**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2017] UKUT 3 (LC)**
**UTLC Case Number: LRX/67/2016**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – SERVICE CHARGES – payment on account – approach to reasonableness of estimated expenditure where determination occurs after period of account – expenditure not incurred – whether to be taken into account – necessary adjustment – section 19(2), Landlord and Tenant Act 1987 – appeal dismissed***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**BETWEEN:**

**CHARLES KNAPPER**
**and others**
**(MEMBERS OF THE POINT CURLEW TENANTS ASSOCIATION)**

**Appellants**

**and**

**(1) MARTIN FRANCIS**
**(2) REBEKAH FRANCIS**

**Respondents**

**Re: Atlantic Bays Holiday Park**
**St Merryn**
**Cornwall**

**Martin Rodger QC, Deputy Chamber President**

**The Royal Courts of Justice**
**London WC2A**

**15 December 2016**

*Rawdon Crozier*, instructed by Fursdon Knapper Solicitors, for the appellants
*Jonathan Chew,* instructed by Enigma Solicitors, for the respondents

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**The following cases are referred to in this decision:**

*Bwllfa and Merthyr Dare Steam Collieries (1891), Limited v The Pontypridd Waterworks Company* [1903] AC 426

*Carey Morgan v de Walden* [2013] UKUT 134 (LC)

*Curwen v James* [1963] 1 WLR 748

*Golden Strait Corp v Nippon Yusen Kubishka Kaisha* [2007] 2 AC 353

*Parker v Parham* (Lands Tribunal) (2003) LRX/35/2002

*Phillips v Francis* [2015] 1 WLR 741

**Introduction**

1. This appeal concerns the meaning and effect of section 19(2) of the Landlord and Tenant Act 1985.

2. A well drafted service charge clause in a residential lease will usually require the leaseholder to make periodic "on-account" contributions towards the cost of services before those services are provided by the landlord and the final cost is known. Such contributions are usually based on an estimate of expenditure expected to be incurred during the relevant accounting period, with the estimate often being made by the landlord before that period begins. At the end of the period an account of actual expenditure is typically drawn up and the leaseholder's final liability calculated. If the sum paid on-account proves to have been less than the final liability the leaseholder is required to pay a balancing charge; if it is was more the excess contribution is either carried forward to be set against the leaseholder's liability for the next year, or transferred to a reserve, or (less frequently) returned to the leaseholder.

3. As is well known, the effect of these standard contractual arrangements is modified by section 19 of the 1985 Act which provides as follows:

> 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.

4. The main issue in this appeal is whether, in determining the reasonableness of an amount demanded on-account of relevant costs before they were incurred, a tribunal was required or permitted by section 19(2) to take into account facts which were not known at the date of the demand but became known only later. In particular, was it relevant to the reasonableness of a sum payable on-account that, in the event, part of the anticipated expenditure on which the original demand was based was not incurred at all during the relevant accounting period. If the answer to the first issue is that what might be called post-liability events cannot be taken into account in determining the reasonableness of an on-account demand, a second issue may arise, namely whether in those circumstances the reference in section 19(2) to the making of "any necessary adjustment" nevertheless permits a modification of the leaseholder's contractual obligation to pay a sum which was reasonable at the time it was demanded.

5. The issues arise in this appeal from a decision of the First-tier Tribunal (Property Chamber) ("the FTT") given on 31 March 2016 on an application by the appellants, who are all members of the Point Curlew Tenants Association. The Association represents the interests of leaseholders of holiday chalets on the Atlantic Bays Holiday Park at St Merryn, Cornwall ("the Park") the freehold of which is owned by the respondents.

6. The appellants' application to the FTT was for a determination of the reasonableness of sums claimed by the respondents on 30 December 2014 and which became payable on 31 December 2014, on-account of service charge expenditure anticipated during 2015. The FTT determined that, having regard to the requirement of reasonableness in section 19(2), each of the 171 long leaseholders was liable under the terms of their leases to make a payment of £1,757.52 on-account of the 2015 expenditure. In making that determination the FTT rules that it should ignore the fact that part of the anticipated expenditure on which the December 2014 demands had been based was known not to have been incurred by the time it made its determination.

