FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/18UK/LSC/2020/0042
Property:	Flats 3 and 20 Newynn Court, Market Place, Bideford, Devon EX39 2DR
Applicants:	James Knott (Flat 3) Jennifer Wenmouth (Flat 20)
Representative:	In Person
Respondent:	Newynn Court Management Company Limited
Representative:	Mr R F Holdcroft
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay administration charges) Tenants application for the determination of reasonableness of service charges and administration charges.
Tribunal Members:	Judge A Cresswell (Chairman)
Date and venue of Hearing:	On the Papers
Date of Decision:	21 December 2020

DECISION

The Application

1. This case arises out of the Applicant tenants' application for the determination of liability to pay service charges for the years from 2014 to 2019 inclusive.

Summary Decision

2. The Tribunal has determined that, subject only to the sums shown below, the Respondent has not demonstrated that the service charges and administration charges in question were reasonably incurred or that they are reasonable in amount and, as such, they are not payable by the Applicants.

3. The sums properly payable by the Applicants are solely Estimated Service Charges as follows:

   for 2014-2015: £130.54
   for 2015-2016: £178.00
   for 2016-2017: £203.14
   for 2017-2018: £160.10
   for 2018-2019: £285.62
   for 2019-2020: £243.21
   for 2020-2021: £232.17

4. The Tribunal emphasises that any reductions resulting from its Decision relate only to the years (or part years) the individual lessees owned their flats.

5. The Respondent has not shown that relevant expenditure exceeds the above sums in the years 2014-2020 inclusive.

6. The Tribunal orders the reimbursement of fees in the sum of £300 paid by Applicants.

7. The Tribunal allows the Applicants' applications under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its cost in relation to the application from the Applicants by way of service charge or administration charge.

Preliminary Issues

8. The case had been listed for a video hearing on 12 November 2020. On the day before that hearing, the Respondent (Mr Holdcroft) wrote to the Tribunal to say that he would be unable to take part due to a hearing issue. On the day there was no appearance by one of the Applicants, Mr Knott, with information that he had been taken into hospital the evening before.

9. The case was adjourned and the views of the parties were sought as to the best way forward. The Tribunal indicated in a message sent to the parties that a video hearing was still the preferred way forward and suggested some ways that Mr Holdcroft may be enabled to take part and made an offer of a practice experience of a video hearing. Failing the ability of Mr Holdcroft to take part in a video hearing, views

were requested on a socially distanced hearing or a Decision by the Tribunal on the papers with a requirement for the parties to submit further documentation requested by the Tribunal.

10. The Applicants responded that Mr Knott was at home, but awaiting further in-patient treatment. Both Applicants would be willing to have a video or physical presence hearing, but if Mr Holdcroft was "able to show that his hearing aids make it difficult for him to hear online, and the Tribunal feels that a decision on paperwork alone would be the best and easiest outcome, we will accept this without question." They indicated that they would be willing to answer any further questions the Tribunal would like to put in an email and to send further documents.

11. Mr Holdcroft responded. He attached letters from a medical source detailing his hearing issues, including one expressing difficulties communicating with him by telephone. He said that he would be unable to take part in a video hearing and gave reasons why he could not be assisted to do so.
"The Tribunal should expediently read all papers and act as you see it! biased as it may be; but we want an end to this farce. The lease should rule not this Tribunal! The Tribunal has already been told by both Applicant and Defence that we agree to a Written Representation, as this was in your own papers as a question and answered by both parties in favour of written representations! And does not need further ratification as you claim! I therefore fail to see your reluctance to properly read the submissions and ask further any questions necessary. The written word cannot be denied later. Therefore, it is the best format in the present climate to move this matter forward."

12. Mr Holdcroft went on to say that there were health reasons why a physical hearing should not be considered.

13. The Tribunal agrees with the parties that the only sensible way forward, given what is detailed above, is a Decision on the papers. The Tribunal asked a number of written questions of the parties to be supported by any relevant documentation.

14. The Applicants responded to the questions asked of them, but the Respondent refused to do so, despite what he said above.

Directions

15. Directions were issued on various dates.

16. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration and later, as detailed, asked a number of questions of the parties in writing, the answers to be supported by documentation where relevant.

17. This determination is made in the light of the documentation submitted in response to those directions and questions.

18. The Tribunal has regard in how it has dealt with this case to its overriding objective: The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

    Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal

with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

. (a) exercises any power under these Rules; or

. (b) interprets any rule or practice direction.

(4) Parties must:

. (a) help the Tribunal to further the overriding objective; and

. (b) co-operate with the Tribunal generally.

Issues Relating to the Demands

19. The Applicants raised a number of issues.

20. The relevant law is set out in Sections 20B, 21B and 21 Landlord and Tenant Act 1985 and Sections 47 and 48 Landlord and Tenant Act 1987 and the cases to which the Tribunal will refer.

21. The relevant statute law is set out in the Annex below.

Section 20B Landlord and Tenant Act 1985

22. Under Section 20B of the 1985 Act, if any of the costs taken into account in determining the amount of the service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, the tenant is not liable to pay those costs, unless during the 18-month period 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.

23. A cost is incurred either on the date a landlord receives a demand to pay for the relevant cost, or the landlord makes payment of the costs, whichever happens first: ***OM Property Management v Thomas Burr*** *[2013] EWCA Civ 479*.

24. Section 20B(1) applies to interim demands also: ***Skelton v DBS Homes (Kings Hill) Limited*** *[2017] EWCA Civ 1139*.

25. *T*he notification to be provided to leaseholders under Section 20B (2) must state a figure for the costs which have been incurred, even if that figure is an estimate and later turns out to be wrong. Landlords could protect themselves by stating the highest figure that they thought that the costs incurred might have come to. The notice has to inform the leaseholders that they would be required to pay a service charge in respect of the costs in question, but does not need to tell them exactly what that service charge would be (e.g. estimates will suffice): ***London Borough of Brent v Shulem B Association Ltd*** *[2011] EWHC 1663 (Ch)*.

26. To be valid, the Section 20B(2) notice must state :-

- A figure for the costs which have been incurred, even if that figure is an estimate and later turns out to be wrong (it is best to over-estimate as long as that is a realistic estimate);
- The total of the landlord's costs, e.g. the entire block costs incurred, and not just the individual leaseholder's share (although, where possible, it would be advisable to do both);
- That those costs have been incurred during that specified relevant financial period; and
- Advise that the leaseholder would be subsequently required under the term of their lease to contribute towards such costs by payment of a service charge.

27. *22. The demands for balancing charges, on the other hand, related to costs that had been incurred. The balancing charges represented the Maintenance Adjustment provided for by paragraph 3(b) of the Fourth Schedule to the lease (see paragraph 8 above), ie the amount by which "the expenditure estimated as likely to be incurred in the Maintenance Year by the Company for the purposes mentioned in the Fifth Schedule" fell short of the actual expenditure in that year. One possible application of section 20B(1) in relation to these provisions of the lease would be to treat as "the relevant costs taken into account in determining the amount" of the balancing charges the whole of the actual expenditure for the year, since that is what the Maintenance Adjustment is expressed to relate to. The reality, however, is that the balancing charges simply reflect the costs incurred after the amounts of the advance payments received by the landlord for the year in question have been used up, and in my judgment it is those costs, therefore, that are material for the purposes of section 20B(1); so that the tenant would not liable to pay a balancing charge in respect of any of such costs as were incurred more than 18 months before the demand. Any amount that was payable and was paid as an advance payment would be unaffected. To apply the subsection in this way accords with the approach of the court in* ***Gilje****:*

Holding and Management (Solitaire) Limited v Sherwin *(2010) UKUT 412 (LC).*

28. Documents could not amount to demands or notification of costs incurred under Section 20B when they consisted of

- A single sheet demanding a global amount, which *did not appear to be certified in accordance with the lease or to contain the statement of the tenant's rights and obligations.*
- An undated schedule addressed to a RTM company which *was not certified as required by the lease, and did not set out the tenant's rights and obligations as required by section 21B of the Landlord and Tenant Act1985.*
- *A demand, which did not itemise the charges; was a single sheet, was not certified and did not contain the requisite information.*
- A demand for the estimated service charges, where *it did not inform the tenant that charges have been incurred and was a demand for service charges on an estimated basis. It was not a notice that complies with section 20B(2) of the Landlord and Tenant Act 1985.*

*The fact that the lessees were made aware that a charge would be made for that period, by the RTM schedule and by the 2017 demand, does not amount to compliance with section 20B (**Skelton v DBS Homes (Kings Hill) Limited** (2017) EWCA Civ 1139 paragraph 18: "it is not enough under section 20B that the tenant has received the information that his landlord proposes to make a demand": **Cookson v Assethold Ltd*** (2020) UKUT 115 (LC).

