FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/21UF/LAC/2021/0001**
Property	**:**	**Flat 11, Margaret Court, 269 South Coast Road, Peacehaven, East Sussex, BN10 7PQ**
Applicants	**:**	**Socratis Socratous and Lisa Anne Socratous**
Representative	**:**	
Respondent	**:**	**Margaret Court (Peacehaven) RTM Company Ltd**
Representative	**:**	**Gregory Kirby MBA**
Type of Application	**:**	**Determination of administration charges and service charges**
Tribunal Member	**:**	**Judge R Cooper**
Date of Decision	**:**	**11th June 2021**

DECISION

In this decision references to the page number of the documents are referred to thus [ ].

Background

1. Margaret Court, 269 South Coast Road, Peacehaven, East Sussex, BN10 7PQ ('the Property') is a modern purpose built two-storey block comprising 15 leasehold flats. Prior to July 2020 Rayners Estate Management ('Rayners') managed the property on behalf of the freeholder who is the personal representative of the late Captain E Brown [40].

2. In or around 2017 a number of leaseholders appear to have become concerned about failures in management on the part of Rayners and took steps to form a right to manage company ('RTM') under the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') in order to take over the management responsibility. The Margaret Court (Peacehaven) RTM Company Ltd which is the Respondent to these proceedings was incorporated on 13th December 2019 [56]. Management functions were subsequently transferred to the Respondent's appointed agents, Housemartins Property Services ('Housemartins') on 1st July 2020 after the requisite notices were served. The Respondent is represented in this application by Mr Gregory Kirby who is one of the three directors of the RTM company.

3. Mr and Mrs Socratous ('the Applicants') acquired the lease of Flat 11, which is on the first floor on an unknown date. They live elsewhere and let the flat out to tenants. They, along with the lessees of Flat 1 did not participate in the RTM process.

The Application

4. On 2nd February 2021 the Applicants applied to the Tribunal for determination as to the liability to pay and reasonableness of administration charges and/or service charges in respect of Flat 11, Margaret Court, 269 South Coast Road, Peacehaven, East Sussex, BN10 7PQ. They also apply for reimbursement of money paid to Rayners in respect of works that have not been carried out, and seek orders that the Respondent's costs of the Tribunal proceedings should not be recoverable through future service or administration charges. They also apply for an order for costs in respect of the Tribunal fees and their own legal costs.

5. At a case management hearing on 18th March 2021, the issues for determination by the Tribunal and the proper Respondent to the application were identified. Directions were given by Mr Banfield FRICS setting out the timetable for exchange of statements of case (and supporting documents) and the preparation of a hearing bundle by the Applicants for submission to the Tribunal by 14 May 2021.

6. In an email of 9th April 2021, the Respondent disagreed with two matters recorded in the Directions notice, namely the amount of the agreed refund of fees in respect of the RTM process and the discharge of the previous managing agents as respondents. The Applicants responded on 10th April 2021 disagreeing with the contents of the Respondent's email.

7. The Applicants then applied to the Tribunal on 28 April 2021 for the Respondent's evidence to be barred on the grounds of their *'unsolicited redaction'* of direction 7 of the Tribunal's Order of 18 March 2021. Mr Banfield FRICS refused that application in a decision notice dated 5th May 2021. Further directions were given regarding the filing of evidence.

8. The parties had agreed at the case management hearing on 18th March 2021 that the application was suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013. No written objections were received in response to the directions of 18th March 2021, and the Tribunal considers it appropriate and fair to proceed in this way, there being no matters in relation to which oral evidence is considered necessary.

9. An inspection of the property has not been carried out. It was not considered necessary by the parties, and no written application has been made for one following the Directions of 18th March 2021.

