



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/00KF/LIS/2021/0017**

HMCTS : **Paper**

Property : **Flats 2, 5 and 6 Roberts View, 1c Camper Road, Southend on Sea SS1 2YR**

Applicant (Tenants) : **Cathie Cremin (Flat 2)
Stephen Puttock (Flat 5)
Samantha Taylor (Flat 6)**

Respondent (Landlord): **Perseus GR Limited**
Managing Agent : **Inspired Property Management**
Representative : **JB Leitch, Solicitors**

Type of Application : **1) to determine the reasonableness and payability of Service Charges (section 27A Landlord and Tenant Act 1985) and Administration Charges Schedule 11 of the Commonhold and Leasehold Reform Act 2002)**
2) for an order that the landlord's costs arising from the of proceedings should be limited in relation to the service charge (section 20C of the Landlord and Tenant Act 1985)
3) for an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002)

Tribunal : **Judge J R Morris**

Date of Application : **6th July 2021**
Date of Directions : **13th August 2021**
Date of Decision : **16th November 2021**

DECISION

Decision

1. The Tribunal determines that the reasonable legal costs of the Respondent in respect of case reference CAM/00KF/LIS/2020/0016 are £2,700.00 including VAT.
2. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 in respect of case reference CAM/00KF/LIS/2020/0016 limiting the Respondent's costs payable by the Applicants to be £350.00 each.
3. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 in respect of the present case limiting the Respondent's costs payable by the Applicants to be £100.00 each.
4. The Tribunal makes an Order extinguishing the Respondents' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
5. The Tribunal makes no order for reimbursement of the Application Fee.

Reasons

Introduction

6. The Application was made on 6th July 2021 for a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges incurred in the year ending 31st December 2020 in respect of Legal Costs are reasonable and payable.
7. The Applicants also seek:
 - a) An order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.
 - b) An order to reduce or extinguish the tenant's liability to pay an administration charge in respect of the litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
8. Directions were issued on 13th August 2021.
9. The Directions stated that the Applicants have challenged the liability in respect of a share of the legal costs including counsel's fees incurred by the managing agents for the landlord in proceedings reference CAM/00KF/LIS/2020/0016. The total costs are £4,500.00.
10. No application under section 20C of the Landlord and Tenant Act 1985 was made in those proceedings despite queries by the procedural judge and the Judge Morris on hearing the case. An order was made in relation to any personal liability for costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 but that would not prevent costs being charged as a service charge, assuming the lease allows recovery

and subject to sections 27A and 20C of the 1985 Act for the tribunal to limit such costs.

11. No determination was made on the issue in the previous case therefore it is open to the Applicants to make that application. (Section 20C(ba) of the 1985 Act.

Preliminary Issue

12. The Directions also noted that the application was originally made by Stephen Puttock and that two other leaseholders, Samantha Taylor and Cathie Cremin, have been joined.
13. This was questioned by the Respondents in their statement of case on the basis that neither Samantha Taylor and Cathie Cremin are noted as Applicants within the Application Forms nor has a requisite consent been provided in respect of the 20C Application therefore the Respondent was of the opinion that the sole Applicant was Stephen Puttock. It further stated that in *Re SCMILLA (Freehold)* [2014] UKUT 0058 (LC) and *Plantation Wharf Management Ltd v Fairman and others* [2019] UKUT 236 (LC) a decision in relation to an order under section 20C of the 1985 Act can only apply to the Applicants.

Decision on Preliminary Issue

14. The Tribunal agreed that a decision in relation to an order under section 20C of the 1985 Act can only apply to those who have applied or given their consent or authority to the applicant for the order.
15. The Tribunal found that the application form provided by Stephen Puttock referred to both Samantha Taylor and Cathie Cremin. All three persons have provided statements of case. Taking into account the difficult circumstances over the past 18 months the Tribunal Service has shown a degree of flexibility to all parties, for example digital documents have been accepted when previously only hard copies were permitted, e mail has been an accepted form of communication and where 'wet' signatures have been required, a name has sufficed. What the Tribunal must have in mind is Rule 3 of the Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013 and its applicability to all parties.
16. In the present case the Application Form that has been received clearly states the issues and determination that is being applied for and identifies the three parties. The statements of case that have been provided, and to which Stephen Puttock, Samantha Taylor and Cathie Cremin have each put their name, demonstrate that all three persons referred to in the Application wish to be joined and consent to an order. There is no one representative's statement each has made their own representations.
17. The Tribunal therefore finds that Stephen Puttock, Samantha Taylor and Cathie Cremin are the Applicants and it also acknowledges that in taking this

view the Respondent's evidence and submissions are applicable to each of the Applicants.