7. Permission to appeal was refused by the FTT but granted by the Tribunal on condition that each appellant should pay the sum of £1,287.52 per unit, that being the proportion of the on-account charge referable to expenditure which was known to have been incurred.

**The identity of the appellants**

8. A preliminary point of some general significance arose concerning the identity of the proper appellants in this appeal. The application to the FTT and the appeal were both brought in the name of the Association. Although that was no doubt convenient for administrative reasons the Association is unincorporated and has no legal personality; it is therefore incapable of conducting legal proceedings. Apart from that important technical consideration, it is in any event undesirable, because of the uncertainty it can give rise to, for individuals with separate interests and liabilities to participate in proceedings under a collective identity. The Tribunal therefore directed that each of the members of the Association who wished to participate in the appeal should be individually identified. A list of 95 members was provided and is appended to this decision. At the start of the hearing the leaseholders whose names appear on the list were substituted as appellants in place of the Association.

**The relevant facts**

9. The background to this appeal is described in the judgment of the Court of Appeal in *Phillips v Francis* [2015] 1 WLR 741, the most celebrated battle in a long-running dispute between the owners of the Park and the members of the Association.

10. The Park is a 25 acre holiday park at St Merryn built in the 1970's on part of a disused military airbase. It includes 171 holiday chalets let on 999 year leases, together with a separate area for visiting caravans, an amenity centre and other

buildings and facilities including a children's play area. Each of the leases places an obligation on the leaseholder to contribute through a service charge to the costs incurred by the Park owner in maintaining and managing the Park.

11. In April 2008 the freehold of the Park was conveyed by the previous owner, St Merryn Holiday Estate Management Company Limited, to the respondents, Mr and Mrs Francis.

12. Each of the chalet leases is in the same standard form. The example I was shown was the lease of Unit 104 which was granted by the St Merryn Holiday Estate Management Company Limited as Lessor to Wardles Leisure Estates (St Merryn) Limited as tenant on 21 January 1983. The lease is for a term of 999 years at a ground rent of £10 per annum, and includes at clause 2(q) a covenant by the leaseholder to pay within 14 days of demand a "service rent" defined in clause 4. Clause 2(q) continues:

> "PROVIDED ALWAYS that the tenant shall pay to the Lessor on each of the accounting dates in every year during the term such sum or sums as the Lessor may reasonably require on account of the said service charge and any such payment to be credited to the tenant against the payment of the services as certified to be due from it (as hereinafter provided) by the certificate issued next after the making of such demand …."

The reference in clause 2(q) to each of the accounting dates is explained in clause 4, where the expression "accounting date" is defined as meaning 31 December or such other date as the Lessor may determine. The lease therefore provides for a single payment on 31 December on-account of the Lessor's total anticipated expenditure in the forthcoming year.

13. Clause 4 provides that the service rent is to be a fair and equitable proportion of the aggregate of the sums "actually expended" on services provided by the Lessor in a period ending on the accounting date. The sum payable is to be ascertained by a certificate given by the Lessor or its managing agent. The services listed in Schedule 3 include the management of the Park and the repair and maintenance of common parts.

14. The lease contains no provision for a reserve or sinking fund nor does it state what is to happen if the service rent paid by a leaseholder on-account under clause 2(q) exceeds the sum subsequently certified under clause 4 as having been actually expended in the relevant year.

15. In 2007 each leaseholder had been required to pay a service charge of £1,478. In December 2008 a payment of £3,117.47 was demanded on-account of the anticipated service charge for 2009, the first full year of the respondents' ownership. The demand led to proceedings in the Truro County Court, the High Court and eventually the Court of Appeal, whose decision, to which I have already referred, was given on 31 October 2014. In the course of those proceedings the service charges

payable for 2008 and 2009 were largely compromised and applications to the leasehold valuation tribunal (the predecessor of the FTT) concerning charges for the years 2010 to 2014 were stayed.