29. **Hayes Point** (LVT/CH/SC/32) 20 April 2012 paragraph 344: s.20B(2) has a number of disparate elements: there needs to be a date when the costs were incurred, that those costs have been incurred, the tenant must be notified in writing that the costs have been incurred and he must be notified that he would subsequently be required under the terms of the Lease to contribute to them by payment of the service charge.

Gilje v Charlesgrove Securities Ltd [2004] 1 All ER 91
Section 20B does not apply in cases where a (1) a leaseholder is required to make an on account payment against an estimated bill and (2) the final cost to the Leaseholder does not exceed the amount which they paid, or was asked to pay, on account. "*Section 20B of the Act has no application where (a) payments on account are made to the lessor in respect of service charges, and (b) the actual expenditure of the lessor does not exceed the payments on account, and (c) no request by the lessor for any further payment by the tenant needs to be or is in fact made.*" "*The policy behind section 20B of the Act is that the tenant should not be faced with a bill for expenditure, of which he or she was not sufficiently warned to set aside provision. It is not directed at preventing the lessor from recovering any expenditure on matters, and to the extent, of which there was adequate prior notice.*"

London Borough of Islington v Abdel-Malek LRX/90/2006 guides that the notification required under Section 20(2) is in respect of costs that have been incurred and not costs that are to be incurred. "*This requires the appellant to prove two things in order to show that the LVT reached a wrong decision. Firstly, that such relevant costs had been incurred by the date of the notice and, secondly, that the notice itself stated this to be the case.*"

Brent LBC v Shulem B Association [2011] EWHC 1663 (Ch)
If a **demand** for payment is not a **valid demand** under the terms of a Lease, it is also not a demand for payment under the requirements of Section 20B(1) of the Landlord and Tenant Act 1985. However, if certain conditions were met, then a demand for payment which was not contractually valid might serve as **valid notification** of cost under Section 20B(2). *"Accordingly, my conclusion as to interpretation of section 20B(2) is that the written notification must state a figure for the costs which have been incurred by the lessor. A notice which so states will be valid for the purpose of subsection (2) even if the costs which the lessor later puts forward in a service charge demand are in a lesser amount. Secondly, the notice for the purposes of subsection (2) must tell the lessee that the lessee will subsequently be required under the terms of his lease to contribute to those costs by the payment of a service charge. It is not necessary for the notice to tell the lessee what proportion of the cost will be passed on to the lessee nor what the resulting service charge demand will be."*

Johnson v County Bideford [2012] UKUT 457 (LC)
There is a distinction between a demand which was contractually invalid and one which failed to comply with the requirements of the legislation, here sections 47 and 48 of the Landlord and Tenant Act 1987. The Upper Tribunal decided that a demand which did meet the requirements of sections 47 and 48 was still a valid demand for the purposes of Section 20B.

OM Property Management Ltd v Burr [2013] EWCA Civ 479:
First as a matter of ordinary language, there is an obvious difference between a liability to pay and the incurring of costs. As a matter of ordinary language, a liability must crystallise before it becomes a cost.
Secondly, the difference between a liability to pay and the incurring of costs is recognised by the draftsman in section 20B(1) itself. Where he wishes to refer to a liability, he does so: note the words "the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred." It is significant that the phrase "relevant costs" is defined in section 18(2) as "the costs or estimated costs incurred or to be incurred". It is not defined as "the liability or estimated liability for costs. Similarly, section 20B(1) does not say "if any liability for any of the relevant costs is 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 that liability so incurred."
Thirdly, section 19(2) provides strong support for the view that costs are incurred only when they are paid (or when an invoice or other demand for payment is submitted by the supplier or service provider) and not when services are provided or supplies are made. The subsection draws a distinction between (i) what is to happen before the relevant costs are incurred and (ii) what is to happen after they have been incurred. Section 20B deals with (ii). The significance of section 19(2) in relation to relevant costs that have been incurred is that it provides in relation to such costs that any necessary adjustment to the service charge shall be made by "repayment, reduction or subsequent charges or otherwise". Such an adjustment of the service charge to reflect the costs that have been incurred can only be made after the amount of the costs has been ascertained (usually by the submission of an invoice or other demand for payment). In other words, the

incurring of costs entails the existence of an ascertained or ascertainable sum which is capable of being adjusted by repayment, reduction etc. The mere provision of services or supplies does not without more entail anything which is capable of being adjusted in this way.
On the other hand, as section 19(2) makes clear, there is a different regime in relation to estimated costs before they are incurred. The landlord or management company is entitled to reflect reasonable estimated costs in the service charge and the statute makes no provision for adjustment of estimated costs.
In my view, therefore, costs are not "incurred" within the meaning of section 18, 19 and 20B on the mere provision of services or supplies to the landlord or management company. Like the Upper Tribunal, I do not find it necessary to decide whether costs are incurred on the presentation of an invoice (or other demand for payment) or on payment. This interpretation accords with the natural and ordinary meaning of the words and is strongly supported by section 19(2).

Skelton v DBS Homes (Kings Hill) Limited [2017] EWCA (Civ): *The date on which the "demand for payment" was served was the date when the demand became fully valid. Section 20B applied to a demand for a payment on account because the definition of "service charge" encompassed costs to be incurred as well as costs which had been incurred. The amounts of any payments must be reasonable.*
Arden LJ**:** "17. In my judgment, it is clear from the definition of "service charge" in section 18 that section 20B applies to service charges in respect of costs to be incurred as much as costs that have been incurred. In my judgment, the judge was wrong to hold otherwise on the basis of ***Gilje***. In ***Gilje*** the landlord served demands for 1999 and 2000 before incurring any costs. The landlord had spent less than the amounts demanded, and there was no balancing charge. The argument was that none of the on-account payments was payable. Etherton J held that there was no "metamorphosis" from an on-account demand and a demand for actual costs once costs had been incurred. Section 20B did not apply where the tenants made on-account payments of their service charges, the landlord's actual expenditure did not exceed the estimated amount on which the service charges were based and the landlord did not serve any further demand on the tenant. There was then no "demand for payment" after the incurring of costs to which section 20B could apply. But that reasoning does not assist in this case because the demand was only validly served after the costs were incurred.

18. Further, in my judgment, it is not enough under section 20B that the tenant has received the information that his landlord proposes to make a demand. As Morgan J held in ***London Borough of Brent v Shulem B Association Ltd*** [2011] EWHC 1663, [53], there must be a valid demand for payment of the service charge. In that case, the landlord had served several different demands for payment but they were all invalid because they did not comply with the terms of the parties' contract. The content of the alleged demand did not comply with the service charge provisions of the lease. So there was no valid demand for the purposes of section 20B(1) of the 1985 Act…

20. Ms Gourlay also draws to our attention that retrospective correction of a demand is possible in certain situations. Thus, in **Johnson v County Bideford** [2012] UKUT 457 (Lands Chamber), the landlord had failed to comply with the requirement in section 47(1) of the 1985 Act to provide his name and address. The Upper Tribunal held that, by serving fresh demands, the landlord had provided the

information required by section 47(2) to validate the original demands. Section 47(2) allows for this possibility. Ms Gourlay submits that **Johnson v County** is about statutory validity not contractual validity. I agree. We have not been shown any authority for the proposition that as a matter of contract law the delivery of the estimate validated the demands in this case as of the date of the demand.

21. If in the situation in this case, the tenant receives a windfall, that is the result of the landlord not having complied with the terms of the lease for service of a valid demand."

Roberts v Countryside Residential (South West) Limited (2017) UKUT 386 (LC):

66. The Tenant has never argued that the costs were incurred more than 18 months prior to each service charge demand, the demands being based on estimated expenditure. The fact that invoices may have been paid and therefore expenditure incurred more than 18 months after the invoice was sent does not alter the fact that the service charge demands based on estimated expenditure were not made more than 18 months after the service charges were incurred. Accordingly, a demand for service charges was made pursuant to s.20B(1) not more than 18 months after the service charges were incurred. It follows that s.20B does not apply in this case and provides no grounds for the Tenant not to pay the service charges in issue in this case (2009 to 2015).

