agreed to meet with her, then many of these issues could have been resolved. Ms Richards had withheld payment because she was not satisfied that the leaseholders had complied with the articles of association in respect of the decisions that had been taken in respect of the management of the property.

72. Counsel did not accept that this was relevant to the issue of the granting of a section 20C order. Counsel stated that Ms Richards had not set out why an order should be made.

73. Ms Richards stated that if she had been given formal notice as required she would have realized the extent of her obligations, which would have led to a more timely resolution of this matter.

74. Having heard the submissions from the parties and taking into account the findings of the Tribunal, the Tribunal is not satisfied that in all the circumstances it would be just and equitable for an order to be made. The Tribunal have taken into account the fact that the Applicant is a company made up entirely of the leaseholders with no assets save for the freehold.

75. The Tribunal makes no order for the Applicant's fees to be refunded by the Respondent.

76. The Tribunal having made its findings by way of this decision remits this matter to the county court in respect of any further action.

Name: Judge Daley

Date: 29/05/17

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

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

4. 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 of relevant legislation

Landlord and Tenant Act 1985

(1) Section 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Section 20C

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

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

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

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.