FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/43UM/LSC/2020/0066
Property:	6 Maple House, Sycamore Avenue, Woking GU22 9FE
Applicants:	Stefan Marev. Monika and Anthony Mills Hazel Wilford Natalia Krasnikova and Graham Hieke
Representative:	In Person
Respondent:	Willow Reach Residents Management Company Limited
Representative:	HML Group
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) Tenants' application for the determination of reasonableness of service charges for the years 2017 and 2020.
Tribunal Members:	Judge A Cresswell (Chairman) Mr N Robinson FRICS
Type of Hearing:	On the Papers
Date of Decision:	16 December 2020

DECISION

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The Application

This case arises out of the Applicant tenants' application, made on 25 June 2020, for the determination of liability to pay service charges for the years 2017 and 2020.

Summary Decision

1. The table below sets out the heads of expenditure challenged by the Applicants where the Tribunal found the total of the sums demanded not to be reasonable and payable. With those exceptions only, the Tribunal found otherwise that the sums demanded by way of Service Charge are reasonable and payable now by the Applicants:

Disputed Heads of Expenditure	**Sums Payable 2017**
Gardening General Invoices	£3,108
General Repairs	Nil
Bank Charges	Nil
Cleaning	£682.40

2. The Tribunal orders the reimbursement by the Respondent of £100 fees paid by the Applicants.

3. The Tribunal allows the Applicants' application 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

4. **James Scicluna v Zippy Stitch Ltd & Ors** (2018) CA (Civ Div) (Longmore LJ, Underhill LJ, Peter Jackson LJ):
   Where the parties to Tribunal proceedings had agreed a list of issues, the matters to be determined in the substantive hearing and on any appeal were properly to be limited to those agreed issues.

5. Some of the issues of original complaint had been explained by the Respondent to the satisfaction of the Applicants and, accordingly, they form no part of this Decision.

Reserve Funds

6. 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.

7. A Reserve Fund ensures that tenants effectively save for future costs so that there are no "nasty surprises". That said, tenants do not want, and should not be required, to pay more into a Reserve Fund than is reasonably required.

8. The Tribunal's task here is simply to determine whether items specified in the schedule completed by the Applicants should form part of the Reserve Fund and whether a reasonable value has been attributed to their likely cost. "*Should*" in this context means "*reasonably incurred*" in accordance with the terms of the lease. "*Reasonable*" means "*reasonable*", not "*precise*". See Section 19 of the 1985 Act above.

9. In reaching its current Determination, 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.

7.6 Holding service charge funds in trust

You must hold service charge monies, and any interest accruing, by way of statutory trusts in accounts established in accordance with section 42 of the *Landlord and Tenant Act* 1987. Service charge payments must be kept separate from the landlord and managing agent's own money and must only be used to meet the expenses for which they have been collected.

They should be held in either separate client service charge bank accounts for each scheme you manage,
or a universal client service charge bank account for all service charge monies but where monies for each scheme are separately accountable. If you operate one universal account it is a breach of trust to allow funds held for one scheme to be used to finance any other scheme. The accounts should include the name of the client or the property (or both) within the title of the account.

You should not commit expenditure unless you have the funds available to cover the costs in full. Some leases provide for the service charge account to borrow funds to meet required expenditure, but you cannot assume this to be the case without reference to the lease. In any event, you should ensure those funds have been made

available prior to committing to the expenditure and should not allow service charge bank accounts to go into deficit.

You must hold such sums in trust for the purpose of meeting the relevant costs in relation to the property and they should not be distributed to the leaseholders when the lease is assigned/terminated, subject to any express terms of the lease relating to distribution, either before or at the termination of the lease.

Funds held for longer terms, or comprising large balances, should be held in an interest-earning account. Funds required to meet day-to-day expenditure should be immediately accessible. Where reserve funds are invested these must be invested in accordance with current regulations.

A trustee is under a duty to invest the trust funds not required to meet day-to-day expenditure. The investment must be in accordance with the terms of the trust, the *Trustee Investments Act* 1961 or an order made under
the *Landlord and Tenant Act* 1987 (which enables funds to be deposited at interest with the Bank of England
or with certain institutions under Part 4 of the *Financial Services and Markets Act* 2000, including a share or deposit account with a building society, or a European Economic Area firm mentioned in Schedule 3 to the Act). Trustees who want to take advantage of the wider powers of investment under the *Trustee Investment Act* 1961 (as amended by the *Trustee Act* 2000) should have regard to the provisions of that Act, and to the various subsequently enacted statutory instruments.

If leaseholders contribute towards different costs (e.g. one group of leaseholders contributes towards the lift, whilst another group contributes towards gardening), the funds should be differentiated. This should be done by way of different service charge schedules, each schedule should total 100 per cent although you should be aware that percentages under some leases do not add up to 100 per cent.