The Issues for the Tribunal

10. At the Directions hearing on 18th March 2021, the following issues were identified as requiring determination

    (i) Whether administration charges of £183.80 are payable by the Applicants in respect of the fees for the right to manage company
    (ii) Whether the Tribunal has power to order the repayment of the sum of £265.96 being the first installment of the cost of repairs to the balcony and porch which have not been carried out.
    (iii) Whether Tribunal fees and legal costs should be recovered from the Respondent.
    (iv) The identity of the appropriate Respondent i.e. whether the RTM company or the Freeholder

11. The Application itself also included applications under s20 of the Landlord and Tenant Act 1985 ('the 1985 Act') and paragraph 5A of Schedule 11 of the 2002 Act.

12. Mr Kirby in his position statement for that hearing said that contrary to the RTM Company's instructions, costs relating to the right to manage (RTM) process had been added to the Applicants' service charge when they should not have been. He agreed they should be reimbursed [46]. The Directions of 18th March 2021 record that Mr Kirby agreed the sum of £183.80 would be refunded. However, after the hearing only £90 was purportedly repaid. Mr Kirby in his email to the Tribunal of 9th April 2021 said the fee relating to the RTM process was only £90 and the other £93.80 was the balance of the service charge owed by Flat 11 for the service charge year ending May 2020 [53]. As the original application included a request for determination of the liability to pay the entire sum of £183.80, the Tribunal considers it reasonable and proportionate to allow the Respondent to resile from the agreement recorded as recorded in the Directions notice. The Tribunal must therefore determine whether the balance of £93.80 is payable as either an administration charge under Schedule 11 of Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') or as service charge under s27A Landlord and Tenant Act 1985 ('the 1985 Act').

13. The other two matters for determination by this Tribunal are

(i) Whether the sum of £265.96 (being the first installment of the cost of repairs to the balcony and porch) paid to Rayners on 29th January 2020 should be repaid to the Applicants, as the works have not been carried out

(ii) Whether Tribunal fees (£100) and legal costs (£780) paid by the Applicants should be recovered from the Respondent.

The Applicants' lease

14. The Tribunal had a copy of the Applicants' lease for flat 11 Margaret Court. It is dated 5th April 1976 and was granted for a term of 99 years from 25 December 1973.

15. In summary the relevant provisions are as follows:

(i) A ground rent of £25 per annum is payable on the 24th June each year

(ii) By clause 4 (i) the lessee covenants to pay '*such proportion of the annual maintenance cost as hereafter provided*'. The drafting of the lease is unfortunate. Not only is it silent as to the percentage share of the annual maintenance cost that is attributable to Flat 11, but it also makes inadequate provision for payment on account of costs. By clause 4(i) the lessee covenants to pay only £40 on account of the lessees' share of the annual maintenance cost contribution in advance on 24th June each year. In the event the Lessee's share of the annual maintenance cost is greater than £40 Clause 4(i) obliges the Lessee to pay the balancing charge as certified by the Lessor's managing agent or accountant '*forthwith*' after the end of the service charge year.

(iii) However, Clause 4(iii) does allow for a reasonable amount to be included in the annual maintenance account towards a reserve fund for expenditure that is not of a '*regularly recurrent annual basis*'.

(ii) The annual maintenance cost is defined in clause 4(ii) as '*the total of all sums actually expended by the Lessor during the period to which the relevant Maintenance Account relates in connection with the management and maintenance of the Buildings….*', and thereafter in sub-clauses (a) to (d) sets out the basis of the charges. These include the costs of performing the Lessor's covenants in Clauses 5(ii) to 5(vi) as well as other payments such as the costs of employing managing agents and other professionals (such as solicitors, accountants, valuers or surveyors) and other advisors in connection with those duties.

(iii) Clause 4(iv) gives Lessees a right to inspect all vouchers and receipts in respect of items in the Maintenance Account on serving

reasonable notice at least 28 days after having received the Maintenance Account.

(iv) The obligations in Clause 5(ii) to (vi) require the Lessor to, amongst other matters, maintain, repair, cleanse, repaint, redecorate and renew the main structure (including the roof) and common parts of the building, (including the forecourt, paths and grounds and the conduits for drainage, gas, and electricity). There is an obligation to keep '*cleansed reasonably lighted and in tidy condition*' the parts used in common by other occupiers (including the stairs, entrance and forecourt). There is an obligation to pay all rates, charges and outgoings in respect of parts of the Property used in common with others, and to keep the Property insured.

