12547

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BJ/LSC/2017/0200**
Property	:	**Flat C, 741 Garratt Lane, Earlsfield, London, SW17 0PD**
Applicant	:	**Kimberley Cullum**
Representative	:	**In Person**
Respondent	:	**Garlanmanco Limited**
Representative	:	**NCL Law, solicitors**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charge**
Tribunal Members	:	**(1) Judge Amran Vance** **(2) Mr S Mason, BSc FRICS** **(3) Mr J Francis**
Date and venue of Hearing	:	**9 November 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**4 December 2017**

DECISION

Decisions of the tribunal

1. The following service charge costs will be payable by the applicant if properly and validly demanded from her:

   (a) Costs associated with rat infestation incurred in about August 2015 in the sum of £75.40; and

   (b) Roof repair costs incurred in about May 2016 in the sum of £1,977.60.

2. The following service charge costs are not payable by the applicant:

   (a) Roof Repair costs incurred in about November 2016 in the sum of £24; and

   (b) Companies House Filing Costs in the sum of £5 per annum.

3. The following service charge costs are not currently payable by the applicant but have been reasonably incurred by the respondent and will be payable if properly and validly demanded from her:

   (a) Common Parts Electricity in the sum of £91.34 referred to in a bill dated 15 February 2017.

4. The following service charge costs concerning building insurance are not currently payable by the applicant and we make no determination as to whether they have been reasonably incurred:

   (a) the applicant's apportioned share of the sum of £854 sought for the 2014/15 service charge year;

   (b) the applicant's apportioned share of the sum of £891 sought for the 2016/16 service charge year

   (c) the sum of £189.98 sought from the applicant towards her share of the premium paid for the 2016/17 service charge year.

5. The tribunal makes the following orders under section 20C of the Landlord and Tenant Act 1985:

   (a) 25% of the respondents' costs of these proceedings incurred up to and including the hearing on 2 August 2017, should not be regarded as relevant costs to be taken into account in

determining the amount of any service charge payable by any of the leaseholders.

(b) None of the respondents' costs of these proceedings incurred after 2 August 2017 should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the leaseholders.

Introduction

6. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by her for the service charge years 2015/16 and 2017/18 in respect of Flat C, 741 Garratt Lane, Earlsfield, London, SW17 0PD ("**the Flat**"). The Flat is a first-floor, one-bedroom flat located at 741-743 Garratt Lane ("**the Building**"). The Building comprises a ground floor commercial shop and four residential flats which are all let on long leases. Ms Cullum acquired the leasehold interest of the Flat in 2013. Flats A, B and D are sublet on short-term lets. Ms Cullum is currently the only long leaseholder resident in the Building.

7. The respondent, Garlanmanco, is a company owned and controlled by the long leaseholders of the four flats in the Building. All four of the long leaseholders, including the applicant, are shareholders and directors of Garlanmanco. Garlanmanco acquired the freehold title of the Building in June 2009.

8. Numbers in square brackets and in bold below refer to pages in the hearing bundle provided by the applicant.

The applicant's lease

9. The applicant holds her leasehold interest in the Flat pursuant to the terms of a lease dated 10 February 2006, entered into by (1) Wingdawn Property Company Limited and (2) Miriam Louise Foster, granted following the tenant's application for the grant of a new lease under section 42 Leasehold Reform and Urban Development Act 1993 (the Lease"). Except for extending the term of the lease at an annual rent of a peppercorn (if demanded) the Lease incorporated the terms of a previous lease dated 3 November 1988 entered into between (1) Stackrace Limited and (2) Martin Henry Auger and Karen Amanda Clegg.

10. The Property is defined in the Particulars to the Lease as being 741 and 743 Garratt Land, London SW17. The Demised Premises is defined as Flat C on the First Floor.

11. Under the terms of the Lease the tenant is obliged to pay a 25% contribution towards a "Maintenance Charge", comprising amounts payable under paragraph 2 of Part 1 of the Fifth Schedule of the Lease, in respect of the landlord's reasonably and properly incurred expenses relating to the Building, as identified in the Eighth Schedule to the Lease.

12. The Eighth Schedule sets out those costs and expenses incurred by the landlord which are payable from the Maintenance Fund, including the landlord's costs of complying with its obligations in Part 1 of the Sixth Schedule which include obligations to repair and maintain the roofs, foundations and other parts of the Building and to keep the Building insured.

13. Paragraph 2 of Part 1 of the Fifth Schedule stipulates that the amount of the Maintenance Charge is "to be certified by the Lessor's Managing Agent or Accountant acting as an expert and not as an arbitrator as soon as conveniently possible after the expiry of The Maintenance Year. The Maintenance Year is defined as the 12-month period ending on 28 September each year, or such other annual period as determined by the landlord. Provision is also made for the landlord to be entitled to demand an Interim Maintenance Charge from the tenant on 25 March and 29 September each year.

14. Under paragraph 4 of Part 1 of the Sixth Schedule the landlord covenants to *"keep The Property including the Demised Premises insured in its full reinstatement cost against loss or damage by fire and such other of the usual comprehensive risks as the Lessor may in its discretion determine....."*.

The lease for the Commercial Shop

15. The lease for the ground floor commercial shop is dated 23 April 2007 and is made between (1) Backmill Limited and (2) Cressbrooke Holdings Limited. Under its terms, the lessee is obliged to pay Insurance Rent which includes the costs of the premium incurred by the landlord in insuring the ground-floor lock up shop.

The previous tribunal applications

16. There have been two previous tribunal applications involving the parties to this application.

The 2016 Tribunal Decision

17. In **LON/00BJ/LSC/2016/0211**, Ms Cullum sought a determination under section 27A of the 1985 Act as to whether certain service charges demanded from her were payable by her. In the tribunal's decision

dated 03 August 2016 (**the "2016 Tribunal Decision**") it determined that the following service charge costs were not payable by Ms Cullum because they had not been validly demanded:

(i) £1,977.50 for roof repairs completed in April/May 2016 (**the "2016 Roof Repairs"**);

(ii) £75.40 for rat infestation treatment completed in August 2015 (**the "2015 Rat Infestation Costs"**; and

(iii) £136.25 for fence repairs completed in June 2014.

