FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LAC/2020/0003**
HMCTS Code	**:**	**P: Paper**
Property	**:**	**Flat 52, Chester Close South, Regents Park, London NW1 4JG**
Applicant	**:**	**Ms Teresa Hampson**
Representative	**:**	**In Person**
Respondent	**:**	**Chester Close South Residents Company Ltd**
Representative	**:**	**Wilsons LLP**
Type of application	**:**	**Liability to pay and administration charge**
Tribunal member	**:**	**Judge Robert Latham**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Paper Determination	**:**	**1 June 2020**

DECISION

Description of Hearing

This has been a hearing on the papers (“P”). The Directions provided for a paper determination and neither party has requested an oral hearing. Pursuant to these Directions, the Tribunal has been provided with:

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(i) The Applicant's Bundle of Documents. This extends to 153 pages. Refences to this Bundle with be prefixed by "A". It includes an Amended Statement of Case (at A6-36). This includes a section drafted by D Giles (Counsel) at A9-31. A preliminary issue which the Tribunal is required to determine is whether it should permit the Applicant to amend her case.

(ii) The Respondent's Statement of Case. This extends to 303 pages. Refences to this Bundle with be prefixed by "R". This includes (a) the Respondent's Statement of Case prepared by Wilsons Solicitors LLP (at R86-97) which refers to a number of additional documents; (b) The Applicant's unamended Statement of Case (at R209-239); and (c) The Respondent's Reply (at R258-273).

(iii) Various e-mails. On 22 May, the Tribunal recorded its regret at the amount of email traffic to the tribunal. This did not stem the flow of emails from the Applicant.

Decisions of the Tribunal

(1) The Tribunal determines that the administration charge of £19,325 (inclusive of VAT) demanded in respect of legal costs is not reasonable and determines the reasonable costs to be £13,500 + VAT, a total of £16,200.

(2) The Tribunal does not make orders under section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The Tribunal does not make any order in respect of the costs of this application.

(4) The Tribunal does not make any order for the refund of fees paid by the Applicant.

The Application

1. On 20 February 2020, the Applicant issued an application in which she seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether an administration charge is payable. She sets out, in detail, her grounds for contending that the sum is not payable. She attaches a number of documents to her application. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs, under paragraph 5A

of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The applicant stated that she was content for the application to be determined on the papers.

2. The Applicant seeks a determination in respect of an administration charge of £19,325 which was demanded on 4 October 2019. This administration charge relates to the legal costs incurred in respect of an alleged breach of covenant arising from the erection of a wall in her flat. This was determined in LON/00AG/LBC/2019/0003. On 5 June 2019, a Tribunal determined that the applicant had breached a covenant in her lease by erecting the wall. The applicant had contended that this was a "Chinese Legacy Art Project". The Tribunal declined to make orders under either section 20C of 1985 Act or paragraph 5A of Schedule 11 of the 2002 Act.

3. On 13 March 2020, the Tribunal gave Directions. The Tribunal identified the following issues to be determined:

   - The payability and reasonableness of the administration fee which has been demanded.
   - whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made
   - whether an order for reimbursement of application fees should be made.

4. Both parties have filed their Statements of Case and the Respondent has served a Reply. Neither side complied with the timescale but this was understandable given the difficulties created by Covid-19. The parties were unable to agree a joint bundle of documents, so each has filed their own bundles setting out the documents on which they seek to rely.

5. On 15 May 2020, the Applicant applied to amend her Statement of Case. This was after the Respondent had served its Reply. She wishes to add an additional paragraph 26A in which she seeks to argue that the Respondent Company acted ultra vires its Articles of Association in bringing the application for breach of covenant and in instructing solicitors. In a letter dated 20 May, the Respondent object to this amendment at this late stage. It asserts that were the amendment to be allowed, it would require time to respond to the issues raised. It suggests that the tribunal should require the Applicant to pay the costs incurred by such a late amendment.

6. Having regard to the overriding objectives in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"), the Tribunal refuses the application to amend. It would not be proportionate to let this issue be raised at this late stage resulting in an adjournment. It is a matter which the Applicant could, and should, have raised when she issued her application. Further, the Tribunal does not consider that this issue is relevant to the matters that it is required to determine. If the Respondent Company is not being governed in accordance with its Articles of Association, the remedy lies in another court.