11. From the evidence before the Tribunal it would appear that not all of the leases in the Property are drafted in identical terms. The email from Housemartins to the directors of the RTM company on 10th November 2020 refers to service charge demands being due on 24th December for some but not all lessees.

The Law

12. Section 18(1) of the 1985 Act defines 'service charge' as '*an amount payable by a tenant … which is payable, directly or indirectly, for services … and … the whole or part of which varies or may vary according to the relevant costs'*. Section 18(2) defines 'relevant costs' as '*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord … in connection with the matters for which the service charge is payable*.'

13. Under s27A of the 1985 Act the Tribunal has the jurisdiction to determine whether a service charge is payable and, if it is;

(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.

14. A service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard (s19 of the 1985 Act). When service charges are payable in advance, no more than a reasonable amount is payable.

15. Paragraph 1 of Schedule 11 to the 2002 Act defines an 'administration charge' 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 respect of a failure by the tenant to make a payment by the due date to the landlord or … in connection with a breach (or alleged breach) of a covenant or condition in his lease'.

16. Paragraph 1(3) of the same Schedule defines a variable administration charge as *'an administration charge payable by a tenant which is neither (a) specified in his lease or (b) calculated in accordance with a formula specified in his lease'.*

17. Under paragraph 2 of the same Schedule a variable administration charge is only payable to the extent that the amount of the charge is reasonable. Under paragraph 4 of the Schedule *'a demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges'.* Under paragraph 5 of the Schedule an application can be made to the tribunal for a determination (*inter alia*) as to whether an administration charge (including a variable administration charge) is payable.

18. Under s20C of the 1985 Act a leaseholder may apply for an order that all or any of the costs incurred by a landlord in connection with 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 payable by the tenant or any other person or persons specified in the application.

19. A leaseholder may also apply to the Tribunal under paragraph 5A of Schedule 11 of the 2002 Act for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs".

Discussion and conclusions

<u>The applicants' case</u>

17. The Applicants' case is set out in the application [8] to [19], the witness statements of Mr and Mrs Socratous [49] to [51] and [79] to [90] and in their response to the Respondent's case [76] to [78].

18. In summary, the Applicants complain that the Respondent has failed to provide information requested both under clause 4(iv) of the lease and s22 of the 1985 Act.

19. They seek reimbursement of £183.80 which they believe were the set up and administration costs for the RTM company. They say that as they were not members of the RTM company they should not be liable for the initial costs of setting up and administration the company. They also say the Respondent should honour the agreement given by Mr Kirby at the Directions hearing on 18th March 2021 and refund the full sum of £183.80 rather than simply £90 [51].

20. They also seek reimbursement of £265.56 paid to Rayners on 29th January 2020 as the first of three instalments for concrete works to repair the balcony and porch to the block ('the Works'). They say this money should be reimbursed as the works have never been done following the s20 consultation process in 2019. The Applicants deny the Respondent's claim that the money has been used by Rayners and subsumed within the service charge due for the year ending May 2020 and say they have not received a service charge demand in October 2020 as alleged by the Respondent in its response to the application.

21. Finally, they also seek orders under s20C of the 1985 Act and Paragraph 5A and re-imbursement of their Tribunal application fee (£100) and the costs of obtaining legal advice in relation to this dispute (£780).

The Respondent's case

22. The Respondent's case is set out in Mr Kirby's response to the Applicants' statement of case (at [56] to [60]).

23. In summary, Mr Kirby on behalf of the Respondent says 13 of the 15 leaseholders in Margaret Court (87%) formed the RTM Company as the only means of transferring management of the Block away from Rayners who were incompetent. He says the RTM Company had no desire to 'self-manage' but simply wanted to ensure the Block was effectively managed in future. He says they had been hampered in their attempts by Rayners' failure to hand over all relevant information (including copies of leases, lease extensions, and service charge accounts). He says Housemartins had been unable to comply with requests for information from the Applicants because they themselves had not received the required information from Rayners. He says the past 3 years' accounts were only handed over by Rayners following a successful complaint to Property Redress Scheme (PRS), which was determined on 25th January 2021 [57] and even then, Rayners statements were unclear.