18. The tribunal's reasoning is summarised at paragraphs 38 and 39 of its decision:

> *" 37. In our judgment where no on account payments have been requested by the respondent the obligation on Ms Cullum to contribute to service charge expenditure is triggered by the delivery to her of an annual account duly certified by the respondent's managing agent or accountant. Where such certified accounts are provided the lease obliges Ms Cullum to effect payment within 14 days.*
>
> *38. In these circumstances we find that none of the sums presently claimed by the respondents are presently payable by Ms Cullum. However, if the 'paperwork' were to be put into good order, some of them may be payable by her."*

19. At paragraph 27 of its decision, the tribunal recorded that it was not in dispute that the 2016 Roof Repairs were required. At paragraph 30 it recorded that Ms Cullum informed the tribunal that she had no reason to doubt that the roof works had been carried out to a reasonable standard and at a reasonable cost and that she did not have any evidence to the contrary.

20. However, at paragraph 29, the tribunal noted the respondent's concession that it had not complied with the statutory consultation requirements set out in section 20 of the 1985 Act in respect of those works. It also states the following regarding the service charge demand relied upon by the respondent in relation to the 2016 Roof Repairs:

> *" It may also be noted that the demand relied upon was not compliant with section 21B of the Act because it was not accompanied by a summary of rights and obligations of dwellings and it was not compliant with section 47 Landlord*

and Tenant Act 1987 because it did not contain the name and address of the landlord.

Further, the amount of the expenditure has not been included in an annual account of the Maintenance Charge certified by the respondent's managing agent or accountant."

21. The tribunal stated, at paragraph 40 of its decision that it may be of assistance to the parties if it made some general observations to enable them to go forward as it was in the best interests of all five lessees if the development was run with the consensus of all concerned.

22. It then went on to say, at paragraph 41 of its decision, that it was open to the respondent to make an application under section 20ZA of the 1985 Act for retrospective dispensation from the section 20 consultation requirements in respect of the costs of the 2016 Roof Repairs.

23. At paragraph 43, it recorded that:

"The absence of certified accounts was fatal to the respondent's case. If certified accounts are prepared the respondent will need to ensure that compliant demands are given to the lessees. Although no point was taken by Ms Cullum in the present case the 'demands' or requests for contribution to costs incurred were plainly not compliant in a number of respects. We have already drawn attention to section 21B of the Act and section 47 Landlord & Tenant Act 1987. The respondent may wish to take professional advice on the paperwork that requires to be issued"

24. As to the costs of the fence repairs demanded from Miss Cullum the tribunal indicated at paragraph 45 of its decision that as these costs had been incurred in June 2014 it was now too late for the respondent to recover them, by virtue of section 20B of the 1985 Act.

The February 2017 Tribunal Decision

25. In a decision dated 19 February 2017, in application **LON/00BJ/LDC/2016/0127**, the tribunal granted dispensation to Garlanmanco under section 20ZA of the 1985 Act in respect of the 2016 Roof Repairs.

26. In summary, the tribunal concluded that Ms Cullum had not established that she had experienced relevant prejudice because of the respondent's failure to comply with its obligations under section 20. However, as she had incurred some financial losses in contesting the

application, which would not have been incurred if there had been formal consultation, it directed that the grant of dispensation was conditional upon the applicant paying the sum of £282.50 to the respondent within 28 days of the date of its decision. The tribunal also made an order under section 20C of the 1985 Act so that none of the applicant's costs of those tribunal proceedings may be passed to Ms Cullum through the service charge.

This Application

27. The catalyst for this application was a service charge demand sent to Ms Cullum under cover of a letter from the respondent's solicitors dated 12 May 2017 **[78]**. The demand is dated 8 May 2017 and sought payment of the sum of £2,168.34 in respect of service charges said to be due for the service charge year 2015/16. A summary of tenants' rights and obligations accompanied the demand. Also enclosed was a breakdown of the sum demanded, which read as follows:

(1)	*Rat Infestation August 2015 25% share*	*£75.40*
(2)	*Roof repair May 2016 20% share*	*£1977.60*
(3)	*Roof Repair November 2016 20% share*	*£24*
(4)	*Common Parts Electricity 25% share*	
	February 2017	*£91.34*

Total £2168.34

28. At this point, it is appropriate to explain why the respondent has been demanding service charge contributions from Ms Cullum in differing percentage sums. The reasoning behind this can be identified at paragraphs 17 to 25 of the 2016 Tribunal Decision in which the tribunal referred to Ms Cullum's acquisition of the lease for the Flat. In summary, pre-purchase enquiries made by her solicitors resulted in Ms Cullum being informed that the five lessees to the Building had agreed an informal arrangement between themselves whereby contributions towards required expenditure were sought as and when required, and not in accordance with the mechanism set out in their respective leases. The reason why contributions towards insuring the Building and towards roof repairs had been sought at 20% instead of 25% was to reflect the need for a contribution from the lessee of the commercial shop and the unfair result that would result if the residential lessees had to pay the entire of the costs of insuring and carrying out roof repairs to the Building.