The Lease

7. On 2 July 2003, the Applicant was granted a 146-year lease of Flat 52, Chester Close South, Regents Park, London, NW1 4JG ("the Flat"). Two clauses are relevant to this application:

   (i) By clause 3.13.1, the Tenant covenants with the Landlord "that no additional building or any additional walls or other things whether temporary or otherwise shall be erected or set up upon the demised premises… and that no alteration whatsoever shall be made in the plan or elevation of the demised premises… or internal decorative treatment or in the height pattern or construction of the walls of the demised premises…"

   (ii) By clause 3.16, the Tenant covenants with the Landlord "to pay to the Landlord (if so requested by the Landlord) all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Landlord in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925."

The Law

8. The 2002 Act defines 'administration charge' for the purposes of Schedule 11, Part 1 as including an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly in connection with a breach (or alleged breach) of a covenant or condition in his lease.

9. A "variable administration charge" means an administration charge payable by a tenant which is neither: (a) specified in his lease, nor (b) calculated in accordance with a formula specified in his lease. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

10. By Schedule 11 paragraph 5A (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". The litigation costs relate to proceedings in the First-tier Tribunal which is therefore the relevant tribunal. Paragraph 5A (2) provides that "the relevant court or tribunal may make whatever order on the application it considers to be just and equitable".

The Background

11. The Building at Chester Close South is in Regents Park consists of 33 flats. The demised Flat has two bedrooms on the 2nd floor of the Building. It has a value in excess of £950,000. The Respondent Company is controlled by the lessees. Thus, any legal costs which are not recovered against the Applicant will be shared by all the lessees. The block is managed by Myhill Newman. Mr Robert Myhill, a Chartered Surveyor, is a partner in Myhill

Newman. He is also a director of the Respondent Company and a lessee of another flat in the Building.

12. On 22 June 2018, before she was due to move out of the Flat to her current home in Pratt Street, Camden Town, the Applicant erected a wall in the Flat. She asserts that this was a unique and impressive 3-D Chinese Gardens Art Project to link to a special 3-D picture which she had brought from Hong Kong. The Respondent rather suggests that this was a stud wall to create a third bedroom.

13. As a result of a report which Mr Myhill received on 22 June 2018, he e-mailed the Applicant (at R22) complaining that he had been informed that she was in the process of erecting a stud partition wall. He asserted that this was a breach of the terms of her lease and requested her to cease works and remove the construction. On 28 June, the Applicant responded denying that she had erected a wall. Thereafter, numerous e-mails were exchanged.

14. On 6 August, Mr Myhill inspected the Flat. He saw what he described as a stud wall with an opening for a door. The Respondent required the Applicant to move the structure. She declined to do so.

15. On about 24 October 2018, the Respondent instructed Wilsons Solicitors LLP ("Wilsons"). The letter of engagement, dated 9 November, is at R198-208. On 29 November, Wilsons sent the Applicant a letter before action (at R140). The letter stated (at R141): "we put you on notice that this letter is written in contemplation of forfeiture proceedings and as such you are liable for our client's costs". The letter required the Applicant to take immediate steps to remedy the breach.

16. On 22 January, the Respondent issued its application to this tribunal (LON/00AG/LBC/2019/0003) (at R148). This was made pursuant to section 168 Commonhold and Leasehold Reform Act 2002". Section 168 is concerned with forfeiture notices under section 146.

17. On 29 April 2019, a tribunal determined this application. Ms Hampson appeared in person. The Respondent was represented by Mr Mills (Counsel). Mr Myhill gave evidence. Wilsons had prepared a detailed witness statement for him (at R158-163). Counsel submitted a Skeleton Argument (at R278-285).

18. The Tribunal's decision is dated 5 June 2019 (at R71-84). The Tribunal was satisfied that there had been a breach of covenant by erecting the wall. The parties had agreed that it was irrelevant whether the intention had been to create a third bedroom or whether it was a genuine art project. The issue was whether the wall/art project resulted in a breach of the terms of the lease. The tribunal was satisfied that the Landlord had acted reasonably in connection with the proceedings and had succeeded on the single issue in dispute. The tribunal therefore concluded that it would be neither just or equitable in the circumstances to make orders under either section 20C of the 1985 Act or paragraph 5A of Schedule 11 to the 2002 Act. Ms Hampson

subsequently sought permission to appeal. On 26 July 2019, the tribunal refused permission to appeal.