16. On 30 December 2014 the respondents' managing agents gave notice to the leaseholders of the service charge budget for 2015 and the amount payable on-account. The total budget of £412,361.25 was divided equally amongst the 171 chalets to produce individual contributions of £2,411.47 plus VAT. I was told by Mr Crozier that some of the leaseholders on the Park had paid the sums demanded, but that the appellants had not.

17. On 25 March 2015 the appellants applied to the FTT under section 27A of the 1985 Act for a determination of the payability and reasonableness of the on-account service charge demanded for 2015. That application was initially stayed along with the other proceedings but the stay was lifted and the application came before the FTT for determination in January 2016, after the end of the year of account to which the budget and on-account demands related.

**The FTT's decision**

18. In its decision the FTT drew attention to the fact that all service charges for the years from 2010 onwards were currently the subject of contested proceedings. It was impossible to know whether, once final accounts for each of the disputed years were drawn up, credits would be due to the leaseholders from excessive payments on account made in previous years. The FTT therefore declined to assume that there would be a credit or debit for either party and approached the quantification of the 2015 on the basis that it was "a stand alone year, unaffected by the past". It has not been suggested that it was inappropriate for the FTT to take that approach.

19. The hearing before the FTT took two days, but after retiring to consider its decision the tribunal requested further written representations on the proper approach to anticipated expenditure which had been included in the 2015 budget and reflected in the on-account demand but which, according to the evidence, had not actually been incurred by the respondents during 2015. Two specific items fell into this category. The first was the proposed employment of a new site manager for whose salary, pension contributions and overheads the sum of £50,000 had been budgeted; the second was a proposal to refurbish the children's play area on the Park at a cost of £36,000. The FTT invited and received submissions on whether expenditure which had not actually been incurred should be ignored or taken into account when determining the reasonable amount of the on-account charge for 2015.

20. In paragraph 51 of its decision the FTT expressed its view on that issue, as follows:

> "Where on account demands are provided for in a lease the landlord is entitled to seek an amount for anticipated future expenditure. The expenditure actually incurred will not necessarily include what has been budgeted for.

> Alternatively, it may include items not budgeted for. That does not affect the validity of the amount sought in the on account demand. It is the end of year final account that should reconcile the difference."

Although it expressed its decision in terms of the "validity" of the demand, the FTT clearly intended by this passage to indicate its view that post-liability events were not to be taken into account in determining the *reasonableness* of the sum demanded on-account.

21. When it considered the reasonableness of the on-account demands the FTT therefore made no reduction to reflect the expenditure which, in the event, had not been incurred. It reduced the estimated sum of £50,000 for the site manager to what it considered to be a reasonable charge of £35,000. It allowed the estimated cost of refurbishing the play area in full. After making a number of other deductions and adjustments it found that the reasonable budget for 2015 was £286,225.00 to which a 5% management charge could be added under the terms of the lease to produce an on-account contribution by each of the 171 leaseholders of £1,757.52.

**The appeal**

22. On behalf of the appellants Mr Crozier submitted that, in any dispute about the quantum of a service charge, the proper approach was to identify the expenditure which the landlord was contractually entitled to include within the service charge and then to consider whether that entitlement ought to be modified to give effect to the limitation imposed by section 19 of the 1985 Act. The language of section 19(2) was apt, Mr Crozier suggested, to impose a general test of reasonableness, which ought to be judged as he put it "in the round" at the time of the determination rather than by taking a snapshot of more limited information available at the date of the relevant demand. He detected a significant difference between the focus of section 19(1), which was on whether costs had been reasonably incurred and which therefore directed attention to the time at which they had been incurred, and that of section 19(2) which appeared to be much more open-ended.

23. An assessment of reasonableness was, Mr Crozier submitted, extremely sensitive to the evidence and facts on which it was based. Guidance on how a tribunal should approach a determination of reasonableness for the purpose of section 19(2) was provided by the decision of the Lands Tribunal (George Bartlett QC, President) in *Parker v Parham* (2003) LRX/35/2002. The Tribunal had rejected the submission that a landlord was entitled automatically to receive on-account the whole of its budgeted expenditure and identified a number of factors to which a tribunal could properly have regard in determining the reasonableness of a sum demanded in anticipation of future expenditure; if, for example, it was unclear whether certain work would proceed or might be delayed, it might not be reasonable for the whole sum budgeted for it to be payable on-account. The FTT had been wrong, Mr Crozier submitted, to confine its consideration to information available at the date of the demand for payment and should have had regard to the fact that the expenditure it allowed had not been incurred by the end of the accounting period.