70. Applying these principles to the present case, the annual Service Charge Statements of Account specify the amount of expenditure which has been incurred and do so in sufficient detail to be able to determine if any service charge demanded relates to those costs. Further, all that is required is that the tenant is notified no later than 18 months after the date that the costs have been incurred that they have been incurred. There is no basis in s.20B(2) for asserting that the notice has to specify each and every date when a particular item of expenditure has been incurred. Further, in my judgment the provision of a 'Service Charge Statement of Account' makes clear what expenditure and income will be taken into account for the purposes of the service charge and the resulting surplus or deficit. If there were a deficit and a balancing charge were demanded pursuant to paragraph 9 of the Eighth Schedule to the Lease, it would clearly relate to the net deficit specified in the Statement of Account. It is not necessary for the Landlord to go further and specify what sum the Tenant will have to pay.

71. Accordingly, if it were necessary to decide this point, the provision of the annual Service Charge Statements of Account would satisfy s.20B(2).

30. In **No. 1 West India Quay (Residential) Limited v East Tower Apartments Limited** (2020) UKUT 163 (LC), the Upper Tribunal advised:

1. *The purpose of section 20B is to ensure that a leaseholder (or prospective leaseholder) is not taken by surprise by an unexpected bill for services or works carried out in earlier years, as Etherton J explained in* ***Gilje v Charlegrove Securities Ltd*** *[2003] EWHC 1284 (Ch) at [27]:*
"…the policy behind s.20B of the Act is that the tenant should not be faced with a bill for expenditure, of which he or she was not sufficiently warned to set aside provision. It is not directed at preventing the lessor from recovering any expenditure on matters, and to the extent, of which there was adequate prior notice."

2. *Mr Bates submitted that the section should not be allowed to become a trap for the unwary or unfortunate landlord, and suggested that, by introducing the requirement that a demand for the purpose of section 20B(1) had to be a contractually valid demand, the law had taken a wrong turn in* ***Brent v Shulem B****. He described the more recent decision of the Court of Appeal in* ***Skelton v DBS Homes (Kings Hill) Ltd*** *[2017] EWCA Civ 1139 as a "complicating factor". Unlike* ***Brent v Shulem B, Skelton*** *binds this Tribunal, and Mr Bates realistically did not press his submission that it should be distinguished. He therefore acknowledged that his appeal on issue 2 ought to be dismissed and that he should be left to pursue it at higher levels.*

Section 21B Landlord and Tenant Act 1985

31. Under Section 21B of the 1985 Act, a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. A tenant may withhold payment of a service charge which has been demanded from him if that is not complied with in relation to the demand.

32. The following cases provide guidance:

Tingdene Holiday Parks Ltd v Cox and others [2011] UKUT 310 (LC): The summary of rights and obligation required by Section 21B of the Landlord and Tenant Act 1985 must be sent with any demand for payment of a service charge. In this case the Landlord had sent the summary a number of days after the demand and this was not taken to have met the requirement of the Act.

MacGregor v BM Samuels Finance Group Plc [2013] UKUT 471 (LC): A Landlord may retrospectively comply with statutory provisions, such as Sections 47 and 48 of the Landlord and Tenant Act 1987, by reissuing a further invoice or notification as the situation requires. A distinction is made between demands which are only invalid in respect of statutory provisions, and demands which are contractually invalid, as in the case of **Brent LBC v Shulem B Association** [2011] EWHC 1663 (Ch).

Roberts v Countryside Residential (South West) Ltd (2017) UKUT 386 (LC):
"The purpose of the requirement in s.21B(1) of the 1985 Act that a demand for service charge include a summary of the tenant's rights and obligations is to inform the tenant as to what his rights are and what action he may take to protect them (and likewise inform him of his obligations)."
"It is right that a service charge demand that fails to comply with the 2007 Regulations can immediately be re-served…"

Sections 47 and 48 Landlord and Tenant Act 1987

33. Under Section 47 and 48, a Service Charge demand is not payable if it does not contain the name and address of the landlord at which notices (including notices in proceedings) may be served on the landlord by the tenant.

34. The following cases provide guidance:

Beitov Properties Limited v Elliston Bentley Martin [2012] UKUT 133 (LC): Payment of a Service Charge demand was not due because the demand did not include the name and address of the Landlord as required by Section 47 of the Landlord and Tenant Act 1987.

MacGregor v BM Samuels Finance Group Plc [2013] UKUT 471 (LC): A Landlord may retrospectively comply with statutory provisions, such as Sections 47 and 48 of the Landlord and Tenant Act 1987, by reissuing a further invoice or notification as the situation requires. A distinction is made between demands which are only invalid in respect of statutory provisions, and demands which are contractually invalid, as in the case of **Brent LBC v Shulem B Association** [2011] EWHC 1663 (Ch).

Pendra Loweth Management Limited v Mr & Mrs North [2015] UKUT 0091 (LC), the Tribunal recorded with approval:

54. Section 60(1) of the 1987 Act contains a definition of "landlord" applicable to s. 47 as meaning "the immediate landlord"; there is no statutory extension of the expression "landlord" to include any person with the right to enforce the payment of a service charge (as there is in s. 30 of the 1985 Act).

55.In this case the obligation on the Owner or lessee under clause 10 of the lease was to pay the various charges to the Management Company. The obligation to pay the Vendor or landlord arose only if he had stepped in to carry out the Management Company's obligations following a default in performance of those obligations, as provided for by clause 47(a). There had been no such default. The sanction in s. 47(2) therefore had no application in this case, because the sums in issue are not payable to the landlord and the demand for their payment was therefore not a "demand" for the purpose of s. 47.

56.Alternatively, the only effect of the sanction, if it were to be applicable, would be to cause the charges not to be "due from the tenant to the landlord". Since the charges were due to the Management Company the lessee's obligation to pay them would be unaffected.

Cannon v 38 Lambs Conduit LLP (2016) UKUT371 (LC):

32. Section 47 has a quite different purpose, as I have explained above. That purpose is achieved by requiring the landlord, as a pre-condition to successful enforcement of the service charge, to provide the tenant with his name and address in writing. Unless and until that is done, then the charge is not 'due'. But it does not follow that where the charge is not due, the F-tT cannot consider an application under section 27A. As long as there is a service charge, the F-t T may be asked, and required to answer, the questions that naturally arise. If a demand has been made which does not comply with section 47, but the F-tT takes the view, having considered the application, that the tenant is otherwise obliged to make payment under the service charge, it retains jurisdiction. It may determine that the charge (which it may quantify if required to do so) is payable if and only if a section 47 compliant demand is served by the landlord

on the tenant.

Section 20 Landlord and Tenant Act 1985 Limitation of service charges: consultation requirements

35. The provisions of section 20 apply where a landlord either enters into a qualifying long-term agreement or a contract to carry out qualifying works.

36. They provide that if the consultation requirements have not been complied with or dispensed with by a Tribunal, the amount of the relevant costs incurred on carrying out the works or under the agreement which may be recovered through the service charge is limited to the "appropriate amount". The application of the provisions is regulated by the *Service Charges (Consultation Requirements) England) Regulations 2003 – SI 2003/1987).*

37. "The appropriate amount is –

> in respect of qualifying works, an amount which results in the relevant contribution of any tenant exceeding £250.

Reserve Funds

38. The Tribunal first makes the point, relevant to all of its findings in respect of the Reserve Fund, that it is the terms of the lease which are paramount when determining the rights and duties of the Respondents in respect of the Reserve. The lease is the contractual agreement of the parties. Nowhere else is the term "Reserve Fund" defined specifically for these parties. Whilst the RICS Code gives guidance to landlords about Reserve Funds, it is guidance only and cannot alter the clear terms of a lease. It is, however, very important that a landlord complies with law and with the RICS Code in its identification of particular items of future expenditure, their costing and the calculation of the sums required proportionately from the tenants to meet those future costs, together with the holding of the sums gathered in trust and earning interest and the regular assessment of the composition and costing of the Reserve Fund plans.

39. A Reserve Fund ensures that tenants effectively save for future costs so that there are no "nasty surprises", but also that the costs of items are shared by those who use or have the benefit of them; as an example, the cost of a roof included within a Reserve Fund will be shared proportionately by 2 tenants in proportion to the number of years of their enjoyment. That said, tenants do not want, and should not be required, to pay more into a Reserve Fund than is reasonably required.