Issues

18. The Tribunal has identified the following matters to be determined:
- a) whether the legal costs incurred in the year ending 31st December 2020 are reasonable and payable;
 - b) whether an order should be made for the limitation of the Landlord's costs of the proceedings under section 20C of the Landlord and Tenant Act 1985 in respect of case number CAM/00KF/LIS/2020/0016.
 - c) whether an order should be made for the limitation of the Landlord's costs of the proceedings under section 20C of the Landlord and Tenant Act 1985 in respect of case number CAM/00KF/LIS/2020/0016.
 - d) whether 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 of the Commonhold and Leasehold Reform Act 2002 should be made.
 - e) Whether an order for reimbursement of application and/or hearing fees should be made.

The Law

19. The relevant law is contained in the Landlord and Tenant Act 1985 sections 18 to 27A and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as set out in Annex 2.

The Lease

20. A Copy of the Lease for the Property was provided dated 19th August 2015 between Terence James Callaghan ("the Landlord") (1) and Peter Hubert Woodhouse (the "Tenant") (2). The Lease is for a term of 199 years from 1st January 2014. All the Leases are understood to be in the same form. The Leaseholds are registered at HM Land Registry as follows:
Flat 2 Title Number EX915922 to Catherine Cremin 29th November 2018,
Flat 5 Title Number EX925454 to Stephen William Puttock 29th March 2016,
Flat 6 Title Number EX920963 to Samantha Jane Taylor 2nd January 2020.
21. The Landlord's freehold title is registered at HM Land Registry under Title Number EX142869 as of 11th January 2017. A summary of the provisions of the Lease relevant to these proceedings are set out below.
22. The Lease has the following relevant definitions:
The Service Charge is the Tenant's Proportion of the Service Costs
The Tenant's Proportion is 1/6th
The Service Costs are the costs listed in Part 2 of Schedule 7.
The Service Charge Year is currently 1st January to 31st December.
23. Schedule 4 - Tenant Covenants

Paragraph 2 - Service Charge

Paragraph 2.1

The Tenant shall pay the estimated Service Charge for each Service Charge Year in one instalment on each of the Rent Repayment dates.

Paragraph 2.3

If in respect of any Service Charge Year, the Landlord's estimate of the Service Charge is less than the Service Charge, the Tenant shall pay the difference on demand. If, in respect of any service charge Year, the Landlords' estimate of the Service Charge is more than the Service Charge, the Landlord shall credit the difference against the Tenant's next instalment of the estimated Service charge and where the difference exceeds the next instalment then the balance of the difference shall be credited against each succeeding instalment until it is fully credited.

Paragraph 7 - Costs

To pay on demand the costs and expenses of the Landlord (including any solicitors' surveyors' or other professional' fees, costs and expenses and VAT on them) assessed on a full indefinity basis incurred by the Landlord (both during and after the end of the Term) in connection with or in contemplation of any of the following:

- (a) the enforcement of the Tenant Covenants;*
- (b) preparing and serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking an proceedings under either of these sections...*

Paragraph 16

To indemnify the Landlord against all liabilities, expenses costs (including but not limited to any solicitors, surveyors or other professionals' costs and expenses and nay VAT on them assessed on a full indemnity basis) claims damages and losses (including but not limited to any diminution in the vlaue of the Landlord's interest in the Building and loss of amenity of the Building) suffered or incurred by the Landlord arising out of or in connection with:

- (a) any breach of any of the Tenant's Covenants;*
- (b) any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person at the Property or the Building with the express or implied authority of any of them.*

24. Schedule 6 - Landlord Covenants

Paragraph 4 - Services and Service Costs

Paragraph 4.1

Subject to the Tenant paying the Service Charge, to provide the Services

25. Schedule 7 – Services and Service Costs

Part 1 – The Services

This provides a list of items (a) to (m) including cleaning, maintaining, repairing and replacing/renewing the Retained parts, the Common Parts, the lift, security and fire prevention machinery.