19. On 13 August 2019, the Landlord inspected the Flat and found that the wall had been removed. The breach had therefore been remedied. Whilst it would have been open to the Landlord to issue proceedings in the County Court to forfeit the lease, it is probable that relief from forfeiture would have been granted. The Landlord has not informed the Tribunal when it decided that no further legal action would be taken.

20. Thereafter, there would have been no further question of forfeiture. The sole remedy for the Landlord would have been to seek to recover the costs which it had incurred in contemplation of the forfeiture proceedings. The Landlord is only seeking to recover the legal costs that it has incurred.

21. The Landlord claims costs in the sum of £19,325, inclusive of VAT ("the legal costs"). Four claims have been made:

    (i) On 25 April 2019, before the trial of the Landlord's Application, the Landlord provided the Tenant with a Statement of Costs (Form N260), categorising the then-total charges of £16,000. These were included as pages W1-W4 to the Tenant's Application and are at R26-29.

    (ii) On 4 October 2019, the Landlord sent a letter and invoice demanding payment of the legal charges of £19,325 (R164-168). This is claimed as an administration charge and is the demand which this Tribunal is required to determine. The Landlord conceded (at [29], R266) that it accidentally sent the summary of rights and obligations appropriate to service charges rather than administrative charges. However, as the Landlord notes, this does not extinguish the tenant's liability, it merely suspends it until she has been provided with the relevant information (*Tedla v Cameret Court Residents* [2015] UKUT 221 (LC) – see Martin Rodger QC at [38]). It is still open to the Tribunal to determine the reasonableness of the sum demanded. It is unclear whether, and if so when, the Landlord remedied this procedural defect. However, this is not a point that the Applicant has raised.

    (iii) On 29 December 2019, the Landlord provided to the Tenant 22 pages of invoices from its solicitors (which were attached as pages W5-W26 of the Tenant's Application and are at R174-197).

    (iv) On 3 April 2020, the Landlord attached to its Statement of Case an updated Form N260 (at R174-173) and a full break down of the legal costs claimed in the sum of £19,325. The Tribunal will refer to these documents in determining the reasonableness of the legal charges which are now demanded.

The Tribunal's Determination

22. The Tribunal is satisfied that the substantive issue to be determined is the Applicant's liability for and reasonableness of the Landlord's claim for legal

costs of £19,325. The Applicant's Counsel now appears to concede that £7,449.85 is payable (see A36); however, the Applicant still seems to argue that the whole sum should be extinguished (see A153).

23. The Tribunal is further satisfied that the previous application was brought in contemplation of forfeiting the lease under section 146 of the 1925 Act. In the light of the background which is discussed above, the Applicant's contention to the contrary is hopeless. The Landlord first raised the issue of the wall in June 2018. The Tenant failed to remedy the alleged breach of covenant. Solicitors were not instructed until October 2018. Wilson's letter before action, dated 29 November, specifically referred to the possibility of forfeiture proceedings.

24. By 13 August 2019, the Applicant had remedied the breach. Thereafter, the Landlord was entitled to take an informed decision as to whether there was any realistic option of forfeiting the lease by proceedings in the County Court. It is apparent that by the end of September, it had decided not to do so. On 4 October 2019, the legal costs incurred in respect on the proceedings had been assessed in the sum of £19,325, inclusive of VAT. A formal demand was made for the payment of an administration charge of £19,325. This only related to the legal fees charged by Wilsons. The Landlord is not seeking to recover any other costs arising from these proceedings.

25. The parties have raised a number of further issues which the Tribunal can deal with briefly:

(i) The Applicant seeks to revisit the findings made by the tribunal in LON/00AG/LBC/2019/0003. It is not open to her to do so.

(ii) The Applicant argues that this previous application should not have been brought and no legal costs should have been incurred by the Landlord. The tribunal found that this application was property brought.

(iii) The tribunal (in LON/00AG/LBC/2019/0003) concluded that it would be neither just nor equitable in the circumstances to make orders under paragraph 5A of Schedule 11 to the 2002 Act. It is not open to this Tribunal to revisit that decision.

(iv) Section 20C of the 1985 Act is not relevant to this application as the Landlord is not seeking to pass on the legal costs through the service charge.