40. In reaching its current Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. Of particular note to the issues here are the following extracts from the Code:

> **7.5 Reserve funds (sinking funds)**
> The lease often provides for the landlord to make provision for future expenditure

by way of a 'reserve fund', or 'sinking fund'. You should have regard to the specific provisions within the lease that may, for example, provide for a general reserve fund(s) for the replacement of specific components or equipment.

The intention of a reserve fund is to spread the costs of 'use and occupation' as evenly as possible throughout the life of the lease to prevent penalising leaseholders who happen to be in occupation at a particular moment when major expenditure occurs. Reserve funds can benefit both the landlord and leaseholder alike by ensuring monies are available when required for major works, cyclical works or replacing expensive plant.

It is, therefore, considered good practice to hold reserve funds where the leases permit. If the lease says the landlord 'must' set up a fund, then this must be done. Neglecting to have a fund when the lease requires one could be deemed to be a breach of the terms of the lease. No attempt to collect funds for a reserve fund should be made when the lease does not permit it.

Where there is no provision in the lease for reserve funds, there is no entitlement to create or hold one, and any money collected for such a purpose can be demanded back by the leaseholders. In these circumstances, or where the current provisions are likely to prove inadequate, you should make leaseholders aware and encourage them to make their own long-term saving provisions towards the estimated expenditure. You should also consider recommending to your client that consideration be given to discussing with leaseholders the benefits of a variation to the leases to allow for a reserve fund to be set up.

You should also recommend your clients to have a costed, long-term maintenance plan that reflects stock condition information and projected income streams. This should
be made available to all leaseholders on request and any potential purchasers upon resale.

The level of contributions for simple schemes should be assessed with reference to the age and condition of the building and likely future cost estimates. On more complicated developments, the assessment should reference a comprehensive stock condition survey and a life-cycle costing exercise, both undertaken by appropriate professionals.

The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy agreement does not make any other provision, is to take the expected cost of future works, including an allowance for VAT and fees, and divide it by the number of years which may be expected to pass before it is incurred. The level of contributions should be reviewed annually, as part of the budget process, and the underlying survey information should be reviewed at appropriate intervals. This will vary for each scheme depending on complexity, age, condition and the relative size of funds held.

If after the termination of any lease there are no longer any contributing leaseholders, any trust fund shall be dissolved and any assets comprised in the fund immediately before dissolution shall, if the payee is the landlord, be retained by them for their own use and benefit, and in any other case, be transferred to the landlord by the payee. Again this is subject to any express terms of the lease relating

to distribution, either before or at the termination of the lease.

41. **23 Dollis Avenue (1998) Ltd v Vejdani** [2016] UKUT 365: A failure to comply with the consultation requirements under ss.20, 20ZA Landlord and Tenant Act 1985 does not necessarily mean that an on account demand is unreasonable; the statutory limit on recoverable charges applies only once the works have been carried out.

Inspection and Description of Property

42. The Tribunal did not inspect the property. The property is said to consist of 15, one and two bedroom, conversion flats, and 6 newbuild, one and two bedroom flats in two blocks of three flats. The whole development is said to be Grade 2 Listed.

The Law

43. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.
44. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

45. A tenant may withhold payment of a service charge which has been demanded from him if (the requirement to provide the summary) is not complied with in relation to the demand. "Where a tenant withholds a service charge under this section, any provisions of the lease in relation to non-payment or late payment of service charges do not have effect to the period for which he withholds it"

46. Under Section 20B of the 1985 Act, if any of the costs taken into account in determining the amount of the service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, the tenant is not liable to pay those costs, unless during the 18-month period 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.

47. The Tribunal has the power to decide about all aspects of liability to pay administration charges and can interpret the lease where necessary to resolve disputes or uncertainties. Schedule 11 of the Commonhold and Leasehold Reform Act 2002 defines administration charges as sums payable in addition to rent inter alia in respect of failure by a tenant to make a payment by the due date to the landlord. The Tribunal can decide by whom, to whom, how much and when an administration charge is payable. An administration charge is only payable insofar

as it is reasonably incurred. The Tribunal therefore also determines the reasonableness of the charges. Any administration charge demanded by the landlord must be reasonable in order for the landlord to recover the charge, and must also be accompanied by a summary of the leaseholder's rights and obligations in respect of administration charges. If the summary is not included, the charge is not regarded as being payable unless, and until, the demand is made with the summary of rights and obligations. "A tenant may withhold payment of an administration charge which has been demanded from him if (the requirement to provide the summary) is not complied with in relation to the demand." "Where a tenant withholds an administration charge under this section, any provisions of the lease in relation to non-payment or late payment of administration charges do not have effect to the period for which he withholds it."

48. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.

49. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

7.10 Accounting for service charges

An annual statement should be issued to leaseholders following the end of each service charge period, giving a summary of the costs and expenditure incurred and a statement of any balance due to either party to the lease. It is also recommended that explanatory notes are included. The accounts should be transparent and reflect all of expenditure in respect of the account period.

50. **Enterprise Home Developments LLP v Adam** (2020) UKUT 151 (LC):

27. In Yorkbrook Investments Ltd v Batten (1986) 18 HLR 25 Wood J, giving the decision of the Court of Appeal, addressed the issue of the burden of proof on the reasonableness of service charges. At page 34 he said this:

"Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify

the item complained of and the general nature – but not the evidence – of his case. No doubt discovery will need to be ordered at an early stage, but there should be no problem in each side knowing the case it has to meet, providing that the court maintains a firm hold over its procedures. If the tenant gives evidence establishing a prima facie case then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions."
28. Much has changed since the Court of Appeal's decision in Yorkbrook v Batten but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions.

51. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** [2015] UKUT 0333 (LC)).

52. Where a party does bear the burden of proof:
"*It is common for advocates to resort to [the burden of proof] when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law… It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out…: the burden of proof is a last, not a first, resort.*" (Sedley LJ in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38 at paragraph 86).

53. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost*.

54. The relevant statutory law is set out in the annex below.

Management

55. The property is managed for the owner by Newynn Court Management Company Limited, a party to the lease. The Management Company stands in the place of the Landlord, Mr R F Holdcroft. As Mr Holdcroft says: "*The service charge has been run from start to finish by the Management Company as set up by the said Solicitors and on* ***BEHALF OF ALL MEMBERS****. Not just two.*" and *"Any debt or fines imposed will fall on the Management Company not Holdcroft as Landlord*

nor anything else, as there has never been a complaint asking the Landlord to take over as per the lease; if any member was / is unhappy."

The Lease

56. The lease in the bundle is dated 4 December 2014 and was made between Robert Fraser Holdcroft as lessor and James Cocker Knott as lessee. The Tribunal understood this lease to be representative of all leases at the property.

57. The relevant parts of the lease follow:

Clause 6.1 The Service Charge

1/21 of the cost of the Annual Expenditure of the car parking areas accesses footpaths service media and I/ I8 of the cost of the Annual Expenditure of Building A

Clause 6.2 Annual Expenditure

6.2.1 all costs expenses and outgoings whatever reasonably and properly incurred by the Landlord during a Financial Year in or incidental to providing all or any of the Services and

The Management Company

Clause 13. The Management Company covenants with the Landlord and (subject to payment of the Service Charge) with the Tenant to observe and perform the obligations set out in the Fourth Schedule

THIRD SCHEDULE

Part II

The Tenant covenants with the Landlord and the Management Company

15. To pay to the Management Company the Service Charge as specified in the Fifth Schedule

20.4 To comply with any reasonable rules that the Management Company may make at any time for the good management of the Estate

FOURTH SCHEDULE

The Management Company covenants with the Landlord and Tenant:
I. To keep the Estate in good and substantial repair and condition at all times

2. To paint and decorate all exterior & interior paint work and surfaces of the Estate usually painted (other than inside the apartments) at least once in every seven years in a good and workmanlike manner

3. To keep the courtyard area well surfaced clean and adequately lit at all times

4. To keep the lobby stairways corridors and lift clean and adequately lit and heated

5. To keep all parts of the Estate not included in any apartment lease and all service conducting media not serving a specific apartment in good repair and decorative order at all times

6.1 To insure the Estate against loss or damage by fire and all such other risks as required from time to time by the Council of Mortgage Lenders to its full reinstatement value in the name of the Landlord and the Management Company with an insurance office of repute and to produce to the Tenant and the Management Company on demand (but not more often than once a year) the policy of insurance together with the receipt for the last premium due