(n) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.

Part 2 - Service Costs

Paragraph 1(a)

All the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:

- (i) providing the Services*
- (vi) putting aside side such sum as shall reasonably be considered necessary by the Landlord (whose decision shall be final as to matters of fact) to provide reserves or sinking funds for items of future expenditure to be or expected to be incurred at any time in connection with providing the Services*

Paragraph 1(b)

the costs and disbursement reasonably and properly incurred of:

- (i) managing agents...*
- (ii) accountants...; and*
- (iii) any other person retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services.*

Description of the Property

26. The Tribunal did not inspect the Building in which the Properties are situated due to the regulations regarding the Coronavirus pandemic referred to in the headnote of this Decision. From the previous Decision Case Reference CAM/ooKF/ LIS/2020/0016 the Tribunal was aware of the Description of the Building although the matters in issue were not dependent on its physical features and therefore the description is not repeated here.

Submissions

27. Both parties provided Statements of Case.

Applicants' Case

28. Mr Stephen Puttock, Ms Samantha Taylor and Ms Catherin Cremin each made written Statements of Case which are paraphrased and précised below.
29. **Mr Stephen Puttock** said in his Statement of Case that:

- a) He was a pensioner and not a wealthy person and so has to manage his day-to-day finances;
 - b) The past 18 months had been a period of emotional and financial hardship which had caused him stress and concern around maintaining his home and finances;
 - c) Each tenant including himself had paid £3,743.00 per flat which is a substantial sum of a modest block of 6 flats in a somewhat unfashionable area of Southend no Sea.
 - d) It was appreciated that the Building requires regular maintenance and he was not opposed to fair and affordable increases. He had previously gone to the Tribunal (Case reference CAM/00KF/ LIS/2020/0016) because he considered the increase in the annual contributions to the sinking fund unreasonable. These was reduced by the Tribunal. He did not expect the Landlord to charge its legal costs to the Service Charge.
30. He stated that he considered it unfair that the Tenants should have to pay the Landlord's legal costs because:
- a) The Tenants were ordinary members of the public and did not have access to specialist legal advice
 - b) As a limited company, the Landlord could easily absorb the costs and offset them against annual profit generated.
 - c) The Landlord and the Managing Agent have professional people with the expertise and knowledge to form a compelling case without the need for external legal resource.
31. Mr Puttock submitted that the Respondent's statement of case in respect of the current application of 161 pages was excessive.
32. **Ms Samantha Taylor** said in her Statement of Case that she had purchased the Lease to Flat 6 on 18th December 2019. She had looked at properties which had charges of between £1,500 and £2,500.
33. She said that when she decided to purchase the Leasehold interest, she requested the property management pack including details of the service charge. She said she was told that due to a new managing agent being appointed this information was not available. She subsequently relied upon the information given by the estate agent which was that the service charge was in the region of £1,500.00.
34. Ms Taylor said she appreciated that it was a variable service charge and fully expected an increase which on talking to other people in similar situations she anticipated to be in the region of £500.00 to £1,000.00. In the event the service charge was over £4,000.00 per annum.
35. This she considered unreasonable and entered discussions with the managing agent. It was evident that effort was made on both sides to try to find a solution without going to the Tribunal.