29. The 2016 Tribunal noted that the Legal Ombudsman had upheld compliant made by Ms Cullum regarding poor service from her solicitor in advising her on this apportionment issue. At paragraphs 24 and 25 of its decision the tribunal stated as follows:

> *"24. We are satisfied that at no stage of the process, either before purchase or post purchase did the respondent explain to Ms Cullum that instead of operating the service charge as set out in the lease they operated a different regime, at no stage did they explain clearly what that regime was and at no stage did they invite Ms Cullum to agree to abide by that regime.*
>
> *25. From what we can see the directors simply carried on as before and, if they thought about it at all, they assumed that Ms Cullum had no objections to it or no right to object to it. Ms Cullum, not being experienced in the legalities of how these things work did not initially raise any formal objections. It was only as time went on and Ms Cullum became frustrated with the manner in which the affairs of the respondent were conducted did she take further advice which, eventually, resulted in the application before us."*

30. By an email dated 13 June 2017, sent by Mohan Kanagarajah, one of the directors of Garlanmanco **[64]**, Ms Cullum was also asked to pay the additional sum of £189.98 towards the costs of renewal of the insurance policy for the Building as well as the sum of £5 towards the costs of filing the annual return for Garlanmanco at Companies House. No summary of tenants' rights and obligations accompanied this email. Nor was the demand compliant with section 47 Landlord and Tenant Act 1987 as it did not contain the name and address of the landlord.

31. Ms Cullum objected to the sums demanded and issued this application on 24 May 2017. In the application form, amongst other matters, she asserts that the respondent was continuing to make unfair and unreasonable service charge demands, in an invalid format, and not in compliance with the timescales required under the Lease.

32. An oral case management hearing took place on 27 June 2017, attended by Ms Cullum and by counsel for the respondent. At the hearing it was identified that the applicant was seeking relief that might fall outside the jurisdiction of the tribunal. In addition, counsel for the respondent indicated that the respondent wished to apply for parts of the application to be struck out. Directions were given for the determination, as a preliminary issue, of the respondent's application to strike out parts of the application under Rule 9(2) and 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "1993 Rules").

33. A further hearing took place on 2 August 2017, attended by Ms Cullum and counsel for the respondent. The tribunal records, at paragraph 7 of

its decision, that immediately prior to the hearing the respondent provided copies of certified service charge accounts for the 2014/15 and 2015/16 service charge years. At paragraph 9 it identifies the respondent's position relating to these accounts as being that it was now *"making efforts, albeit long delayed, to comply with earlier Tribunal decisions"*.

34. At paragraph 13, the tribunal notes that the applicant had requested that this matter be referred to mediation but that the respondent's position was that it did not consider that anything was to be gained by mediation and it was unwilling to delay a final determination. The tribunal informed the parties that mediation required the agreement of both parties and that it did not appear that mediation was likely to succeed as the applicant was unwilling to accept any responsibility for payment towards the major works or the rat infestation costs.

35. At the 2 August 2017 hearing the tribunal determined to strike out the following issues under Rule 9(2), on the basis that they related to the operation and accounting systems of the company and not to the reasonableness and payability of service charges:

    (a) Alleged non-compliance with Companies Act 2006 and issues relating to company, as opposed to service charge accounts, and removal of directors;

    (b) Use of alleged freeholder income from bill board advertising;

    (c) Alleged harassment; and

    (d) Payment by the respondent/directors' loans.

36. It also determined to strike out, under Rule 9(3)(c) the following issues:

    (a) The applicant's challenge to the costs of the 2016 Roof Repairs; and

    (b) the applicant's challenge to the 2015 Rat Infestation Costs.

37. It did so following acceptance of the respondent's arguments that the 2016 Roof Repairs had been fully considered by the 2016 tribunal who made significant findings of fact in relation to them in the 2016 Tribunal Decision and that it was not in the interests of justice for the applicant to be given a further opportunity to question these charges. As for the 2015 Rat Infestation Costs, it considered that the applicant had the opportunity to raise these issues before the 2016 tribunal and that it was not appropriate or in the interests of justice for the matter to

be re-opened and nor was it proportionate to do so given that her share of the costs was only £75.40.

38. The tribunal also struck out the applicant's challenge to the costs of the 2016 Roof Repairs and to the 2015 Rat Infestation Costs under Rule 9(3)(e) on the basis that there was no reasonable prospect of these challenges succeeding as the applicant had raised nothing of substance to suggest that the works were unnecessary or that the costs were unreasonable in amount.

39. The striking out of the applicants challenge to the costs of the 2016 Roof Repairs and the 2015 Rat Infestation Costs means that these costs will be payable by Ms Cullum, if properly demanded from her, subject to any genuine issue of limitation arising under Section 20B of the 1985 Act arising.

40. At the hearing, the tribunal gave directions for the future conduct of the application and identified that the remaining issues requiring determination by the tribunal were:

    (a) Buildings insurance 2015-17 (limited to reasonableness and payability;

    (b) Works to a skylight/roof in November 2016 (applicant's contribution £24);

    (c) Common parts electricity demanded in 2017 relating to earlier years (applicant's contribution £91.34);

    (d) Whether an order under section 20C of the 1985 Act should be made; and

    (e) Whether an order for reimbursement of the application/hearing fees should be made

41. The tribunal's decision contains a notification to the parties of their rights of appeal against its decision including the 28-day time limit within which a written application for permission to appeal must arrive at the tribunal's regional office. During the hearing before us Ms Cullum confirmed that no such application has been made although she had indicated at page 29 of her written statement of case in this application that she was intending to do so. If such an application is now made it would be made late and, unless the tribunal agreed to extend time under rule 6(3)(a) of the 1993 Rules, would not be admitted.

Inspection

42. Although Ms Cullum requested an inspection of the Building we did not consider that one was necessary or proportionate to the issues in dispute.

The hearing

43. At the hearing on 9 November 2017, Ms Cullum represented herself and the respondent was represented by counsel, Ms Coyle. No witnesses for either party attended the hearing. We had regard to the brief witness statement of Martin Walford contained in the hearing bundle **[163]** but this was of no significant evidential value as its contents concerned the costs of the 2016 Roof Repairs, Ms Cullum's challenge to which had been struck out at the case management hearing on 2 August 2017.