6.2 If the Estate is damaged or destroyed by an insured risk as soon as practical to lay out the insurance money in the repair and reinstatement of the Estate and if for any reason it is impossible or impractical to repair or reinstate then the insurance money shall be held in trust for the Landlord and the Tenant and the tenants of the Estate in such proportions as shall be agreed or settled by arbitration

FIFTH SCHEDULE

Service Charge

I. The Tenant shall pay to the Management Company a sum on account of the Service Charge on the Ist of March in each year (the Estimated Service Charge)

2. The Estimated Service Charge shall be a sum equivalent to the Service Charge for the previous year provided that in the first year of the Term it shall be £300

3. As soon after the 1 March as possible the Management Company shall prepare and provide to the Tenant an account of the Service Costs in the preceding year and shall supply a copy to the Tenant (and shall if required produce the relevant invoices and receipts) and at the same time shall specify the amount of the Service Charge payable taking into account the Estimated Service Charge already paid. Where the Estimated Service Charge is greater than the Service Charge credit shall be given but if it is less the balance shall fall immediately due

4. The Service Costs shall be the sums expended by the Management Company in

4.1 Complying with its obligations under this Lease and the other leases of the Estate

4.2 The fees and disbursements paid to any managing agents accountants solicitors or other professional people in respect of the maintenance and management of the Estate or the provision of legal accountancy or other professional services relating to preparation of accounts

4.3 Any rates or taxes payable in respect of the Estate that are not attributable to any apartment

4.4 The cost of providing any other service to the Estate that the Management Company in its reasonable discretion deems desirable for its good management and for the benefit of the tenants

4.5 If the Management Company in its absolute discretion so decides a reasonable additional sum to be held towards the cost of future maintenance repair or renewal of any part of the Estate provided that any sums so paid shall be held in a separate account on trust for the tenants of the Estate

5 The Management Company covenants that if at the end of the service account year the service Costs are less than the total Service Charges collected for that year credit will be given in the following service account year and an adjustment to the Service Charges for that following year made

SIXTH SCHEDULE

5. Whenever the Tenant is due to pay money to the Landlord or the Management Company it shall be payable on demand and if it is more than twenty one days overdue it shall carry interest at 4% over the base lending rate of the Management Company's bankers from time to time from the date it fell due to the date of payment

58. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

59. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

60. The hallmarks of a demand for payment is that it contains words which make it clear that a payment is being sought and ensures that the amount that is being required to be paid is sufficiently clear: **Marine Court Residents Association v Rother District Investment Ltd** CHI/21UD/LSC/2009/0094, LVT.

61. In **Chowdhury v Bramerton Management Co Ltd** (2014) UKUT 0260 (LC):

23. *As to the first question, the appellant pointed out that the statement of account was not a demand. That is not an attractive argument since although the word "demand" was not used, the statement identified the sums which were "due", aggregated them to produce a "balance to pay" and provided details of how payments could be made. In any event, clause 4(4) of the lease does not render the quarterly service charge instalments payable on demand and provides only that the lessor should give notice in writing to the lessee prior to any quarter day of the yearly sum to be paid by those instalments. The statement of account of 11 November 2011 clearly, although belatedly, performs those functions.*

The Upper Tribunal advised that the general rule is that, where the lease does not deal expressly with the consequences of late service of a service charge demand, time is not of the essence. It would then be a question of construction of the lease as to whether the arrears would become due and payable on the next payment date or following the expiry of a reasonable time after notification of the sum claimed. "*What is unarguable and was not suggested by the appellant, was that a failure to give notice would relieve the appellant of her liability to pay the quarterly service charge instalments at all.*"

"*The possible consequences of late service of notice of the sum claimed on account seem to me to be either that the arrears might not become due and payable until the next quarter day (by analogy with the reasoning in South Tottenham Land Securities Ltd v R & A Millet (Shops) Ltd [1984] 1WLR 710 (a rent review case), or that the accumulated arrears might not become due until a reasonable time after notification of the sum claimed. Of these alternatives the language of the lease seems to me to point more strongly to the first, because notice was required to be given "prior to any quarter day" in order to trigger a liability to pay the sum notified on that quarter day. Assuming that approach to be correct, the three accumulated quarterly payments would have become payable on 25 December 2011 at the same time as the instalment falling due for the first time on that date. If, alternatively, the instalments were only to become payable after the lapse of a reasonable period, it nonetheless seems to me that the period of approximately seven weeks between the service of the statement of account and the commencement of the proceedings meant that the sums recorded in the statement of account had undoubtedly become due by the time the claim form was issued.*"

62. In **Scottish & Newcastle Plc V Raguz** [2008] UKHL 65, the House of Lords held:

56. It was common ground that the effect of the authorities (in particular United Scientific Holdings Ltd v Burnley Borough Council [1978] AC 904, 934-935 and South Tottenham Land Securities Ltd v R & A Millett (Shops) Ltd [1984] 1 WLR 710) is that (at any rate under a relatively primitive form of rent review clause) the revised rent notionally falls due on the quarter day on which it is payable under the lease, but in practice only the old, unrevised rent ("the passing rent") can be demanded until the new, revised rent has been ascertained; the balance then falls due on the first quarter day after its ascertainment. Hart J summarised the position in his first-instance judgment [2006] 4 All ER 524, para 24:

"Under a typical upwards only rent review provision such as obtained in the present case, the rent capable of being demanded by the landlord will be limited

to the unreviewed rent so long as the review process has not been completed. Once, however, that process has been completed the reviewed rent will become payable retrospectively with effect from the review date and can be demanded by the landlord as from the rent day next following the completion of the review process."

57. Other rent review clauses, in more modern form, are more complex (and may provide for the payment of interest). Parliament must be supposed to have been aware that both rent review provisions and service charge provisions do now come in a variety of forms, but may also be supposed to have wanted to provide a reasonably simple and workable system, the operation of which would not depend on subtle points of construction of different forms of lease (compare, in relation to arbitration clauses, Fiona Trust & Holding Corporation v Privalov [2007] 4 All ER 951, paras 11-12).

Facts Agreed or Not in Issue

63. Mr Knott purchased his lease on 4 December 2014 and Ms Wenmouth in February 2017.

64. On 18 October 2018, the Respondent sent to the Applicants a demand for payment of service charge ("**Letter A**") in varying sums detailed for the years 2011-2012 to 2017-2018. there was a differentiation made between one-bed and two-bed apartments, the latter being £50 more each year than the former.

65. The year end was said to be 31 August.

66. The demand was not accompanied by a summary of rights and responsibilities.

67. The demand was accompanied by a document headed Newynn Court Management Company Service Charges 2017-2018 relating to Apartments 3 and 20 (the Applicants' apartments) and detailing a service charge rate of £500 (the sum shown for a two-bed apartment in Letter A for 2017-2018).

68. Total Expenditure was shown in the document headed Newynn Court Management Company Service Charges 2017-2018 as £12,237.85. A deduction of £4,9865.72 for Management Company Balance and £8,899.07 for Balance Carried Over and an addition of £2,997.07 for R Holdcroft Contribution and a Year End Balance of -£10,888.53.

69. Sums were shown for each apartment for Buildings Ins, Electricity, Accounts/Admin, Cleaning and Management of Works, and Additional Maintenance/Repairs, which added together as £582.75 per Applicant (or almost 1/21 of £12,375.85; actually 1/21 of £12,237.75).

70. The document does not say whether the expenditure arose from works relating to Building A, Building B or the car parking area.

71. The document shows payment of £235 by Flat 3.

72. This was the first demand for service charge payment made of either Applicant.

73. The Respondent sent to the Applicants **Letter B**, Accounts Summary, dated 2 November 2018. The Respondent indicated that 4.75% was now to be charged monthly for late payments. It stated a list of what payments were included within the charges sought, but did not signal any change from the one/two-bedroom apartment differentiation revealed in Letter A. It did set out details of "Additional Expenditure". The additional expenditure for the year 2017-2018 is totalled at £1928.25, the figure appearing on the document headed Newynn Court Management Company Service Charges 2017-2018 attached to Letter A.

74. The totals for Additional Expenditure for the years 2011-2012 to 2016-2017 respectively are £93.47, £635.81, £73.84, £869.57, £1,383.55, £362.