(v) The Applicant raises various discrepancies in the different bills produced by Wilsons ([14] – [20] at A10). The Tribunal accepts the Respondent's argument that these were not, in fact, inaccuracies (see [9] at p.261):

> "When Wilsons reduced their fees for the Landlord, they did this by reducing the overall cost for various chunks of work. For example, in one month the solicitors might have spent £1,500 of time but only charged £1,000. To reconcile the hours worked with the final bill, all hourly rates are automatically reduced by a proportionate amount. For example, to reduce a bill from £1,500 to £1,000 would require hourly rates to be

reduced by 33%. Naturally, that leads to the relevant staff having multiple hourly rates – their full rate for some tasks and their lower rate for the reduced-fee tasks. Crucially, the amount being billed to the Landlord, which the Landlord is claiming from the Tenant, is the lower figure. The higher figures only appear in the full solicitor's ledger for internal record keeping purposes. This is not usually sent to the client, let alone an opponent, because it can lead to confusion (as in this case). To put it bluntly, there are no errors or inconsistencies between the tables and the Tenant actually benefits from the differences."

(vi) The Respondent suggests that the Applicant is estopped from disputing the reasonableness of the costs as the previous Tribunal was aware that the Landlord's costs were £15,999 at the date of the hearing and did not query these. The Tribunal disagrees. The previous tribunal did not consider the reasonableness of the costs claimed so no issue of estoppel arises.

26. The Tribunal therefore turns to the payability and reasonableness of the sums claim in the Form N260 (at R171-173) and the supporting documentation (at R174-197). The Applicant's Counsel, Mr Giles, has made detailed submissions on these.

27. Mr Giles notes that there are six relevant invoices: (i) 3241: billing period 24 October 2018 to 28 January 2019. Fees £3,600 (inc VAT); (ii) 3874, billing period 30 January 2019 to 26 February 2019. Fees £1,721.60; (iii) 4358: billing period 1 March 2019 to 27 March 2019. Fees £5,894.40. (iv) 5018: billing period 8 April 2019 to 30 April 2019. Fees £2,151; (v) 6425: billing period 2 May 2019 to 30 July 2019. Fees £2,500; and (vi) 7151, billing period 1 August 2019 to 5 September 2019. Fees £558.

28. Mr Giles further notes that (i) £2,542.60 was incurred before Wilsons issued the application to this tribunal; (ii) £11,129 was incurred between 17 January 2019 and 30 April 2019; and (iii) £2,465 was incurred after the hearing was concluded on 29 April 2019. All these figures are exclusive of VAT.

29. Wilsons who are based in Salisbury, have charged Grade A fee earners at £300 to £325; Grade B at £200 to £250; Grade C at £150; and Grade D at £75 to £125. These are not unreasonable. Counsel has charged at £125 per hour, a total of £3,700, but has only charged for a small part of his time engaged on the case.

<u>(i) Costs incurred between 24 October 2018 and 16 January 2019: £2,542.60</u>

30. Mr Giles argues that no more than £1,892.82 should be allowed. First, he argues that the Tribunal should disallow at least £890.37 which was the time spent by Wilsons before the Respondent accepted Wilson's charges and expenses. The Landlord responds that it was contractually obliged to pay the sums charged by Wilsons for reviewing the paperwork and giving initial advice.

31. Secondly, Mr Giles argues that only £411.46 should be allowed for the further work prior to the issue of the application. He suggests that the

Landlord should have sent the letter before action itself. The Tribunal disagrees. The Landlord had given the Applicant over four months to remedy the breach. She had failed to do so. A solicitor's letter tends to concentrate the mind of a party in default.

(ii) Costs incurred between 17 January and 30 April 2019: £11,129

32. Mr Giles argues that no more than £3,727.54 should be allowed. First, he contends that it was not reasonable to take advice from Counsel. Wilsons charged £400 for instructing Counsel; Counsel charged £600 for his Advice. Counsel's fee note records that he was engaged for 9.5, but he only charged for 4.8 hours work. The issue whether there had been a breach of covenant in this case was not entirely straight forward. The Landlord argues that any breach could have put the Company in breach of its headlease with the Crown Commissioners. The Applicant was disputing that this was a stud wall which was being erected to create an additional bedroom. The Tribunal is satisfied that it was reasonable to take advice from Counsel. Whilst the charge of £400 for instructing Counsel seeks high, the sum charged by Counsel is reasonable.