24. Alternatively, Mr Crozier submitted, even if the assessment of the reasonableness of an on-account charge should be undertaken initially with regard only to the circumstances known at the date of the demand, the second limb of section 19(2) could and should be employed to adjust the appellants' contractual liability once it had become clear that the anticipated expenditure had not been incurred. An adjustment of a tenant's liability could be made at any time after the relevant costs had been incurred. Since nothing at all had been spent on the employment of a site manager or the refurbishment of the play area, the adjustment which was necessary in this case was to reduce the payment on-account to a sum which was now known to be sufficient to meet the expenditure actually incurred in 2015.

25. On behalf of the respondents Mr Chew submitted that the FTT's decision had been right for the reasons it gave. In principle, facts which are not known at the date of the demand for an on-account service charge should not be taken into account in determining the reasonableness of that charge. He suggested that the relevant statutory policy of the 1985 Act, the proper construction of the first limb of section 19(2), and the contractual purpose of the provision for collecting contributions before incurring expenditure all pointed towards that conclusion. Moreover, Mr Chew submitted, the appellants' primary argument, that reasonableness should be assessed "in the round" having regard to all that was known at the date of assessment, had been considered and rejected by the Tribunal in *Carey-Morgan v Howard de Walden* [2013] UKUT 0134 (LC).

26. In response to the appellants' alternative argument, Mr Chew submitted that the reference to any "necessary adjustment" in the second limb of section 19(2) did not provide what he called "a stand-alone basis for a reduction". In any event, no adjustment was necessary and none should be made in the circumstances of this case.

**Issue 1: What information can be taken into account under section 19(2) when determining a reasonable sum payable on account?**

27. The respondents would exclude from consideration of the reasonableness of a sum demanded on-account any information which was not known to the landlord at the time it set its annual budget; the appellants would have regard to all information known at the time of determination of the dispute by the FTT. It does not seem to me that either of these extreme positions is the correct approach to section 19(2), although on the facts of this case the respondents' contentions are much closer to my own view than those of the appellants.

28. When it considers an application concerning a service charge payable on-account, the FTT exercises the jurisdiction conferred on it by section 27A of the 1985 Act to determine the amount which is payable and the date on which it became payable. The starting point for its determination is the contractual position between the parties. In this case that position is clear: the lease required the appellants to pay on 31 December 2014 such sum as the respondents might reasonably require on account of the service charge.

29. It has not been suggested on the appeal that, when the 2015 budget for the Park was prepared the respondents did not intend to employ a site manager, refurbish the play area or incur the other costs which were included in that budget. The contractual position, absent any consideration of the effect of section 19(2), was therefore that each appellant was obliged to pay on account their proportion of the total budgeted sum on 31 December 2014.

30. The second stage of the determination is to consider whether the on-account payment required by the lease exceeded the statutory limit imposed by section 19(2). The effect of the statute is to modify the contractual obligation so that no greater amount than is reasonable is payable before the relevant costs are incurred. The language of the subsection suggests that the statutory ceiling applies at the time the leaseholder's liability arises. If, at that date, the on-account payment is greater than a reasonable sum, the leaseholder's contractual obligation is to pay only the lesser, reasonable, sum.

31. In its March 2016 decision the FTT found that £35,000 was the reasonable cost of the site manager and that the respondent's requirement of a payment on-account equal to the whole of the sum budgeted for the play area was unreasonable. If it had been asked to make its decision at the start of January 2015 it would no doubt have made the same reduction in respect of the site manager's costs but otherwise confirmed the appellants' liability as being for the full budgeted amount. Only matters known by the date of the first demand and taken into account in drawing up the budget could have been taken into account by the FTT in reaching its conclusion and no subsequent change in the respondent's reasonable requirements or unexpected increase or reduction in costs would be capable of affecting the appellants' contractual liability.