75. Letter B was accompanied by a document headed Newynn Court Management Company Limited Accounts 31.03.2016 – 31.08.2018, but this document appears to be only partially completed.

76. Letter B was not accompanied by a statement of rights and responsibilities.

77. Letter B was accompanied in the Bundle by a number of documents headed Newynn Court Management Company Service Charges for the years 2011-2012 to 2018-2019. These shared a similar format with the similarly named document accompanying Letter A.

78. **Letter C** is Headed Accounts Summary 2019/2020 and was sent 2 October 2019.

79. The year end was said to be August.

80. This demand was not accompanied by a statement of rights and responsibilities.

81. Letter C referred to a deficit and invited tenants to pay £116.35 to cover the deficit from the previous year and asked the Applicants to clear their arrears.

82. That demand was accompanied in the Bundle by documents headed Newynn Court Management Company Service Charges 2017-2018 relating to Apartments 3 and 20 (the Applicants') and detailing a service charge rate of £550.

83. The document does not say whether the expenditure arose from works relating to Building A, Building B or the car parking area.

84. **Letter D** is an email of 5 August 2020 from the Respondent seeking payments of £2,000 from each tenant towards a contingency and sinking fund for the painting and fire alarm replacements. It stated that any surplus funds would be repaid.

85. Letter D sought the views of the tenants on a precis of estimates from 2 contractors.

The Issues

The Applicants

86. The Applicants said that the charges detailed in letter A were not at the rate indicated at purchase.

87. There were no summary accounts.

88. They queried whether Section 20 consultation had been complied with.

89. There appeared to be an attempt to demand sums over 18 months old.

90. The document made a difference between 1- and 2-bedroom flats, which was not envisaged by the lease.

91. The month used was August not March. It was not biannual.

92. There was no summary of tenants' rights and obligations.

93. Letter B was again based on August to August.

94. There was a lack of clarity of information in relation to the contingency fund.

95. The letter again referred to rates for 1- and 2-bedroom apartments.

96. The demand was not biannual.

97. There were not supporting invoices.

98. Administration charges had been included wrongly because there was no summary of rights and responsibilities.

99. There was no summary of tenants' rights and obligations in respect of service charges.

100. There was a charge for accounts but no professional accountant had been used.

101. The demand in Letter C was not biannual.

102. There was a lack of clarity of information and supporting documents were not included.

103. Again, there were different rates for 1 and 2 bedrooms.

104. There was a charge for accounts, but no professional accountant had been used.

105. The letter sought to charge only space holders for car park works in contravention of the terms of the lease.

106. Administration charges were wrongly included because there was no summary of rights and responsibilities.

107. There was no summary of tenants' rights and obligations in respect of service charges.

108. Letter D was a request for £2000 for works in the autumn of 2020, but there had been no Section 20 consultation.

109. There was no address of the landlord.

110. There was no summary of tenants' rights and obligations.

111. Mr Knott paid £22.44 to the Respondent when he completed his purchase on 4 December 2014. He paid a further £800 in August 2017, basing the payment to approximate with £300 per year. He set up a standing order of £25 per month and continued this until May 2018. Still having received no service charge demand, he cancelled the monthly payment in May 2018. He paid a further £325 in December 2018, bringing his payments up to £300 per annum as he felt that the accounts and demand received in November 2018 were inadequate and not compiled legally or according to the lease. In April 2019, he paid £250, which was to represent £125 from himself and Ms Wenmouth for insurance and a further £125 for insurance from himself in April 2020.

112. He has never received formal notification of Service Charge amounts for a previous year.

113. Ms Wenmouth made no payment on purchase of her lease in February 2017 as her solicitor was unable to get details from Mr Holdcroft. She thought matters would be sorted out at the end of March in accordance with the lease. There was no demand in March 2017. She began to worry about falling into arrears, worked out for herself what was due and paid £271 to cover the period to end August 2017, not having received a reply from Mr Holdcroft to her email seeking his views. She heard nothing in response from the Respondent.

114. In April 2018 she reimbursed Mr Knott £125 for the payment he made on her behalf for insurance. Mr Holdcroft refused to accept that payment was made by her and treated the whole £250 sum as reducing Mr Knott's arrears.

115. She again paid, this time to the Respondent, the sum of £125 in March 2020 towards the insurance and asked Mr Holdcroft to tell her if the amount was incorrect. Again, he refused to accept a part payment.

116. Apart from Letters A, B, C and D, she believes that there must have been an email or letter in 2017 informing her that the Service Charge was going up from £400 p.a. to £450 p.a. She remembers this, but no longer has a copy of it. Mr Knott and 2 other leaseholders she asked have no memory of receiving it. She makes reference to £450 in an email to Mr Holdcroft of 30 May 2018. She paid no further service charge after August 2017 because she felt that a high increase set against low inflation could not be justified without accurate accounts to show why it was necessary.

117. She has never received formal notification of Service Charge amounts for a previous year.

The Respondent

118. The Respondent, via Mr Holdcroft, said that he could not send accounts until information had been received from solicitors. They had not sent him final purchase statements or details of service charge payments. Accordingly, he needed to start afresh and obtain copy leases from the Land Registry.

119. He had been dealing with a major insurance claim.

120. There was repainting to be done.

121. There was a gentleman's agreement to delay the accounts by Mr Knott.

122. Paragraph 20.4 of Part 2 of the Third Schedule gave the Respondent a right to make changes to the lease.

123. Tenants were under a duty to make payments in advance in accordance with the Third Schedule of the lease.

124. Notice and a demand for payments were issued at purchase and is a once only issue for costs throughout the 999 -year term.

125. Ms Wenmouth had her accounts within the 18 months' deadline for accounts.

126. In respect of Letter A, the management company was not set up until August and therefore the accounts were not finalised until then.

127. The charges are 1/18th of the cost of annual expenditure.

128. Summary accounts were attached to letter A.

129. Section 20 consultation is not applicable as the charge per tenant was £139.21.

130. There was interest from earlier years.

131. The service charge is not biannual; August was chosen as that was when the management company was formed.

132. Warning was contained within the lease details.

133. In relation to letter B, the Applicants were unwilling to contribute to a contingency fund.

134. All flats pay at the same rate.

135. August was chosen for the reasons stated. The charge is not biannual.

136. All supporting documents were sent to the Applicants and the Tribunal.

137. The accounts were produced by the management company.

138. In respect of letter C, the accounts were produced by the managing agent and therefore the charge for doing so is payable.

139. No charge was levied for the car park.

140. Administration charge is covered in the Fifth Schedule of the lease at paragraph 4.4.

141. The Applicants are members of the Respondent management company.

142. Mr Holdcroft has "*acted at all times for the Management Company with all its members in mind. Keeping costs to the minimum and legally as per the lease, making changes to lease rules to accommodate less fees and create time to search out and implement fair service charges. The cheapest in the Country I claim! For 21 units, and a listed Building to boot.*"

143. Any fault with the accounting for service charges lies at the door of the solicitors who set up the lease.

144. *"Holdcroft merely acts on behalf of all members. All members have been kept informed throughout and agreed with processes throughout. That's why they paid up when informed how their accounts stood with a copy of accounts issued. Not as now claimed."*

145. *"19 other people/votes want their service charges for the lowest possible price! So who the hell is this Tribunal to demand otherwise? Knott & Wenmouth are simply being pedantic without a care for others. Just what catastrophic event has happened to these two to justify this action???"*

The Tribunal

146. The Tribunal first looks at the lease provisions.

147. Essentially, the lease requires the tenant to make payment on 1 March each year of the Estimated Service Charge, a sum equivalent to the Service Charge for the previous year and, as soon as possible after 1 March, requires the landlord to provide the tenant with an account of the Service Costs for the previous year and, at that time, reconcile what is actually due with the estimated payment made on 1 March.

148. For the first year, i.e. the year to 1 March 2011, the Estimated Service Charge is £300.

149. The demand must be based upon 1/21 of the cost of the Annual Expenditure of the car parking areas accesses footpaths service media and I/ I8 of the cost of the Annual Expenditure of Building A.

150. The demand must be based upon the costs, expenses and outgoings reasonably and properly incurred by the Landlord during a Financial Year in or incidental to providing all or any of the Services, the Services being those listed in the Fourth and Fifth Schedules.