Inspection and Description of Property

10. The Tribunal did not inspect the property.

Directions

11. Directions were issued on 29 July 2020. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013.

12. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. This determination is made in the light of the documentation submitted in response to those directions.

13. 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.

The Law

14. 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.

15. 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.

16. 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.

17. 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.*

18. 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)).

19. 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).

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

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

Ownership and Management

22. Crest Nicholson Operations Limited is the owner of the freehold. The property is managed for the owner by the Respondent, which stands in its place as a party to the Lease.

The Lease

23. Stefan Yordanov Marev holds Flat 6 under the terms of a lease dated 2 December 2006, which was made between Crest Nicholson Operations Limited as lessor and Mr Marev as lessee and the Respondent Management Company. The Tribunal understood this lease to be representative of all leases at the property.

24. The lease requires the tenants to pay twice yearly an estimated service charge, which is reconciled by the service of accounts for the period ending 31 December as soon as practicable thereafter.

25. Paragraph 23 of the Sixth Schedule defines the Reserve Fund payments as follows: "*Such sum as shall be considered necessary by the Management Company (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be expected to be incurred at any time in connection with the Maintained Property save for any part or parts thereof which are specifically addressed in this Schedule.*"

26. The lease defines "*the Lessee's Proportion*" at paragraph 1 of the lease as "*a fair and reasonable proportion of the Maintenance Expenses payable by the Lessee in accordance with the Seventh Schedule.*"

27. *"The Maintenance Expenses*" are defined: "*means the reasonable and proper monies actually expended or reserved for periodical expenditure by or on behalf of the Management Company at all times during the Term in carrying out the obligations specified in the Sixth Schedule.*"

28. 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)).

29. 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.

ESTATE Costs
Insurance
The Applicants

30. The Applicants complained that the Directors and Officers amount did not match.

31. If there was an accrual, the Respondent should provide the invoice and its calculations or remove the sum from the service charge.

The Respondent

32. The Respondent explained that the insurance runs across periods and that £219.55 had been carried forward to 2018 as a prepayment.

The Tribunal

33. The Tribunal notes first that the recommended standard, to be found in technical releases 03/11 (Residential Service Charge Accounts) issued by ICAEW states that Service Charge accounts should be prepared on the accruals basis. This method of accounting recognizes costs in the accounts when the expense was incurred rather than when the invoice is paid. The benefit to lessees of the accruals basis is that they can be confident that the expenses in the accounts only relate to the Service Charge period in question. Cash accounting recognizes transactions only when there is an exchange of cash.
34. The propriety of the Respondent using an accrual method of accounting is also recognized by the definition at paragraph 1 of the lease of "*the Maintenance Expenses*".
35. The Respondent explained to the Applicants why there was a mismatch. Rather than looking to the following year's accounts to satisfy themselves that the explanation of the Respondent was satisfactory, the Applicants continued to query the situation. The parties did not provide the Tribunal with the following year's accounts. The Tribunal has to do the best that it can do with the available evidence. The Respondent provided the Applicants with an explanation, which they were able to check. Accordingly, the Tribunal finds no reason to interfere with this element.

Gardening General Invoices

The Applicant

36. The Applicants point out that the invoices for the year total £2,814 and yet there was a charge for £3,402.

37. They argue that the final accounts should be based upon invoices, not accruals. The charge should be reduced to £2,814.

The Respondent

38. The Respondent said that £294 was accrued for September 2017 as the February invoice was not then received.

The Tribunal

39. The Tribunal has already commented upon the use of accrual accounting above. Accepting the Respondent's explanation for the £294 February invoice, that still does not explain the whole difference. Accordingly, the Tribunal reduces the sum charged by the difference (£3,402 - £2,814, -£294 = £294), so that the sum properly chargeable is £3,108.

General Repairs

The Applicants

40. The Applicants pointed out that an invoice was missing and that the sum of £95 should be removed.

The Respondent

41. The Respondent agreed.

The Tribunal

42. The Tribunal, accordingly, reduces the head of expenditure by £95 to nil.

Bank Charges
The Applicants

43. The Applicants submit that there is no invoice to support the charge of £30.50.

44. The bank statement should be produced or the charge removed.

The Respondent

45. The Respondent said that the figure was taken from the bank statement.

The Tribunal

46. The Tribunal notes the explanation of the Respondent. The Tribunal is aware that some banks will produce invoices for charges and others merely include them within a statement.

47. The Respondent has, however, failed to produce its bank statements so as to show that its explanation is correct. Nor has it provided any explanation for its failure to do so. Even if there were issues of confidentiality, these could have been easily overcome by redaction.