24. The Respondent says the sum of £265.96 is not repayable to the Applicants as this was simply deducted by Rayners from the service charge of £371.61 that Rayners say was due from Flat 11 for the period to 31st May 2020. Although he agrees the RTM fee should not have been charged to the applicants, he says the sum of £93.80 remains due and owing from them for the period to 31st May 2020 [57]. The Respondent says the Applicants are aware of all the difficulties faced by the RTM company and rather than attacking the Respondent, they should be contributing to the costs of repairing and managing the Property. The Respondent denies that they have failed to manage in accordance with the lease and says that only now Housemartins have taken over are cleaning, gardening and long term and major project management issues being properly addressed. The Respondent says Housemartins are awaiting confirmation from the First-tier Tribunal as to the % share of the service charge that can be levied, as this is not clear from the lease [58].

25. In relation to costs, the applications are opposed. The Respondent says the Applicants have been entirely unreasonable in their approach. Explanations have been given as to the whereabouts of the £265.96 paid to Rayners in their emails of 9th and 29th April 2021. The Applicants' insistence on proceeding with the application to the Tribunal is unreasonable and they should be responsible for paying the Respondents' costs (if any).

The Tribunal's determination

26. Unhappily, as with many applications that come before the Tribunal for determination, there appear to be issues relating to the management of the Property which do not fall squarely within the jurisdiction of the Tribunal, but which take up a great deal of time, effort and cost to the various individuals involved and may be better suited to mediation rather than being the subject of proceedings.

27. There appears to have been a history of concern on the part of some of the leaseholders about poor management of the Property, which led to the formation of the Margaret Court (Peacehaven) RTM Company Ltd and the transfer of management functions to the Respondent's appointed agents, Housemartins Property Services ('Housemartins') on 1st July 2020. The Applicants clearly did not agree with the application for the right to manage and did not participate. However, they say they are prepared to abide by the democratic process so long as the RTM company (and its agents) carry out its functions properly in accordance with the law and the provisions of the lease [49].

28. From the documents it also appears there are a number of issues of disrepair about which there is concern on the part of the leaseholders. In particular, there is mention of;

- concrete works required to repair the balcony and porch (which is the cause of water ingress to the ground floor and resulted in a piece of falling concrete in April 2019)
- replacement of the two front doors
- ensuring communal smoke alarms comply with the required safety regulations
- repointing external walls [100].

29. In 2019 a consultation process under s20 Landlord and Tenant Act 1985 ('the 1985 Act') appears to have been carried out in respect of works required to repair the balcony and porch of the Property ('the Works'). Money was then demanded on account. A demand for an initial instalment of funds for those works (£265.96) was issued to the Applicants on 22nd January 2020 [40], which was duly paid [42]. In the case of Mr Kirby (who is the leaseholder for Flat 6) the demand was for £736.54 [73]. However, it appears these Works have never been carried out.

30. Following Housemartins confirmation in an email dated 18th September 2020 that they had taken over management of the Property from 1st July 2020, a demand was sent by email to the Applicants on 6th October 2020 requesting payment of the balance of £183.80 said to be outstanding under the service charge account prepared by Rayners [38].

31. This appears to have resulted in substantial correspondence. Mr Socratous' witness statement comprises a chronology of that correspondence, most of which is not wholly relevant to the Applicants' application ([80] to [90]). However, it does show that Housemartins' email of 18th September 2021 generated a significant amount of correspondence from the Applicants commencing on 19th September. They entered into correspondence variously with Housemartins, Rayners, the Directors of the RTM Company and the accountant used by Housemartins. The Applicants sought clarification of various matters including Housemartins' proposed management strategy, the apportionment of service charge between the various flats, the accountants who would be used to certify the accounts, and requests for information regarding the service charge accounts and so on. The Applicants also queried various line items in the statement issued on 6th October and requested confirmation that the sum of £265.96 paid on 29th January 2020 was included within the reserve funds passed onto the RTM Company by Rayners. In the absence of what they considered adequate responses, the Applicants issued this application and served notices under ss21 and 22 of the 1985 Act.