33. Mr Giles disputes the sum of £1,610 charged for drafting Mr Myhill's witness statement. He suggests that Mr Myhill should rather have drafted it himself. The Tribunal disagrees. It was appropriate for Wilsons to draft the statement, albeit that the amount charged seems very high.

34. Mr Giles disputes the sum of £1,307.50 charged for preparing the hearing bundle. The Landlord responds that this involved creating a coherent electronic bundle from 15 different documents and that 40% of the work was done by a Grade D solicitor (paralegal). Mr Giles ([5], [6] and [8] at A28-31) challenges a number of fee line entries. Wilsons deal with these in their schedule at R269-273). They have provided a detailed breakdown of the work involved.

35. Mr Giles disputes the sum of £515 charged for drafting a Schedule of Costs. He argues that there was no reasonable prospect of the Tribunal assessing costs at the hearing. We agree with Mr Giles.

(iii) Costs incurred between 2 May and 5 September 2019: £2,465

36. Mr Giles argues that no more than £621.18 should be allowed. The work charged by Wilsons included contacting the tribunal to ascertain when the judgment would be available, forwarding and discussing the decision with the Landlord and considering the Tenant's application for permission to appeal.

The Tribunals Assessment of Costs

37. In determining what costs are reasonable, the Tribunal must have regard to the fact the Applicant has been found to have breached the terms of her lease by erecting the wall. A tribunal has further found that the Landlord acted reasonably in connection with these earlier proceedings and had succeeded

on the single issue in dispute. The tribunal declined to make orders under either section 20C of the 1985 Act or paragraph 5A of Schedule 11 to the 2002 Act.

38. In determining what costs are reasonable, this Tribunal must also have regard to the fact that the Tenant has covenanted to pay to the Landlord all legal costs which may be incurred by the Landlord "in or in contemplation of" any proceedings under Sections 146 of the Law of Property Act 1925. This is subject to the statutory provision that any legal costs demanded as an administration charge must be reasonable.

Period 1 (24 October 2018 and 16 January 2019) – Sum Allowed: £2,500

39. The Tribunal assesses the reasonable pre-application costs at £2,500 + VAT, a total of £3,000. The Respondent was entitled to take legal advice on the prospects of a successful application and instruct solicitors to daft a pre-action letter. Proceedings should not be issued prematurely. The Applicant had been given ample opportunity to remedy the breach. She had failed to do so. In short, the Tribunal finds the costs incurred by Wilsons to be reasonable, and merely rounds it down from £2,542,60 to £2,500.

Period 2 (17 January to 30 April 2019) – Sum Allowed: £10,000

40. The Tribunal assesses the reasonable costs relating to the application itself (from issuing to hearing) at £10,000 + VAT, a total of £12,000. This was a straight forward application seeking a determination of an alleged breach of covenant. There was a single issue. The Tribunal accepts that this was an important matter for the Landlord. It also accepts that the Respondent was entitled to instruct Counsel. It was further reasonable for Wilsons to draft a witness statement for Mr Myhill's witness statement, a document that would prove critical at the hearing. However, the Tribunal finds some of the time involved to be excessive and considers that there was some duplication of work. The Tribunal reduces the sum claimed from £11,129.90 to £10,000.

Period 3 (2 May to 5 September 2019): £1,000

41. The Tribunal assesses the reasonable post hearing costs at £1,000 + VAT, a total of £1,200. The Tribunal found that a breach of covenant was established. At this stage, the Landlord needed to consider what action to take in consequence of this finding. The Applicant sought permission to appeal. However, this was merely a matter between the Applicant and the Tribunal.

42. On 13 August 2019, the Landlord inspected the Flat and found that the breach had been remedied. There is no suggestion that Wilsons were involved in the inspection. It was merely a matter of computing the legal costs which could be recovered from the Tenant pursuant to clause 3.16. The demand for the payment of an administration charge of £19,325 was issued by Myhill Newman, the managing agent (at R164). The Landlord needed to do no more than total the sums paid that it had paid to Wilsons. It is unlikely that Wilsons were involved as the demand was not accompanied by the

requisite Summary of Rights and Obligations. The Tribunal is satisfied that the sum claimed of £2,465 is excessive and reduces this to £1,000.