36. In the event an agreement was not reached which was not due to a lack of cooperation on the Applicants' side. Ms Taylor submitted that they were within their rights to question the increase in the Service Charge and the Tribunal reduced the reserve fund contribution. She considered that it was unfair to charge the legal costs of the Landlord and Managing Agent to the Tenants and that these could be covered by the Managing Agent.
37. The recovery of legal costs strongly discourages tenants from questioning unreasonable service charges. In this case Ms Taylor said that she was trying to stop costs being thrown away. She added that all the Applicants had cooperated in seeking a solution and had not withheld any payments.
38. **Ms Catherine Cremin** said in her Statement of Case that she had moved into the flat for security and ease of maintenance after being widowed. She said that she selected the flat because it was in a small block of 6 that was well maintained with a service charge that was affordable for a pensioner. Ms Cremin said she expected the Service Charge of £1,500.00 to rise with inflation but not an increase of 150%. She said she was not legally minded and so could not understand how this was right. She thought the Managing Agent was acting for the Tenants and so should consult them.
39. Ms Cremin added that no maintenance work had been carried out since the increase in the Service Charge apart from the fortnightly clean of the communal areas and external window clean every few months. She said that the Building was in a shabby state. There is metal waste left within the gated perimeter since July 2021, the entrance door to the Building lets in water leaving a smell of damp in the foyer, there is mould on the garage ceiling and an untended flower bed is full of rubbish.

Respondent's Case

40. The Respondent made a written Statement of Case. In which it was stated that the Landlord was entitled to recover the legal costs under the Lease (reference made to passages considered relevant) incurred in respect of the Tribunal Proceedings CAM/00KF/LIS/2020/0016 which were submitted to be reasonable.
41. It was noted that the Tribunal Decision determined that the estimated Service Charge costs for the year ending 31st December 2020 were reasonable but that the contribution to the Reserve Fund totalling 13,311.00 should be reduced to £5,000. In addition, an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 was made but no order was made to reimburse the Application or Hearing Fees under rule 13(2) of the First-tier Tribunal (Property Chamber) (Residential Property) Rules 2013.
42. No Application was made at that time for an order under section 20C of the 1985 Act.
43. It was further noted that the Tribunal in the proceedings CAM/00KF/LIS/2020/0016 had found that the Respondent's legal costs could be recovered pursuant to paragraph 1(b) of Part 2 of Schedule 7 of the Leases.

44. The costs included Solicitors' Fees of £2,500.00 plus VAT for work undertaken by a Grade C fee earner with an hourly rate of £161 plus VAT and a paralegal with an hourly rate of £118.00 plus VAT (Government guidelines for hourly rates were provided). The total time taken by Solicitors for carrying out the work was 25 hours, 20.3 hours of which were spent by the paralegal.

Work included:

Correspondence with Chambers via telephone and email;
Liaising with client via telephone and email;
Considering the case papers;
Advising client;
Correspondence with the Tribunal;
Drafting and submitting application to adduce witness evidence;
Drafting and reviewing witness statement of Mr Chris Peters;
Reviewing Bundle;
Filing and serving the witness statement;
Correspondence with Mr Puttock;
Correspondence with Counsel;
Reviewing witness statement of Ms Cathie Cremin;
Reviewing witness statement of Ms Samantha Taylor;
Briefing Counsel to attend hearing;
Reviewing decision.

45. It was submitted that it was reasonable to instruct the particular firm of solicitors from London as the Respondent has a long-term working relationship enabling it to benefit from favourable competitive rates in instructing them.
46. It was further submitted that the Respondent was entitled to seek legal advice and referred to the paragraph 4.1 of Part 1 of Schedule 7 of the Lease and *Reston Ltd v Hudson* [1990] 2 EGLR 51 where it was held that management might include obtaining legal advice in circumstances which involved litigation.
47. The costs included Counsel's Fees of £1,250.00 plus VAT in preparing for attending the hearing on 18th November 2020. Counsel was called to the bar in 2015 and is experienced in landlord and tenant matters.
48. The Respondent stated the Leases gave a contractual entitlement to recover its costs through the Service Charge. It was contended that to make an order under section 20C would be to penalise the Respondent for relying upon professional advice. It was submitted that it would not be just and equitable to deprive the Respondent from recovering its costs.
49. With regard to the Application for an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 the Respondent said that it did not intend to claim costs on a personal liability basis.

Decision

50. The Tribunal considered each of the issues identified.

a) Reasonableness and Payability of Costs

51. Firstly, it considered whether the legal costs incurred in the year ending 31st December 2020 are reasonable and payable.

52. With regard to payability the Tribunal found that paragraph 1(b) of Part 2 of Schedule 7 which states the Service Charge includes:

the costs and disbursement reasonably and properly incurred of:

(i) managing agents...