32. The notices served under s22 of the 1985 Act on 4th December 2020 seeking accounts, receipts and invoices indicate that summaries of relevant costs may have been provided for the periods (a) ending 6th October 2020 [115] (b) 1st July 2019 to 31st May 2020 [116] and (c) ending 12th October 2020 [117]. However, this is not information that has been provided to the Tribunal. In any event, as Mr Banfield FRICS made clear at the case management hearing in March 2021, the Tribunal does not have jurisdiction to consider any failure by the Respondent to comply with the duties under ss21 or 22 of the 1985 Act.

33. Turning to the matters that do fall within the Tribunal's jurisdiction, the Applicants queried the statement presented to them by email on 6th October 2020 with Housemartins' demand for payment of £183.80 [38]. The Applicants sought clarification as to who the statement was from and have repeatedly questioned three items namely

01/06/20 Inc & Exp A/c to 31/05/20 *£105.65*
01/06/20 RTM Admin Fees *£90.00*
10/08/20 Payment of service charge (Housemartins) *£183.80.*

Mr Socratous has also repeatedly requested confirmation that the sum of £265.96 paid on 29th January 2020 was held within the funds passed onto the RTM Company by Rayners, and now seeks reimbursement of that sum.

34. The Tribunal finds that the statement at [38] is not a proper demand for payment of service charge that has been certified in accordance with clause 4(i) of the lease. Nor is it one that contains the summary of rights and obligations of tenants in respect of service charges as required by s21B of the 1985 Act. The Tribunal is satisfied it is a statement drafted by Rayners showing the state of Mr and Mrs Socratous's service charge account as it purportedly stood around the time the management function was handed over to Housemartins. In the case of the Applicants, they were said to owe an amount of £183.80 which has since been demanded by Housemartins as the money settled on the transfer of the account as at 10th August 2019 [39].

35. On the basis of that 'handover statement' and the evidence from Mr Kirby, the Tribunal is satisfied and determines that the Administration Fee for the RTM company applied to the applicants' account was £90 not £183.80 as stated in the Directions notice of 18th March 2021. Mr Kirby accepts in his correspondence with the Tribunal that a share of the administration fee for the RTM application should not have been passed on to the leaseholders who did not participate and are not members of the company (namely the Applicants and the owners of flat 1). The Respondent confirms that £90 has been reimbursed to the service charge account for the Applicants. This is accepted by the Applicants.

36. In relation to the statement it is not clear to the Tribunal why an amount of £11.85 has been credited to the Applicants' account in respect of ground rent for the period 2nd January 2020 to 23rd June 2020. The full ground rent of £25 was due for the year commencing 24th June 2019 and was paid in advance on 7th June 2019. A further sum of £25 fell due on 24th June 2020 but has not been included.

37. No explanation is provided in the statement as to £105.65 charged as the *'Inc & Exp A/c to 31/05/20'* or how this was calculated by Rayners. The Tribunal accepts that it is more likely than not that this information may not have been known to the Respondent or Housemartins at the time of the request for payment in October 2020 or indeed the time of this application given Rayners' failure to provide relevant accounts, statements, vouchers and receipts (as set out below).

38. Mr Kirby in his emails to the Tribunal, however, says the outstanding amount (of £93.80) is the balance of service charge due from Flat 11 for the year ending 31st May 2020. He says the Applicants' total share of the annual maintenance charge for the year was £371.61 [137].

39. However, there is simply insufficient evidence before the Tribunal to make any proper determination as to the amount of or payability of service charge for Flat 11 for the 2019/2020 service charge year.

40. It is not clear to the Tribunal why the date of 31st May 2020 has been used in this handover statement, as in the Applicants' case at least the service charge year runs from 24th June each year to the 23rd of the next.