151. Whenever the Tenant is due to pay money to the Landlord or the Management Company it shall be payable on demand and if it is more than twenty one days overdue it shall carry interest at 4% over the base lending rate of the Management Company's bankers from time to time from the date it fell due to the date of payment, says paragraph 3 of the Sixth Schedule. For the purposes of the issues to be decided here, sums are due from the tenants on 1 March each year for the Estimated Service Charge and on the balancing date (depending upon the landlord demanding same as soon as possible after 1 March). The tenants are "*due to pay money to the Landlord or Management Company*" when such money is legally due in accordance with the lease and law. To summarise, the landlord/management company can charge interest where he/it has demanded money due in accordance with the lease and payable in accordance with the law.

152. The tenant's liability to pay the Estimated Service Charge is not dependent upon the landlord fulfilling its liability to provide the tenant with an account of the Service Costs for the previous year. Clearly there is an option for the tenant in that where a service charge is payable before the relevant costs are incurred, s.19(1) provides that no greater amount than is reasonable is so payable.

153. As the Upper Tribunal advised in the **Pendra Loweth** case:

> In *Warrior Quay* (*Warrior Quay Management Co Ltd v Joachim* LRX/42/2006) the management company (referred to in the decision as "WQMC") had failed to comply with an obligation to arrange for accountants to prepare an account and give certificates for the service costs each year. Rather than adopting the contractual pattern of estimated charges followed by a final account and a balancing charge WQMC had only ever demanded the estimated charges on account. It was submitted by the lessee that the absence of final accounts for any of the preceding years meant that he was not obliged to pay the estimated charges. At paragraph 25 the Tribunal said this:
>
> "It is clearly unsatisfactory that WQMC has failed to comply with its obligations… However, I am unable to read the lease as meaning that if WQMC has failed to comply with this provision then this automatically thereby proclaims that in respect of the service charge year to which the failure relates WQMC has lost the right to be paid any service charge whatever, such that the entirety of any sum paid on account must be dealt with on the basis that the leaseholder if either entitled to credit for this sum or to be repaid… the whole of the amount paid on account. I agree with Mr Bayne that for this dramatic result to ensue from a failure to comply in proper time with the obligation under the seventh schedule part 3, paragraph 2 would require clear words."

154. The landlord cannot, however, have its cake and eat it. In the absence of the Respondent fulfilling its liability to provide the tenant with an account of the Service Costs for the previous year, what sum is the tenant required to pay each 1 March?

155. The Tribunal follows the House of Lords' guidance in **Scottish & Newcastle Plc V Raguz** above: "*the rent capable of being demanded by the landlord will be limited to the unreviewed rent so long as the review process has not been completed. Once, however, that process has been completed the reviewed rent will become payable retrospectively with effect from the review date and can be demanded by the landlord as from the rent day next following the completion of the review process.*"

The effect here is that the Estimated Service Charge due from the tenants would be £300 per annum for the years March 2013-2014 to 2017-2018 for Mr Knott and the years March 2016-2017 to 2017-2018 for Ms Wenmouth, there having been no fulfilment by the landlord of its obligation to provide the tenant with an account of the Service Costs for the previous years until the provision of the document Newynn Court Management Company Service Charges 2017-2018 which accompanied Letter A.

156. However, now that the expenditure for the relevant years is actually known as a result of the provision of the various documents Newynn Court Management Company Service Charges, the Tribunal can assess what a reasonable sum for payment as an estimated Service Charge should be for those years.
157. By fulfilling its obligation to provide the tenant with an account of the Service Costs for the previous years, the landlord can require payment of a greater sum of Estimated Service Charge, but that greater sum has to be reasonable.

158. It has to be based upon actual expenditure, which expenditure must be recoverable under the terms of the lease and be reasonable in sum.

159. The Respondent has, in Letter A, Letter of Information to all Leasehold Purchasers, dated 18 October 2018, set out uniform sums for 1- and 2-bedroom apartments for the years 2011-2012 to 2017-2018 with the 2-bedroom apartments to be charged £50 more than the 1-bedroom apartments each year. The very fact that there is a difference in sums demanded for different sized apartments reveals that neither proposed charge can be an account of the Service Costs for the previous year. It cannot be reasonable to seek payment of a sum which differs from the apportionment within the lease both in terms of the expressed apportionment within paragraph 6.1 and because it seeks the payment of sums which do not mathematically match the claimed expenditure for the previous year.

160. In Letter B, Accounts Summary, dated 2 November 2018, the Respondent indicated that 4.75% was now to be charged monthly for late payments. It stated a list of what payments were included within the charges sought, but did not signal any change from the one/two-bedroom apartment differentiation revealed in Letter A. It did set out details of "Additional Expenditure".
161. Interest must be an annual interest rate, which accrues as follows: annual interest is calculated by multiplying the sum outstanding by say 0.475 to reflect an interest rate of 4.75% and then dividing the resulting sum by 365 to find out the daily interest.

162. The Tribunal finds that there can be no interest charged by way of administration charge because the Respondent failed to serve a summary of rights and obligations with its demands and because it failed to comply with the terms of the lease, such that the tenants never knew the true figure required of them for the Estimated Service Charge.

163. Letter C, Accounts Summary 2019/2020, dated 2 October 2019, repeats the intention to charge interest on late payments in the sum of 4.75% monthly. It includes reference to monies provided by the landlord to cover, in good part, monies said to be owed to the Respondent by the Applicants. It stated a list of what payments were

included within the charges sought, but did not signal any change from the 1/2-bedroom apartment differentiation revealed in Letter A.

164. Letter D is an email of 5 August 2020 asking tenants to consider paying into a reserve fund for necessary decorations at the property and replacement of the fire system.

165. Letters A, B and C carry the name and address of the Respondent and require payment to the Respondent. The lease requires payment to the Respondent Management Company. There was no requirement to pay the landlord, so that the requested payments are not caught by Section 47. "*The sanction in s. 47(2) therefore had no application in this case, because the sums in issue are not payable to the landlord and the demand for their payment was therefore not a "demand" for the purpose of s. 47.*" (per **Pendra Loweth Management Limited v Mr and Mrs North** (2015) UKUT 0091 (LC)).

166. The liability upon the tenant to pay the Estimated Service Charge is not caught by Section 20B, but a demand for any sum over and above the sum of the Estimated Service Charge might be so caught.

167. Letter A stated that the year end is 31 August. Letter B reminded tenants that yearly payments are to be made August to August in advance. Letter C reminded tenants that yearly payments are to be made August to August in advance. This is contrary to the clear terms of the lease.

168. Whenever the Tenant is due to pay money to the Landlord or the Management Company it shall be payable on demand and if it is more than twenty one days overdue it shall carry interest at 4% over the base lending rate of the Management Company's bankers from time to time from the date it fell due to the date of payment, says paragraph 3 of the Sixth Schedule. For the purposes of the issues to be decided here, sums are due from the tenants on 1 March each year for the Estimated Service Charge and on the balancing date (depending upon the landlord demanding same as soon as possible after 1 March). The tenants are "*due to pay money to the Landlord or Management Company*" when such money is legally due in accordance with the lease and law. To summarise, the landlord/management company can charge interest where he/it has demanded money due in accordance with the lease and payable in accordance with the law.

169. The Respondent suggests that it can change the lease using the Third Schedule, Part 11, paragraph 20.4 as authority to do so. Paragraph 24 refers only to reasonable rules for the management of the Estate and forms part of Part 11 of the Third Schedule, all of which deals with the responsibilities of the tenant and not with the responsibilities of the Respondent. It follows that the paragraph does not allow the Respondent to alter fundamental terms of the lease governing its conduct under the lease.

170. The Respondent has chosen to ignore the Service Charge provisions of the lease. The Respondent can only change the lease with the agreement of the tenants. Here there is no agreement by the Applicants to change any provision of the lease. The Respondent points to a gentleman's agreement, but there is no evidence capable of supporting such a contention. The Applicants are entitled, therefore, to insist that the Respondent fulfils its obligations under the lease.

171. The Respondent appears to have ignored the apportionment of 1/18th of expenses for Building A and rather treated the expenses of Buildings A and B together and divided by 21 to reflect the total number of apartments. In Letter C1, it states that it intends to charge car park necessary repairs to those with spaces, which appears to ignore the 1/21st split detailed within the lease.

172. The Respondent is not entitled to charge for its work as the expenses are limited by paragraph 4 of the Fifth Schedule to sums expended by it and by Clause 6.2 to all costs, expenses and outgoings whatever reasonably and properly incurred by the Landlord. It is not a managing agent. It follows that the demands for Accounts/Admin and Cleaning, Maintenance and Management of Works charged on the basis of hours put in by the Respondent are not payable under the terms of the lease.