(ii) accountants...; and

(iii) any other person retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services.

is in two parts. The one part specifies the persons who may be employed and the other for what they can be employed.

53. With regard to the first part the Tribunal had taken notice that in the course of the hearing of case number CAM/00KF/LIS/2020/0016 (paragraphs [88] to [90] of the Decision and Reasons) Counsel had submitted that paragraph 1(b) of Part 2 of Schedule 7 enabled the Respondent to claim the cost of employing a solicitor or counsel through the Service Charge. The Tribunal found then and finds now that the provision is sufficiently broad to include solicitors and counsel.

54. With regard to the second part the Tribunal finds that the proceedings of case number CAM/00KF/LIS/2020/0016 related to the estimated service charges and reserve funds which are part of managing the Building and providing Services. Therefore, the Tribunal finds that the Respondent may claim the cost of employing a solicitor or counsel in respect of the proceedings of case number CAM/00KF/LIS/2020/0016 as well as the present case.

55. The Tribunal then considered the reasonableness of the charge. In doing so it considered the nature of the proceedings. The Tribunal found that there were two main issues, the reasonableness of the estimated Service Charge of the year ending 31st December 2020 and the amount of the contribution to the Reserve Fund for the same year.

56. Both matters were clearly defined. The amount of the contribution to the Reserve Fund in particular had been the subject of discussions between the parties prior to the proceedings. There were no difficult legal points and Mr Peters was able to address the Tribunal thoroughly on both matters as he was well acquainted with the past actual and then current estimated accounts and had been instrumental in preparing the Long-Term Maintenance Plan. Therefore, the work that was required by the lawyers in preparing the case should be considered in the light of what was needed to present it.

57. The Tribunal recognised that the Landlord Respondent and its Managing Agent might wish to seek the advice of their solicitor on receipt of the

Application. Solicitors would therefore take instructions from the client, advise the client, assist the client in preparing a witness statement/statement of case in the light of the application and the applicants' witness statements and instruct counsel.

58. With regard to the evidence, it found that Mr Peters is an experienced professional property manager who would not require much prompting or directing by lawyers to prepare his witness statement. He also might be expected to have to hand the accounts and any other relevant documentation. With regard to the submissions, Mr Stocks is equally experienced and able to present the case and its submissions based upon the hearing bundle. Taking this into account the Tribunal considers 24 hours for the solicitors to carry out their role in this case is too long.
59. A Grade C fee earner could carry out all the necessary tasks in a time of 5 or 6 hours at an hourly rate of £161.00. A sum of £1,000.00 is reasonable. This together with Counsel's fees of £1,250.00 makes a total of £2,250.00 plus VAT of £450.00.
60. The Tribunal determines that the reasonable costs are £2,700.00.

b) Section 20C Landlord & Tenant Act 1985 re CAM/ooKF/LIS/2020/016

61. Secondly, having noted that the Lease does contain a provision in paragraph 1(b) of Part 2 of Schedule 7 that enables the Landlord to recoup the costs incurred in proceedings before a tribunal or court through the service charge, the Tribunal considered whether an order should be made for the limitation of those costs under section 20C of the Landlord and Tenant Act 1985 in respect of case number CAM/ooKF/LIS/2020/0016.
62. In support of their application under section 20C of the 1985 Act, the Applicants stated that they are individuals of limited financial means and expressed the view that, in contrast the Landlord and its Managing Agent are wealthy companies with commercial interests. The financial resources of the landlord and its agent and whether or not they are a commercial entity is not a relevant consideration when determining whether an order should be made under either section 20C of the 1985 Act, although their respective duties as landlord and agent might be.
63. In support of its application the Respondent drew attention to the provisions of the Lease which enable the Landlord to recoup its costs and submitted that it would not be just and equitable to make an order which would penalise the Respondent for relying upon professional advice or deprive the Respondent from recovering its contractual costs.
64. In deciding whether or not to make an order the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.
65. At paragraph [135] of the previous tribunal's decision and reasons in respect of case number CAM/ooKF/LIS/2020/0016 it considered that neither had

acted unreasonably and both had attempted to engage with a process of settling the issues prior to the hearing.