48. The Applicants have pointed to a charge for which there is no evidence, where evidence could easily have been provided. Accordingly, the Tribunal disallows the charge of £1,800.

General Reserve
The Applicants

49. The Applicants are concerned that there is no invoice for the £1,425.23 revealed in the accounts.

50. The explanation of the Respondent does not make sense. It should provide evidence for the £1,425.23 or remove it.

The Respondent

51. The Respondent explains that the accounts actually show the monies collected from tenants, so that there could be no invoice.

The Tribunal

52. The Tribunal can see that the figure shown in the accounts is to the credit of the tenants, such that its removal would be to their detriment. Accordingly, the Tribunal takes no action in relation to the sum of £1,425.23

MAPLE HOUSE
Cleaning
The Applicants

53. The Applicants point out that the invoices produced add up to £682.40, whereas the charge made was £1,646.37.

54. They argue that the final accounts should be based upon invoices, not accruals. The charge should be reduced to £682.40 in the absence of supporting invoices.

The Respondent

55. The Respondent said that all invoices had been submitted save for accruals for October and November 2017. Some included Estate and other blocks and it was necessary to disaggregate Maple House costs.

The Tribunal

56. The Tribunal could see no reason why the Respondent could not present documentation to show the claimed expenditure and, accordingly, reduces the charge to the sum supported by documentation, i.e. £682.40.

General Reserves

The Applicants

57. The Applicants are concerned that there is no invoice for the £1,400.06 revealed in the accounts.

58. The explanation of the Respondent does not make sense. It should provide evidence for the £1,400.06 or remove it.

The Respondent

59. The Respondent explains that the accounts actually show the monies collected from tenants, so that there could be no invoice.

The Tribunal

60. The Tribunal can see that the figure shown in the accounts is to the credit of the tenants, such that its removal would be to their detriment. Accordingly, the Tribunal takes no action in relation to the sum of £1,400.06.

RESERVE FUND

The Applicants

61. The Applicants are concerned at the increase in the reserve contribution from £2,000 to £6,929, consisting of £3,929.00 for a Water Booster Pump Replacement. One of the two water pumps failed in 2019. The house has been functioning without a backup pump ever since.

62. As the Respondent holds £5,400.00 reserve, they do not see a reason why the Respondent should increase the house reserve by such a significant amount.

63. £1,000.00 is for a Door Replacement. The front door that was first reported as not fit for purpose to the managing agent on 27 February 2017 during the snagging period with the developer – Crest Nicholson.

64. On top of this was the usual £2,000 contribution.

The Respondent

65. The Respondent states that the expenditure was agreed at a meeting of leaseholders on 7 January 2020.

66. Costs for the booster pump replacement were shared with the tenants on 10 January 2020 and there was no response received.

67. Plans to replace a failed pump would be subject to Section 20 consultation.

The Tribunal

68. The Tribunal refers first to the guidance it has recorded above in respect of Reserve Funds.

69. None of the sums detailed here for the usual reserve contribution, the pump or the door, are out of the ordinary for a property of this nature.

70. A reserve fund is vital. The fact that a booster pump costing some £4,000 has failed within 4 years of the development being completed illustrates the sort of costs that can be faced.

71. Apart from the immediate costs of the pump and the door, there was no evidence available to the Tribunal to show that any particular items of future expenditure had been identified as of major significance, had been costed and a calculation been made of the sums required proportionately from the tenants to meet those future costs. Nor was there any evidence to show that the tenants had been involved by the Respondents in such an exercise. Nor, with the documents available to it, could the Tribunal attempt to trace where previous Reserve Fund payments had been expended. Nor was there sufficient evidence before the Tribunal so as to allow it sensibly to attempt to calculate what reasonable sums could be demanded from the Applicants by way of Service Charge towards a Reserve Fund. That being the case, the Tribunal has avoided attempting any such calculation.

72. What the Respondent needs to do now is to follow the above guidance, which will enable it to plan properly and at the same time give the tenants assurance that they are not paying too much (or too little) towards a reserve and to give them clear details of what it is spent upon.

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

73. 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.

74. 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

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

(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.

Section 20C

75. 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).

76. *"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)).

77. The Applicants appear to have been forced before the Tribunal by the Respondent's attitude and performance and have been substantially successful. There has been very little effort on the part of the Respondent to assist the Tribunal, producing only a late and sparse response and no new documentation. The costs of the Respondent must be very small indeed. Whilst appreciating that the costs may fall on others, the Tribunal has no hesitation in allowing the 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 Applicants for the current or any future year.

Paragraph 5A

78. 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.

Fees

79. 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."

80. 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 sum of £100 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

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.