44. At my request, the tribunal had contacted the respondent the day before the hearing and asked for copies of the insurance policy schedules and terms and conditions to be provided at the hearing. At the start of the hearing, and pursuant to this request, Ms Coyle provided the tribunal and Ms Cullum with copies of the insurance policy schedules for the Building dated 23 June 2015 and 31 May 2016, issued by AXA Insurance, together with a copy of the insurance renewal information pack provided under cover of a letter from the respondent's insurance broker, Clear Insurance Management dated 9 June 2017. She also provided a copy of the terms and conditions of the policy.

45. Ms Coyle also produced an email that she said was sent to Ms Cullum at 17.14 on 8 November 2017, the day before the hearing, attached to which was a letter from the respondent's solicitors enclosing new service charge demands for the 2015/16 and 2016/17 service charge years, together with summaries of tenants' rights and obligations. Both demands are dated 8 November 2017, and Ms Coyle informed us that they replaced the demand previously sent to Ms Cullum dated 8 May 2017.

46. Ms Coyle was candid as to why these demands had been prepared. She had advised her instructing solicitors on Tuesday 7 November that the 8 May 2017 demand was invalid and that new demands were required. These were then prepared the following day, 8 November. Ms Coyle accepted that Ms Cullum's liability to pay service charges had not been triggered by the 8 May 2017 demand because the certified service charge accounts had only been provided to her at the hearing on 2 August 2017. The 8 May 2017 demand was therefore invalid for the same reasons as stated at paragraph 43 of the 2016 Tribunal decision, namely the failure of the respondent to send Ms Cullum certified accounts prior to service of a valid demand.

47. The 8 November 2017 demand for the 2015/16 service charge year seeks payment of the sum £2,053, broken down as follows:

(1)	Rat Infestation August 2015 25% share	£75.40
(2)	Roof repair May 2016 20% share	£1977.60

48. The 8 November 2017 demand for the 2016/17 service charge year seeks payment of the sum £305.32, broken down as follows:

(1)	Minor roof repair November 2016 20% share	£24.00
(2)	Common Parts Electricity bill dated February 2017	
	25% share	£91.34
(3)	Building Insurance 20%	£189.98

49. Ms Coyle also produced an unsigned witness statement from a solicitor at NC Law Solicitors, Nazmin Choudhury, in which she states that she personally hand delivered copies of these two service charge demands to Ms Cullum's Flat at 8pm on 8 November 2017.

50. Ms Coyle informed us that she had attempted to pass copies of these two service charge demands to Ms Cullum at the start of the hearing, together with her skeleton argument, but she had refused to accept them. Ms Cullum maintained that position before us, although we made it clear that we were prepared to adjourn to allow her to read the documents in question. She also objected to their admission in evidence. She said that she had not checked her emails recently and had not checked her post. She was therefore unable to confirm whether the 8 November demands had been received by her prior to the hearing. In her view, it was unfair for the respondent to create and then seek to rely on these documents so close to the date of the hearing. Ms Cullum asserted that she wanted to obtain legal advice as to the contents of the demands and, obviously, had not had the opportunity to do so. In her submission, to allow the respondent to rely on these documents would be unfair as the consequence would be that she would not be able to properly argue her case.

51. Having considered the representations from both parties we determined that it would have been unfair to Ms Cullum to allow the admission into evidence of: (a) the email of 8 November 2017 and the accompanying service charge demands; and (b) the witness statement of Nazmin Choudhury. The documents in question had been created the day before the hearing and Ms Cullum had not had the opportunity to obtain legal advice as to their contents and the implications of the

documents for her application. We recognised the long history of the dispute between the parties and the obvious benefit to all concerned if the tribunal was able to reach a final determination on the issues in dispute between the parties. However, no explanation had been provided for the very late creation of the documents and, in our view, allowing their admission, without Ms Cullum having had the opportunity to secure legal advice or even consider the documents properly before the hearing, would have been unfair and would not have allowed her to participate fully in the proceedings. As such, it would have been contrary to the tribunal's overriding objective to deal with cases fairly and justly.

52. We did, however, allow into evidence the insurance documentation that we had requested as we considered Ms Cullum had sufficient opportunity over the lunchtime adjournment to consider this material before it was dealt with in the afternoon. We also agreed that we should have regard to the contents of Ms Coyle's skeleton argument as this simply set out in writing what would have been her oral submissions to the tribunal and the contents did not amount to evidence.

The Issues

53. Ms Coyle informed us that the respondents were not pursuing the costs of the minor roof repairs carried out in November 2016 from Ms Cullum (her contribution was £24.00). That sum having been conceded, we proceeded to deal with the remaining issues identified at the hearing on 2 August 2017

Buildings insurance

54. As described above, paragraph 4 of Part 1 of the Sixth Schedule to the Lease contains a covenant by the landlord to keep the Building and the Flat insured against loss or damage by fire against the usual comprehensive risks as per the landlord's discretion. Ms Cullum's obligation, by virtue of paragraph 2 of Part 1 of the Fifth Schedule and the Eighth Schedule to the Lease, is to pay 25% of the costs of insuring the Building and the Flat following receipt of a valid demand for the same.

55. The service charge accounts provided to Ms Cullum at the 2 August 2017 hearing include the sum of £854 for buildings insurance for the service charge year ending 28 September 2015 **[89]** and £891 for the service charge year ending 28 September 2016 **[95]**. An invoice for the renewal of the policy dated 22 June 2017 in the sum of £949.88 was included in the hearing bundle **[169]**.

56. It was not disputed that Ms Cullum had paid the sums she had been asked to pay towards the costs of insuring the Building for the 2014/15

and 2015/16 service charge years, albeit that she had made the payments without prejudice to her right to challenge the costs involved.