32. In principle it seems to me that the FTT was correct in disregarding matters which became known only after the appellants' contractual liability arose. Those facts did not turn what had been a reasonable sum into an unreasonable sum. The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked.

33. Although he did not rely expressly on authority in other fields Mr Crozier's argument that all matters known at the date of assessment should be taken into account in determining the sum reasonably payable as a service charge on-account is reminiscent of a principle familiar in the law of compensation and expressed pithily by Harman LJ in *Curwen v James* [1963] 1 WLR 748 that "a court should not speculate when it knows."

34. *Curwen* was a claim under the Fatal Accidents Act but the same principle is well established in other fields. In determining compensation for disturbance in the event of compulsory purchase (as opposed to determining the open market value of an asset

on a valuation date), the quantification of loss reflects real world events as they are known to have occurred by the date of assessment. This is sometimes referred to as the "Bwllfa principle" following the decision of the House of Lords in *Bwllfa and Merthyr Dare Steam Collieries (1891), Limited v The Pontypridd Waterworks Company* [1903] AC 426. In a claim for compensation by a mine owner prevented from working its mine by a statutory undertaker where the value of coal had risen after the undertaker's intervention Lord MacNaughten explained how that compensation should be assessed:

> "If the question goes to arbitration, the arbitrator's duty is to determine the amount of compensation payable. In order to enable him to come to a just and true conclusion it is his duty, I think, to avail himself of all information at hand at the time of making his award which may be laid before him. Why should he listen to conjecture on a matter which has become an accomplished fact? Why should he guess when he can calculate? With the light before him, why should he shut his eyes and grope in the dark?"

35. In *Golden Strait Corp v Nippon Yusen Kubishka Kaisha* [2007] 2 AC 353, by a three to two majority, the House of Lords held that damages for repudiation of a long term time charter were not to be assessed at the date of breach on the basis that the charter would have run its full term without taking account of the fact that, on the outbreak of the second Gulf War, the charterer could have cancelled the charter under the war clause, and would probably have done so. Considerations of certainty and finality were made to yield to the greater importance of achieving an accurate assessment of the damages based on the loss actually incurred.

36. In each of these cases the issue depended on principles of the law of damages, whether in contract or tort. Damages are intended to compensate the victim of a breach of contract or duty of care for the loss they have suffered as a result and the principles of the law of damages are adapted to that context. That context is very different from the task of a tribunal applying section 19(2) of the 1985 Act. No relevant question of breach arises in this case and it does not seem to me to be appropriate to apply the *Bwllfa* principle to the determination of the reasonableness a sum due under a contract. Different considerations, namely certainty, predictability, and the effective operation of service charge arrangements seem to me to be of much greater significance in this context. The ability of a landlord to collect funds in advance of expenditure is an important part of most service charge schemes, and is for the benefit of both parties. It ought not to be undermined and Parliament is likely to have intended that the statutory protection afforded by section 19(2) should do no more than protect leaseholders from unreasonable demands.

37. I agree with Mr Chew that the language of section 19(2) does not support the appellants' approach. He suggested that the expenditure in this case had not been incurred by the respondent only because of the refusal of the appellants to make the required payments on account, and that it would be perverse to allow the protection against unreasonable demands conferred by section 19(2) to be used as a means of frustrating the leaseholders' contractual obligation to make the required payment at all. The FTT made no finding to that effect and the facts of this case are no doubt

exceptional, so I do not place great weight on Mr Chew's suggestion that leaseholders generally might seek a tactical advantage by refusing or delaying payment, in the belief that they may eventually avoid liability. Nevertheless, for a leaseholder's liability to be a moving target, reasonable one day and unreasonable the next depending on events which cannot be known at the date on which payment falls due, seems to me to be destabilising and therefore undesirable.