66. It went on state at paragraph [136]:
- “However, the Tribunal considered that the Managing Agents on behalf of the Respondent should have explained the rationale of the Reserve Fund and forewarned the Applicants of the very substantial demand for the Reserve Fund contribution. It was not unreasonable for the Applicants to apply to the Tribunal for a determination promptly on receiving the demand without some explanation. The information provided with the budget did not address what was bound to be the Applicants’ main concern of the demand of over £2,000 per flat towards the reserve which doubled the Service Charge.”
67. Although this consideration related to making an order under paragraph 5A of Schedule 11 of the 2002 Act this Tribunal is of the opinion that it is also applicable to the making of an order under section 20C of the 1985 Act.
68. Additionally, as the negotiations regarding the Reserve Fund were taking place pending a tribunal application the Managing Agent or its legal representative might, in the course of them, have alerted the Applicants to the possibility of costs being incurred in coming to the tribunal. Neither party has mentioned this. Notwithstanding, the Applicants must have been aware that the Respondent would incur some costs in going to the Tribunal and that under the Lease these costs could be recouped subject to the legislative provision in this regard.
69. Overall, the Tribunal found that the Respondent and Agent did not provide information to the Applicants which it should have done and if it had, the proceedings might not have gone to a hearing.
70. With regard to the outcome of case number CAM/00KF/LIS/2020/0016 the estimated Service Charge was found reasonable although the Reserve Fund contribution was significantly reduced. In the present case the costs determined to be reasonable are less than those claimed. The outcome, as is often the case in tribunal proceedings, is neither completely one way or another.
71. Taking into account that the Tribunal determines the reasonable legal costs in relation to case number CAM/00KF/LIS/2020/0016 to be £2,700.00 including VAT and taking into account the parties’ submissions and all the above considerations, the Tribunal makes an Order under section 20C limiting the Respondent’s costs payable by the Applicants to be £350.00 each which reflects the conduct of the parties and the outcome.

c) Section 20C Landlord & Tenant Act 1985 re the Present Case

72. The Tribunal considered whether a section 20C order should be made in respect of the present case. The Tribunal finds that this case has been precipitated by case number CAM/00KF/LIS/2020/0016. It finds that the Applicants could and should have made an application for an order under

section 20C of the 1985 Act when the previous tribunal asked if they wished to do so. If they had done so some additional costs on both sides might have been avoided and this has influenced the Tribunal's decision with regard to making an order under section 20C of the 1985 Act.

73. In making its decision, the Tribunal took into account that there was no hearing in the present case. It also took into account the evidence and submissions that were necessary for a decision to be made. These were a statement from each of the Applicants a brief statement of case from the Respondent giving an explanation of the costs incurred (fee earner rate, time taken etc) and the invoices. The decision further reflects the outcome.
74. The Tribunal makes an Order under section 20C limiting the Respondent's costs payable by the Applicants to be £100.00 each.

d) Paragraph 5A of Schedule 11 Commonhold & Leasehold Reform Act 2002 re Current Case

75. The Tribunal found that Paragraph 7 (a) of Schedule 4 was the only provision which allowed individual liability. Under this clause a Tenant is liable to pay the costs and expenses of the Landlord in connection with or in contemplation of a number of matters which the Tribunal is of the opinion are not applicable in this case.
76. The Respondent has stated that it would not seek costs under this provision but as the Applicant has requested a determination and for the avoidance of doubt the Tribunal makes an order under paragraph 5A of the 2002 Act for the same reasons it did so in its previous decision in case number CAM/00KF/LIS/2020/0016.

e) Application for Reimbursement of Fees

77. The Applicant has not applied for the reimbursement of the Application Fee under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013. However, for the avoidance of doubt the Tribunal was of the opinion that its determination is not so much in favour of the Applicants that their costs should be met by the Respondent. The Tribunal makes no order for reimbursement of the Application Fee.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

2. Section 18 Landlord and Tenant Act 1985
 - (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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period

3. Section 19 Landlord and Tenant Act 1985
 - (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.

4. Section 27A Landlord and Tenant Act 1985
 - (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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

5. 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 court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

6. Schedule 11 Commonhold and Leasehold Reform Act 2002

5 A 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.