57. Nor was it in dispute that Ms Cullum had yet to receive a valid service charge demand for either the 2014/15, 2015/16 or 2016/17 service charge years. Ms Coyle conceded that the email dated 13 June 2017 sent by Mohan Kanagarajah to Ms Cullum **[64]** asking her to pay £189.98 towards the costs of renewal of the insurance policy for the Building was not a valid demand, as the email was sent prior to the finalisation and receipt by Ms Cullum of the certified accounts for the year ending 28 September 2017. Nor, we note, was the demand accompanied by the required summary of tenants' rights and obligations.

58. It was also agreed that instead of being asked to pay 25% of the costs of insuring the Building, as required under the terms of her lease, Mr Kanagarajahto has asked Ms Cullum to pay a 20% contribution.

The Applicant's Case

59. Ms Cullum did not seek to argue that the costs of the insurance premiums incurred by the respondent for the service charge years in dispute were unreasonable in amount. Rather, she argued that she was unable to say if the costs incurred were reasonable because the respondent had not provided her with the information she needed to obtain comparable quotes.

60. She asserted that despite her requests the respondent had failed to provide her with copies of all the residential flat leases and nor had it provided her with a copy of the lease for the commercial shop which should be in their possession. Further, she had not been provided with details of the short-term tenancies granted by the long-leaseholders of Flats A, B and D. The failure of the respondent to comply with these requests meant that she had been prevented from properly understanding the nature of her obligation to contribute towards the costs of insuring the building (including clarity as to how the premium should be apportioned) and had prevented her from obtaining alternative insurance quotes.

61. Ms Cullum had, however, obtained a copy of the lease for the commercial shop from the Land Registry and had noted the markedly different provisions regarding insurance which seemed to contradict the provisions in her lease. She was also concerned that she might be contributing unfairly towards insurance costs that should be borne by the other residential lessees who let out their flats on short-term lets or by the lessee of the commercial shop.

62. It was Ms Cullum's case that the demands that she had received before the hearing asking her to pay towards the costs of insurance were

invalid because they had been sent prior to receipt by her of the relevant service charge accounts.

63. She also mentioned that when the May 2017 renewal demand was received, Clear Insurance Management had asked the lessees to provide further information. She had replied to this request but believed that other lessees had not. Her concern was that this lack of a response might have invalidated the insurance policy.

The Respondent's Case

64. The respondent's case was that the costs incurred were reasonable in amount. Ms Coyle accepted that the terms of the residential leases required the four lessees to insure the whole of the Building and to contribute 25% towards such costs. As for the commercial lease, she asserted that under the provisions of that lease the lessee of the commercial shop was only obliged to contribute towards the costs of insuring its own premises.

65. Whilst acknowledging that Ms Cullum had not yet received a valid service charge demand for any of the service charge years in dispute Ms Coyle nevertheless asked us to determine that the sums in question had been reasonably incurred even though they are not yet payable by Ms Cullum.

Decision and reasons

66. In her application notice Ms Cullum challenged the insurance costs payable by her for the service charge years 2015/16 and 2017/18. At the case management hearing on 2 August 2017, the tribunal indicated that it would also seek to determine the reasonableness and payability of the costs incurred for the 2016/17 service charge year.

67. The sum specified in the service charge accounts as having been incurred for the service charge year 2015/16 is £891. Service charge accounts have not yet been prepared for the 2016/17 or the 2017/18 service charge years although Ms Cullum has been asked to pay the sums of £949.88 and £189.98 respectively for these two years.

68. As agreed by the parties none of these sums are payable by Ms Cullum because they have not been properly demanded in accordance with the provisions of the Lease. Although the sum of £891 was included in the service charge accounts passed to Ms Cullum at the 2 August case management hearing she has yet to receive a valid demand for that sum. Nor are the sums of £948.99 (for the 2016/17 service charge year) or £189.98 (for the 2017/18 service charge year payable by her as she has not received certified accounts for either year. The demand dated 8 November 2017 is not a valid demand for these costs, even if it was sent

to Ms Cullum for same reason stated in paragraph 43 of the 2016 Tribunal Decision, namely the absence of certified accounts followed by a valid demand.

69. We have given careful thought as to whether we should determine that the costs in question have been reasonably incurred by the respondent, even though they are not yet payable by her. If we were to determine that the costs had been reasonably incurred, then they would be payable by Ms Cullum once properly demanded. However, on balance, we do not consider it appropriate to do so because of the considerable uncertainty as to the amount that Ms Cullum is liable to pay towards these costs. Our reasons are as follows:

(a) As far as the insurance costs for the 2016/17 and 2017/18 service charge years are concerned, these have not yet been included in certified service charge accounts. Whilst the service charge year ends on 28 September each year, the renewal date of the buildings insurance policy is 24 June each year, with insurance cover expiring on 23 June the following year. There will, therefore need to be an apportionment exercise carried out before the exact amount of Ms Cullum's liability for both years can be identified.

(b) As for the 2015/16 service charge year, the amount specified in the annual accounts for that year is £891. This appears to reflect the premium of £890.90 for the period expiring 24 June 2017 referred to in the policy documents provided at the hearing and dated 31 May 2016. The respondent appears to have included the sum of £891 in the 2015/16 accounts because the cost was incurred in that service charge year. It is entitled to do that, but if it does, then the accounts for the following year should reflect an appropriate apportionment given the difference in the service charge year and the 12-month period covered by the insurance premium.

(c) We have no evidence before us as to how the respondent intends apportioning the insurance premiums for the three service charge years in question and therefore Ms Cullum's ultimate liability is unknown. We consider it inappropriate to determine whether the costs in question have been reasonably incurred when we cannot determine the sums that Ms Cullum is liable to pay.

(d) What adds to this uncertainty is the fact that Ms Cullum has been asked to pay 20% of the costs said to have been incurred and not the 25% she is liable to pay under the terms of her lease. As referred to above, this arrangement appears to have been agreed amongst the lessees prior Ms Cullum purchasing her flat. The 2016 Tribunal Decision states specifically that it

was satisfied that neither before or post her purchase did the respondent explain to Ms Cullum that instead of operating the service charge as set out in the lease they operated a different regime and at no stage did they explain clearly what that regime was or invite Ms Cullum to agree to abide by that regime.