Conclusion on Reasonableness of the Administration Charge

43. The Tribunal assesses the total of costs payable up to 5 September 2019 at £13,500 + VAT, a total of £16,200.

The Costs of the Tenant's Application

44. In its Statement of Case (at [41] – [42]), the Respondent submits that the Tribunal should order the Applicant to pay the Respondent's costs in resisting this application. The costs claimed are not quantified and there has been no formal demand for the payment of an administration charge. However, the Tribunal accepts the parties' invitation to determine the issue of liability to avoid yet further litigation costs.

45. The Respondent argues that these costs are payable under clause 3.16 of the Lease in that the costs of the current application are incidental to the Tenant's breach of covenant. The two applications are said to be linked.

46. There is an insuperable problem to this argument. As Mr Giles notes (at A33), Clause 3.16 only entitles the Landlord to demand payment of legal costs which may be incurred by the Landlord "in or in contemplation of any proceedings under section 146". By 13 August 2019, the breach had been remedied. Thereafter, there is no suggestion that the Landlord contemplated forfeiture proceedings in the County Court. Any costs incurred after 4 October 2019 were not incurred in contemplation of forfeiture. The Landlord's right to contractual costs had crystallised on 4 October 2019.

47. When the Tenant failed to pay the administration charge which had been demanded, it would have been open to the Landlord to issue proceedings in the County Court for a money judgment or for an assessment of the contractual costs to which it was entitled under CPR 44.5. The County Court is a cost shifting jurisdiction.

48. This application was rather initiated by the Tenant to determine the reasonableness of the administration charge which has been demanded. This tribunal is normally a no costs jurisdiction.

Costs under Rule 13

49. In its Statement of case (at [43]), the Respondent also seek costs under Rule 13(1)(b) of the Tribunal Rules. The Tribunal may make an order only if a person has acted unreasonably in bringing or conducting proceedings. In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC)), the Upper Tribunal ("UT") gave guidance on how First-tier Tribunals ("FTTs") should apply this rule. The UT consisted of the Deputy President of the UT and the President of the FTT. The high threshold that must be met before an order is made is discussed at [22] to [26]. The fact

that a party has failed in their argument, does not mean that the party acted unreasonably in raising it. The UT set out a three-stage test:

(i) Has the person acted unreasonable applying an objective standard?

(ii) If unreasonable conduct is found, should an order for costs be made or not?

(iii) If so, what should the terms of the order be?

50. The Respondent raises three allegations of unreasonable conduct:

(i) The Applicant has sought to relitigate matters that have already been determined;

(ii) The Applicant has raised the section 20C issue out of time; and

(iii) The Applicant has made unfounded allegations against the Landlord.

51. The Tribunal is satisfied that this is not an appropriate case for penal costs. The high threshold for such an award has not been satisfied. This application is a cautionary tale for both parties as to how a dispute about costs can escalate. Both parties should have focused on the two central issues, namely (i) whether contractual costs were payable under clause 3.16; and (ii) the reasonableness of those costs. The Applicant was entitled to have these issues determined by a tribunal. She has been content for these matters to be determined on the papers. The Applicant has had a modest success in reducing the administration charge that has been sought.

Application under s.20C, paragraph 5A and refund of fees

52. The Applicant makes an application for a refund of the fees that she had paid in respect of the application. Although the Tribunal has made a modest reduction in the sum claimed, Mrs Hampson had denied any liability to pay the legal costs occasioned by her breach of covenant. The sum found payable is significantly higher than that conceded by her Counsel. She is therefore the unsuccessful party and it would be inappropriate to make an order for the refund of fees.

53. The Applicant further applies for an order under section 20C of the 1985 Act. Having regard to the findings above, the tribunal does not consider it just and equitable in the circumstances for an order to be made. It may therefore be open for the Respondent to charge the cost of these proceedings through the service charge against all the lessees. This will depend upon the terms of the lease.

54. The Applicant further applies for an order under section paragraph 5A of the 2002 Act. Having regard to the findings above, the tribunal does not consider it just and equitable in the circumstances for an order to be made.

However, the tribunal has found that it would not be open for the Landlord to pass on the costs of these proceedings pursuant to clause 3.16 of the Lease.

Judge Robert Latham
1 June 2020

Rights of Appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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

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

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).