41. Nor can the Tribunal make any determination as to whether a sum of £371.61 was properly payable by the Applicants as their share of the annual maintenance cost (or service charge) as there is simply no evidence before the Tribunal demonstrating how the sum has been arrived at. There is no proper itemised account showing the expenses incurred for the Property as a whole for the year ending 23rd June 2020 identifying how the annual maintenance charge for the 2019/2020 service charge year was calculated. Nor have copies of any relevant invoices or receipts been provided. Although Mr Kirby refers to a sum of £3,000 being handed over by Rayners to Housemartins (money which he says was used for both payment of the insurance premium and managing agents' fees), this would post-date the year in question. Simply no adequate information is available to the Tribunal to determine whether the costs purportedly incurred by the previous managing agents prior to 31st May 2020 (or indeed 23rd June 2020) were properly chargeable to the service charge account under the terms of the lease. In the absence of documentary evidence there is nothing to show that money was expended for purposes defined in Clauses 4 and 5 of the lease.

42. The Tribunal is satisfied that between 1st July 2020 and at least January 2021 (if not later) it was more likely than not that Housemartins and the Respondent would have been significantly hampered in being able to fully answer most of the Applicants' questions, including information about the service charge, as Rayners had not provided them with the documentation on handover that they should.

43. The Tribunal gives particular weight in this regard to the findings of the Property Redress Scheme's (PRS) determination of 25th January 2021 that Rayners had breached their duty of care to the leaseholders and their duties under the RICS Code of Guidance to provide *'all required and necessary information to allow for the handover of the management of the property and for the new agent to effectively manage the block without contravening the law'* [65]. Rayners had failed to confirm to PRS what documentation they had handed over and had failed to answer questions about apportionment of service charge. The PRS ordered Rayners to hand over 13 different categories of documentation to the Respondent including service charge accounts for the previous 3 years, copies of service charge demands issued to lessees, year end receipts/bank statements, minutes of AGM meetings etc.

44. However, if service charge accounts, bank statements and invoices/receipts have now been provided to Housemartins in response to the PRS determination, then this is evidence which should be available to the Respondents, and should form the basis of a proper annual maintenance charge (or service charge) account for the block for the 2019/2020 service charge year certified in accordance with clause 4(i) of the lease.

45. Unfortunately, as Housemartins' email of 10th November 2020 also makes clear they had also not received copies of the leases of the 15 flats

or proper information from Rayners, and had therefore been unable to ascertain from Rayners how the service charge had been apportioned between the various lessees [71]. By January 2021 Housemartins had only received copies of 3 of the 15 leases and remained unable to ascertain the proper apportionment of the service charge between the various leaseholders, and in consequence they were unwilling to issue service charge demands they say were due in December 2020 [74]. It would appear that they are now considering seeking legal advice on the issue, and it would also, of course be open to them to make an application to this Tribunal under the Landlord and Tenant Act 1987.

46. In addition to hampering their ability to issue proper service charge accounts in 2020, Housemartins' inability to obtain relevant information from Rayners also resulted in increased management costs (which may well in time be payable by lessees). It also led to them serving 3 months' notice terminating their appointment as agents [74]. That notice period has since been extended to 10th May 2021 [70].

47. When looking at the totality of the evidence in the round, the Tribunal finds that the sum of £93.80 (being the balance from £183.80 after the refund of the RTM administration fee of £90 is deducted) is not currently payable by the Applicants as a valid service charge demand has not been made.

48. However, once a proper certified service charge demand is provided to the Applicants in accordance with Clause 4(i) of the lease (and s21B of the 1985 Act) setting out the costs and expenses that may properly be attributed to the annual maintenance cost account for the year from 24th June 2019 to 23rd June 2020, it will be for them to make payment of that balancing sum (or any other sum that may be demanded). The RICS Service Charge Residential Management Code (3rd Edition) contains general guidance in respect of such end of year statements, which should ideally be followed by the managing agents.