(e) There is no indication in the documents before us that the respondent has taken any steps since that decision to invite Ms Cullum to agree to abide by a service charge regime different to that set out in the Lease. Whilst she might be content to pay 20% of the costs rather than 25% it is possible that she might wish to argue for a lower percentage than 20%. The absence of any formal agreement between the lessees to vary the percentage service charge apportionments in the residential leases since the 2016 Decision is, in our view, very regrettable, and the uncertainty as to what percentage of the cost is to be borne by Ms Cullum is another reason why it would be inappropriate for us to determine whether the costs in question have been reasonably incurred.

(f) We recognise that the strength of Ms Coyle's submission that Ms Cullum has not produced any evidence by way of alternative quotes to establish that the costs incurred were unreasonable in amount. However, the limitation imposed under Section 19 of the 1985 Act, namely that service charge costs are only to be taken into account to the extent that they are reasonably incurred, is a limitation on the amount payable by the paying party. Where, for the reasons explained above, the amount payable by Ms Cullum cannot be accurately be identified, we do not consider we can properly determine the extent to which these costs have been reasonably incurred.

70. Ms Cullum has expressed the desire for some certainty regarding the apportionment of insurance contributions between the five lessees. That desire is understandable given the absence of any formal agreement between the respondent and the lessees to vary the percentage service charge apportionments in the residential leases.

71. Under the terms of her lease Ms Cullum is liable to pay a 25% contribution towards the Maintenance Charge which comprises the landlord's reasonably and properly incurred expenses relating to the Building, including its costs of insuring the Building. However, in our view it would not be reasonable (both under the provisions of her lease and under section 19 of the 1985 Act) for the respondent to apportion the costs of insuring the Building so that Ms Cullum must pay a 25% contribution. It is clearly unfair for the residential lessees to pay for the costs of the whole Building, including the commercial shop, in

circumstances where the lessee of the commercial shop is obliged to contribute towards the landlord's costs of insuring its premises.

72. We are not able to determine whether 20% is a reasonable apportionment. The lessee of the commercial shop is not a party to this application and we do not have evidence before us as to its view, nor the views of the residential lessees, on the question of apportionment. It seems to us that what is urgently needed is for respondent and all five lessees to seek to reach agreement as to the appropriate apportionment and for this to be recorded either by way of a variation of the leases or in some other formal agreement. The fact that this has not happened, despite the concerns raised by the 2016 Tribunal, has, in our view led to ongoing and regrettable confusion concerning Ms Cullum's liability to contribute towards the costs in question.

Common parts electricity

73. These costs, concern a 25% contribution sought by the respondent from Ms Cullum in the sum of £91.34, towards an electricity bill dated 15 February 2017 **[83]** which covers a period 7 January 2014 to 15 February 2017. The bill is in the total sum of £365.37 and the supply address specified is "the rear of 741 Garratt Lane, London, SW17 0PD". It is addressed to "L/lords Supply, 50 Chelsham Road, London, SW4 6NP".

The Applicant's Case

74. In her application and statement of case Ms Cullum contended that the demand dated 12 May 2017 was invalid as it preceded receipt by her of certified service charge accounts. At the hearing before us, Ms Coyle conceded that this was correct. She also conceded that the demand dated 8 November 2017 was also invalid, for the same reason because the service charge accounts for the 2016/17 service charge year had not yet been prepared.

75. Ms Cullum states that she is unaware of the location of the electricity meter and queried whether it is too late for these costs to now be demanded from her. She also suggested that the costs incurred were excessive. She said that the lighting in common parts consisted of two external lights and one internal light in the hallway.

The Respondent's Case

76. Ms Coyle stated that the explanation for the delayed bill is contained in an email dated 17 January 2017 from Martin Walford to the lessees of the Building **[111]**. In that email he explained that when the previous occupant of the Flat left in 2013, he undertook to pay the common parts electricity bill and set up an account with EDF. He told EDF that he did

not live at the premises and asked for the bill to be sent to his address in Clapham (Ms Coyle presumed that this was the Chelsham Road address). He heard nothing further until visiting the Building on 17 January 2017 when he found a bill from EDF in the sum of £812.79 which included penalties for non-payment. He then contacted EDF, provided them with a meter reading, asserted that they were at fault for not sending bills to his residential address, and asked for the charges to be removed. They duly did so, hence the bill in the reduced sum.

77. Ms Coyle submitted that the costs involved amounted to £0.32 per day, with Ms Cullum's liability being £0.08 per day and were clearly reasonable.

Decision and reasons

78. In our determination these costs have been reasonably incurred and 25% of the costs incurred are payable by Ms Cullum in accordance with her liability under her Lease. However, the costs are not currently payable by her because, for the reasons conceded by Ms Coyle, they have not been validly demanded from her.

79. Ms Cullum did not argue that the costs incurred related to any part of the Building other than the communal parts and she has provided no evidence to establish that they are excessive in amount. The amount of the bill seems to us to be entirely reasonable.

80. In our view these costs are incurred when the bill is raised and therefore no issue of limitation under section 20B of the 1985 Act arises provided that the costs are the subject of a valid demand within 18 months of the date of the bill.

81. In order to promote a more positive relationship between the parties we suggest that the respondent explain the location of the meter to Ms Cullum and allow her access to it to inspect it.

Companies House Filing Costs

82. Although not identified at the 2 August 2017 case management hearing as an issue requiring determination by the tribunal, the applicant had argued in her application form that the £5 sum that she had been asked to pay each year towards a Companies House accounts filing fee was not payable by her through the service charge. As this challenge had also been included in Ms Cullum's Scott Schedule, which the respondent had responded to, we consider it appropriate to make a determination on the point.