173. The Tribunal has had to do its best to assess a fair sum for the Estimated Service Charge for the relevant years, working with the material available to it. For the purposes of this Decision, because it is not possible to disaggregate expenditure between Buildings A and B, the Tribunal has adopted a 1/21st share as the fairest apparent divisor.

174. Even taking the figures in the various documents headed Newynn Court Management Company Service Charge Accounts as being correct, if the sums claimed for Accounts/Admin and Cleaning, Maintenance and Management of Works are stripped out, the totals and 1/21st share (adopting the incorrect basis used by the Respondent for the reason explained above) would be

    for 2013-2014: £2.741.25 and £130.54
    for 2014-2015: £3,737.93 and £178.00
    for 2015-2016: £4,265.88 and £203.14,
    for 2016-2017: £3,362.14 and £160.10
    for 2017-2018: £5997.85 and £285.62
    for 2018-2019: £5,107.42 and £243.21

    These figures should represent, therefore, the Service Charge for the years in question and the estimated service Charge for the following year.

175. If the Respondent wishes to use external agents, a reasonable sum can be charged to the Service Charge account. If the Respondent uses external agents for work in accordance with the lease currently undertaken by it, the sum of the Service Charge would increase by its cost. It can be sometimes an unwelcome reality to insist on the terms of the lease being followed only to find that external costs can be higher than internal costs.

176. Letter A is the first time the Respondent has provided the Applicants with details of the previous year's expenditure. There can, however, be no confidence that the figures quoted are correct given the refusal of the Respondent to provide the Applicants with copies of invoices and the failure to segregate costs for Buildings A and B, and because the sums include charges not payable under the terms of the lease. In any event, this demand is not payable because of the failure by the Respondent to attach a summary of rights and obligations in accordance with Section 21B of the 1985 Act. Insofar as it is an attempt by the Respondent to

demand sums greater than the Estimated Service Charge for the years March 2013-2014 to 2016-2017, it is not payable, in any event, because it seeks to demand sums over 18 months after the costs were incurred in contravention of Section 20B of the 1985 Act. Further, the sums payable under the lease do not exceed the Estimated Service Charge for the years (then £300 as explained above), so cannot be demanded; the same position for all of the years in question March 2013-2014 to 2018-2019.

177. Letter B is subject to the same comments detailed for Letter A above.

178. Letter C attaches a document headed Newynn Court Management Company Service Charge Accounts 2019-2020. There can, however, be no confidence that the figures quoted are correct given the refusal of the Respondent to provide the Applicants with copies of invoices and the failure to segregate costs for Buildings A and B. In any event, this demand is not payable because of the failure by the Respondent to attach a summary of rights and obligations in accordance with Section 21B of the 1985 Act. Insofar as it is an attempt by the Respondent to demand sums greater than the Estimated Service Charge for the year March 2020-2021, the sums payable under the lease do not exceed the Estimated Service Charge for the year, being, once the irrecoverable work by the Respondent is stripped out, £4,875.48 and £232.17. This is because the actual annual expenditure shown totals £11,115.48 and not the total expenditure (estimated) figure used of £14,114.76.

179. It follows that the Estimated Service Charge payments, which could reasonably be demanded of the Applicants are

for 2014-2015: £130.54
for 2015-2016: £178.00
for 2016-2017: £203.14,
for 2017-2018: £160.10
for 2018-2019: £285.62
for 2019-2020: £243.21
for 2020-2021: £232.17

180. Letter D is a demand for £2,000 towards a reserve fund. The Applicants contend that this is really a demand for immediate expenses. The Respondent has, however, shown (baldly) likely sums of future expenditure on a major project commensurate with the sum demanded and is entitled to demand monies for a Reserve Fund under paragraph 4.5 of the Fifth Schedule. This is, however, a demand for service charge under the terms of the lease and needs to be accompanied by a summary of rights and obligations. It was not so accompanied and is, accordingly, not payable.

181. Also, the Respondent would do well to consider its duties under Section 20 to consult formally before entering into a major contract for works as failure to do so could limit the sum recoverable by it to £250 per apartment as well as opening it up to a claim that sums expended were not reasonable.

Conclusion

182. The essence of this very complex set of circumstances is that the Applicants are required by the lease to pay a reasonable sum by way of Estimated Service Charge

each year. That sum is founded upon the previous year's proper expenditure on Services. Here, for the years in question, that expenditure is now known.

183. The conclusion this Tribunal reaches is that the only sums due from the Applicants are the following:
for 2014-2015: £130.54
for 2015-2016: £178.00
for 2016-2017: £203.14
for 2017-2018: £160.10
for 2018-2019: £285.62
for 2019-2020: £243.21
for 2020-2021: £232.17

184. The Respondent has not shown that relevant expenditure exceeds the above sums in the years 2014-2020 inclusive.

General

185. The Tribunal finds it unfortunate that this matter should have had to be brought before it.

186. The lease sets out in quite simple terms how the service charge account should be dealt with, and yet the Respondent seems to have ignored the provisions completely. Even taking account of the difficulties detailed about getting hold of relevant documentation, the Respondent appears to have made no attempt to comply with the terms of the lease.

187. If there is to be a healthier relationship between the parties, there needs to be more dialogue; either the Applicants and other tenants must take control by purchasing the freehold or the Respondent needs to retake control by acting in accordance with its rights and duties under the lease.

Section 20c and Rule 13 Costs and Paragraph 5A Application and Fees

188. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings. They have also asked that the Respondent be ordered to reimburse the fees that they have paid and that it should pay their solicitor's costs.

189. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

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

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

Commonhold and Leasehold Reform Act 2002 Schedule 11

Paragraph 5A Limitation of administration charges: costs of proceedings

(1) *A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.*

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—
(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

Section 29 of the Tribunals, Courts and Enforcement Act 2007, provides (so far as relevant) as follows:
29. ***Costs or expenses***

(1) The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and (b) all proceedings in the Upper Tribunal,

shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

Rules 13 and 3 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"):

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——

(ii) a residential property case,

or (iii) a leasehold case; or

(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.

Section 20C

190. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. It follows a similar course when considering administration charges. *"Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."* (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000).

191. "*An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*
"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order…;
"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".
(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."* (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

192. Because the Applicants appear to have been forced before the Tribunal by the Respondent's reluctance to respond to reasonable requests for information or to act in compliance with the clear terms of the lease, the Tribunal has no hesitation in allowing their application under Section 20c of the Landlord and Tenant Act 1985. It directs that the Respondent's costs in relation to this application are not to be

regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

193. The Tribunal notes that the Applicants have been substantially successful in their submissions. The Respondent has adopted a belligerent stance and challenged the authority of the Tribunal to decide this application.

194. The Tribunal is aware that the costs will fall upon the Respondent, which may try to recover them from the other tenants by way of service charge, but the other tenants are able to challenge the ability of the Respondent to do so in accordance with the terms of the lease and the reasonableness of the Respondent seeking to do so and the reasonableness of any sums sought to be charged.

195. The costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicants in this or any other year.

Paragraph 5A

196. For the same reasons the Tribunal allows the Applicants' application under Section 20C above, the Tribunal allows their application under Paragraph 5A, so that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicants in this or any other year.

Costs

197. The Tribunal has an application by the Applicants for costs, being the invoice of a solicitor from whom they sought advice and who wrote to the Respondent on their behalf.

198. The Tribunal reminds itself that this jurisdiction relates to *bringing, defending or conducting proceedings* and notes that the costs in question predate any of those actions and finds, accordingly that no order can be made for their payment by the Respondent.

Fees

199. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*
"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."

200. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the

Respondent to reimburse the Applicants with the fees paid by them. There appears to the Tribunal to have been no other viable option open to the Applicants to resolve the issues save by making their application to the Tribunal. The Respondent is ordered to pay the sums of £150 each to the Applicants in reimbursement of fees.

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 20B Limitation of service charges: time limit on making demands

(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 21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Landlord and Tenant Act 1987

47 Landlord's name and address to be contained in demands for rent etc

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the Landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [or (as the case may be) administration charges] from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

48 Notification by landlord of address for service of notices.

(1)A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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.

19 Limitation of service charges: reasonableness

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

(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.

27A Liability to pay service charges: jurisdiction

(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 postdispute 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 of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.