49. If the Applicants are then not satisfied either that the service charge is payable under the terms of the lease or that it relates to costs that have not been reasonably incurred or that any relevant works or services have not been carried out to a reasonable standard, it will be open to them to make a further application. However, the Tribunal would sincerely hope that the parties could resolve any issues cooperatively or by some form of mediation rather than by repeated applications.

50. In relation to the Applicants' claim for reimbursement of the £265.96 paid in advance in respect of the Works, the Tribunal has no jurisdiction to order repayment. Any monies paid on account of service charge for works or services yet to be carried out is held on trust (s42 of the Landlord and Tenant Act 1987). This aspect of the claim is therefore outwith the jurisdiction of the Tribunal as it is effectively a breach of trust claim (which can only be brought in the County Court). Furthermore, the Tribunal lacks jurisdiction to make an order for

restitution, as confirmed in Solitaire Property Management Company Limited v Holden [2012] UKUT 86 (LC).

Costs applications

43. The Applicants ask the Tribunal to make orders under section 20C and paragraph 5A preventing the Respondent from recovering the cost of the tribunal proceedings from them either via future service charges, or via an administration charge.

44. An order under either section 20C or paragraph 5A only has significance if there are provisions in the lease that allow the costs of the tribunal proceedings to be recouped through a service and/or administration charge. It should be noted that the Tribunal makes no express finding on this issue.

45. In deciding whether to make an order under either section 20C or paragraph 5A the Tribunal must consider what is just and equitable in the circumstances. The circumstances can include the conduct of the parties and the outcome of the proceedings.

46. The result of this application is that the Applicants have been only partially successful, and this is largely due to default on the part of the previous managing agents. The Tribunal therefore does not consider it just and equitable to make orders either under s20C or paragraph 5A.

47. In relation to the Applicant's application for the Respondent to pay their legal costs of £780 and the application fee of £100, the Tribunal has discretion to under s29 of the Tribunals, Courts and Enforcement Act 2007 but this must be exercised in accordance with the Tribunal Procedure rules (in this case Rule 13). There is no power to make a 'wasted costs' order under s29(4) as the Respondents have not instructed a legal representative.

48. In relation to the power to order costs under Rule 13(1)(b), the Tribunal may only make an order *'if a person has acted unreasonably in bringing, defending or conducting proceedings'*. Sir Thomas Bingham MR in *Ridehalgh v Horsfield (1994) 3 All ER 848*, (a case concerning wasted costs) held at that 'unreasonable conduct' was conduct that was '*vexatious, designed to harass the other side rather than advance the resolution of the case'*. He said the *'acid test is whether the conduct permits of a reasonable explanation*'. Conduct cannot be described as unreasonable simply because it leads to an unsuccessful result.

49. In the context of an application under Rule 13(1)(b), the Upper Tribunal in *Willow Court Management (1985) Ltd v Alexander (2016) UKUT 0290 (LC)* approved that formulation. A principle that emerges from the cases is that costs are not to be routinely awarded under Rule 13 merely because there is some evidence of imperfect conduct at some stage of the proceedings. In this case, the Tribunal finds the Respondents have not acted unreasonably in defending or conducting the proceedings. Whilst

they may not have demonstrated that the balance of the service charge of £93.80 is payable by the Applicant, this is largely, although not exclusively on account of Rayners' failure to provide information. The Respondent would appear to have tried to resolve matters with the Applicants without it being necessary for the Tribunal to become involved. Regrettably, the Applicants' own approach has not been entirely conducive to resolving issues of concern.

50. In respect of the application for reimbursement of the fee of £100 under Rule 13(2) as the applicants have been partially successful the Tribunal orders that the Respondent repay 50% of this sum to the Applicants.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.

Appendix – the Law

The Landlord and Tenant Act 1985 Act (as amended) provides:

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

18(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—
(a) 'costs' includes overheads, and (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 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.

Section 20c 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….the First-tier 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 person specified in the application. …

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate 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 the appropriate 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 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.

(4) No Applications under subsection (1) or (3) may be made in respect of a matter which –

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

…

Paragraph 5A to Schedule 11 of the 2002 Act (as amended) provides:

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
..