83. In its comments to the Scott Schedule the respondent states that the fee is payable to Companies House in order to keep the company on the register and that it is therefore payable by Ms Cullum.

Decision and reasons

84. We do not consider that this cost is properly recoverable through the service charge. Section 18(1) of the 1985 Act defines a service charge as 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.

85. In our determination the cost does not fall within the definition at Section 18(1)(a). It is a cost incurred by the respondent company that should be met through a cash call on its shareholders.

Application under s.20C and for reimbursement of fees

The Applicant's Case

86. In her application form and at the hearing, Ms Cullum applied for an order under section 20C of the 1985 Act that none of the costs of the respondent incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the residential lessees.

87. In her submission, the need for her to make this application flowed from the invalid 8 May 2017 service charge demand. She also suggested that the respondent had unreasonably refused her suggestion of mediation given the small sums in issue in this application and that it was unreasonable for it to have instructed solicitors in circumstances where she, as a Director of the respondent company, had received no notice that this was being considered.

88. She was also concerned that the respondent had not set up its own bank account and that it had notified Companies House that the company was dormant when, in reality, it was not. She argued that despite the concerns raised by the 2016 Tribunal that there was a potential risk of the respondent company becoming insolvent as a result of costs incurred in tribunal proceedings the respondent had still not taken appropriate action to ensure that service charges were demanded in

accordance with the provisions of her lease, including raising an interim demand so that she could plan for anticipated expenditure.

89. For these reasons she requested that we make an order under Section 20C and reimburse the tribunal fees she had paid in making this application.

The Respondent's Case

90. Ms Coyle submitted that the respondent was entitled to recover its costs of these proceedings through the service charge by virtue of paragraph 11(a) of the Eighth Schedule of the Lease which identifies costs and expenses payable from the Maintenance Fund as including all legal and other proper costs incurred by the landlord in the running and management of the Property and in the enforcement of the covenants on the part of the Lessee insofar as they are not recoverable from the lessee in breach.

91. She contended that no order under section 20C should be made. She relied upon the decision of the Court of Appeal in ***Iperion Investments Corporation v Broadwalk House Residents Ltd*** [1992] 2 EGLR 235 and suggested that, as per the comments made by Staughton LJ in that case, it would be a disaster for the respondent, a resident-owned company if such an order were made as the company may be rendered insolvent unless it could raise further capital, its only asset being the freehold of the Building.

92. She also suggested, relying on the decision of the Upper Tribunal in **Primeview Developments Ltd v Ahmed and others** [2017] UKUT 57 (LC), that mediation was highly unlikely to have been successful and that there is no presumption in favour of it. She also contended that the case was authority for the proposition that an issues-based approach to determining whether to make an order under section 20C loses sight of the overall result of the litigation or produces an unbalanced and unfair outcome.

Decision and reasons

93. We accept that paragraph 11(a) of the Eighth Schedule is sufficiently wide in scope to entitle the respondent to recover the costs of these proceedings through the service charge.

94. In our view, the appropriate starting point when considering this section 20C application is to analyse the extent to which Ms Cullum has succeeded in her application and the extent to which it has been successfully resisted by the respondent. We then consider it appropriate to step back and consider whether it is just and equitable in

the circumstances for an order to be made under section 20C of the 1985 Act, and if it is, what the terms of the order should be.

95. We do not agree with Ms Coyle that ***Primeview v Ahmed*** is authority for the proposition that an issues-based approach is inappropriate when determining whether to make an order under section 20C. On the contrary, at paragraph 71 of its decision the Upper Tribunal stated that there is nothing objectionable in an issues-based approach in principle, provided it does not lose sight of the extent to which individual issues were simply steps on the way to a determination of the extent of a leaseholder's liability and the extent to which issues are discrete rather than simply individual components of a single, larger dispute.

96. It is a disturbing feature of this application that none of the costs demanded by the respondent in its 8 May 2017 demand were payable by the applicant. In our view there is considerable weight to Ms Cullum's argument that the need for her to make this application flowed from the invalid 8 May 2017 service charge demand. It is also notable that the respondent only conceded that this demand was invalid at the hearing before us, despite the fact that it was represented by counsel at the hearings on 27 June 2017 and 2 August 2017. We consider that it should have been obvious to the respondent's advisors, from the outset of this application, especially in light of the comments made in the 2016 Tribunal Decision, that the 8 May 2017 demand was invalid, having been sent prior to receipt by Ms Cullum of certified service charge accounts.

97. However, it is clear from Ms Cullum's application notice and initial statement of case that much of the substance of her application concerned the 2016 Roof Repairs and we remind ourselves that this aspect of her application, together with the 2015 Rat Infestation Costs, alleged non-compliance with Companies Act 2006 and other miscellaneous issues were struck out by the tribunal at the 2 August 2017 hearing. As such, the costs of the 2016 Roof Repairs and the 2015 Rat Infestation Costs will, in light of the successful strike out of this aspect of her application, be payable once properly demanded.

98. On balance, therefore, despite the lamentable failure of the respondent to comply with its obligations under the Lease with regard to the proper demanding of service charge costs, we do not consider it would be fair to deprive it of its ability to recover its contractual costs incurred in respect of those issues that were struck out at the 2 August Hearing.

99. Ms Cullum's liability for the costs of the 2016 Roof Repairs and the 2015 Rat Infestation Costs amounts to £2,053. The costs that survived

the 2 August strike out total £669.32[1] which, out of a total sum in issue of £2,722.32, equates to approximately 25% of the total costs. We do not think the Companies Act and other miscellaneous issues would have added significantly to the respondents' costs, as the fact that these were outside the tribunal's jurisdiction would have been obvious to its representatives and could have been dealt with in short order.

100. In our view it is just and equitable to make an order under S.20C so that 25% of the respondents costs of these proceedings, incurred up to and including the hearing on 2 August 2017, should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the leaseholders.

101. As for the respondents' costs incurred after 2 August 2017, in our view it is appropriate to order that none of these costs should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the leaseholders. We say that for two reasons.

102. Firstly, Ms Cullum has successfully argued that none of the costs that survived the 2 August 2017 strike out are yet payable by her. Secondly, as well as the outcome of the proceedings, one of the circumstances to be taken into account when considering whether to make a S.20C order is the conduct of the parties. We accept Ms Cullum's submission that this application was a consequence of the respondent's service of the 8 May 2017 which, in our view, evidences its ongoing failure to implement a regime for the recovery of service charges that is in accordance with her Lease. Despite the useful guidance given in the 2016 Tribunal Decision, the respondent has repeatedly made the same elementary error identified by that tribunal, namely issuing a service charge demand prior to the receipt by Ms Cullum of certified accounts.

103. We recognise that the respondent has sought professional advice since the 2016 Tribunal Decision. Regrettably, the demand it sent on 8 May 2017 was, as conceded by Ms Coyle, invalid. Whilst that may be the fault of its solicitors, rather than any fault of the respondent, it is clearly no fault of Ms Cullum and she should not be penalised as a consequence of that error.

104. Also relevant is the respondent's failure to concede, until the hearing before us, that the 8 May 2017 notice was invalid. As stated above, this should have been obvious to its advisors soon after the issue of the application and yet the point was not conceded at either the 27 June 2017 case management hearing or the 2 August 2017 hearing.

---

[1] This total comprises (a) roof repair costs £24; (b) Companies House Filing Costs £15 x3; (c) Common Parts Electricity £91.34; and (d) Buildings Insurance @20% assumed apportionment - 2014/15 £170.80, 2015/16 £178.20, and 2016/17 £189.98.

105. With regard to the respondent's unwillingness to engage in mediation, we do not consider the respondent's refusal to do so is a significant factor when considering whether or not to make a S.20C order. This is a relatively modest dispute and we accept that an unwillingness to mediate is not necessarily evidence of unreasonableness in light of the time and expense that would be incurred in mediation, with no guarantee of success. We also bear in mind that the tribunal judge at the 2 August 2017 hearing agreed with the respondent that mediation was unlikely to succeed because Ms Cullum was unwilling to accept any responsibility for payment towards the major works or the rat infestation costs.

106. However, by the end of the 2 August 2017 hearing, the only issues left in dispute amounted to £669.32 in value. Whilst not forming part of our reasoning for making a S.20C order, it is in our view regrettable that no effort appears to have been made by the respondent to seek to compromise this matter in light of Ms Cullum's clear indication in her statement of case that she recognised that this was a low value claim and that she was willing to engage in settlement negotiations. We accept that prior to the 2 August 2017 hearing mediation may well have been unsuccessful because of the inclusion in this application of issues there were outside this tribunal's jurisdiction. However, some attempt at compromise should, in our view have been made, albeit probably not full mediation, after that hearing. Given this tribunal's limited resources, it is very unfortunate that this application proceeded to a full day's hearing before us, despite the sums in issue being so small and despite the obvious invalidity of the 8 May 2017 demand.

107. As to Ms Coyle's reliance on the case of ***Iperion Investments Corporation v Broadwalk House Residents Ltd*** we acknowledge that one circumstance for us to take into account when deciding whether to make a S.20C order is the circumstances of the parties and, in this case, the fact that the respondent is a resident-owned company with no resources apart from service charge income and no assets other than the freehold of the Building. This is, in our view, a factor that would, in many circumstances, militate against the making of a S.20C order. However, whilst Ms Coyle suggested that to make such an order would be a disaster for the respondent, there is no evidence before us that this would be the case. The February 2017 Tribunal ordered the respondent to pay Ms Cullum £282.50 as a condition for the grant of dispensation and also made an order under section 20C. We presume that these costs were met by way of a cash call from the other shareholders of the respondent company and it may be that the respondent will have to do the same again for the costs it has incurred in these proceedings. On balance, we consider that Ms Cullum's success in respect of those matters that survived the 2 August strike out and the respondent's conduct of this application outweighs the potential difficulties to the resident-owned respondent company so that in the circumstances it is just an equitable to make a section 20C order.

108. As to reimbursement of the tribunal fees paid by Ms Cullum both parties relied upon the same submissions made in respect of the making of a S.20C order. Given the degree to which Ms Cullum has succeeded in this application and for the same reasons as expressed above regarding the making of a S.20C order, we order the respondent to reimburse her the application fee paid in the sum of £100 and the hearing fee paid in the sum of £200, such payment to be made within 28 days of the date of issue of this decision,

Final Comments

109. Ms Cullum indicated in her application that she wished to seek an order for costs incurred by her in pursuing this application. If she wishes to do so she should refer to Rule 13 of the 2013 Rules, including the time limit specified for the making of such an application. She should note, however, that such orders are not made readily and one pertinent factor the tribunal will need consider is that the respondent is a resident-owned company. She should think carefully before making such an application and would be well advised to obtain legal advice before proceeding.

110. We would encourage the respondent to be proactive in engaging with Ms Cullum regarding her concerns about how it should implement a service charge regime that accords with the terms of the residential leases and as to the formal agreement needed to deal with the apportionment of service charge contributions. The respondent may also find it useful to review the Service Charge Residential Management Code, 3rd Edition published by the Royal Institute of Chartered Surveyors which sets out desirable practices in respect of the management of leasehold property. It can be found at: http://www.rics.org/uk/knowledge/professional-guidance/codes-of-practice/service-charge-residential-management-code-3rd-edition/ .

Name: Amran Vance **Date:** **4 December 2017**

ANNEX 1 - 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.

ANNEX 2 - Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

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

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

Section 20C

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

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

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

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

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).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169

Orders for costs, reimbursement of fees and interest on costs

Rule 13

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in

(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(iv) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.