38. I do however agree with Mr Crozier's submission that section 19(2) allows matters not known to a landlord when its budget was set to be taken into account in determining a reasonable sum to be paid in advance. In this case, for example, even if the landlord was unaware that a site manager could be employed for a significantly lower salary than it anticipated there would be no reason to ignore that information since it would clearly be relevant to the reasonableness of the sum demanded. If matters became known after the budget was drawn up, but before a particular payment became due, those could also potentially affect the reasonableness of the sum to be paid. In this case the payment on-account was due on a single date at the start of the year, but such payments are more usually required half-yearly or quarterly. In such cases the fact that money has not been spent, despite provision having been made in an annual budget, may cause a sum which appeared reasonable on the first payment date to become less reasonable (for example where major works requiring periodic payments are delayed). I do not see why, in such a case, section 19(2) should not modify the contractual obligation by reference to circumstances as they are known at the quarterly or half-yearly payment dates. But I would draw a line at the date on which the payment becomes due and would exclude from consideration matters which could not have been known at that date, because they had not yet occurred.

39. Both parties suggested that their approach was supported by a previous decision of the Tribunal. Mr Chew referred to *Carey Morgan v de Walden* [2013] UKUT 0134 (LC), in which the Tribunal (Judge Huskinson) had ruled that when determining whether a sum demanded on-account was reasonable, the quality of the services provided was irrelevant and that only the principle of whether it was reasonable to include an amount for the disputed service in the demand could be considered. I do not think that the passages relied on (paragraphs 22 and 23) lay down any such general principle, but seem to me to be directed to the circumstances and issues in that case. The arguments did not concern expenditure which it was known had not been incurred. The decision is authority that the correct approach to an on-account demand is a two-stage one considering first the contractual entitlement and then whether section 19(2) prevents the inclusion of some part of the estimated sum on the grounds that it is greater than is reasonable, but that approach is common ground in this appeal.

40. Mr Crozier referred to the Lands Tribunal's decision in *Parker v Parham* (2003) LRX/35/2002 in support of his submissions. Once again I do not find the decision as useful as was suggested in argument, as it did not share with this case the unusual feature that by the date of the determination the expenditure in question was known not to have been incurred. The decision, at paragraph 24, is a useful reminder that it does not automatically follow that the sum which may reasonably be required as a payment on-account is the full amount of the anticipated expenditure. If there is

doubt over the time at which the proposed expenditure may be incurred, or whether it may be incurred during the relevant accounting period at all, it may not be reasonable to require the whole payment in advance.

41. On the evidence the respondents had reasonably considered on the payment date that they required the sum demanded on-account to meet the proposed expenditure (as the lease required), and the FTT was satisfied that the amount was no greater than it was reasonable should be paid in advance of the expenditure. I am therefore satisfied that the FTT was correct to allow the full cost of the proposed refurbishment of the play area and its own assessment of the reasonable cost of employing the proposed new site manager, despite the expenditure not having been incurred on either item by the end of 2015. The reasonable sum required as a payment on-account did not retrospectively become an unreasonable sum once it became clear that the expenditure had been avoided.

**Issue 2: Necessary adjustment?**

42. That leaves only the second limb of section 19(2) to be considered. It provides that "after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise".

43. In my judgment Mr Chew is correct in his submission that these words do not confer jurisdiction on the FTT to direct repayment of any sum which has been collected in advance by a landlord but which exceeds the expenditure actually incurred during the period in question. The FTT's jurisdiction under section 27A of the 1985 Act is restricted to determining the amount that is payable as a service charge, and other specific questions relating to service charges. A service charge is an amount payable by a tenant (see section 18(1) of the 1985 Act) and the expression is not apt to describe a sum payable by a landlord. Section 19(2) itself makes no reference to the FTT and does not seem to me to expand the jurisdiction conferred by section 27A.

44. The true purpose of the second limb of section 19(2) is unclear, as the authors of Rosenthal's *Commercial and Residential Service Charges* point out at para 29-38. It may impose an obligation in favour of whichever party is in credit requiring the other party to make a payment to correct the imbalance, but in most cases provision for credit or repayment will be made by the lease itself which would make such an adjustment unnecessary. Alternatively it may simply have been intended to emphasise that the time for any adjustment to be made is after all of the relevant expenditure to be taken into account in determining the service charge has been incurred. In any event I am not persuaded that the provision allows any role for the FTT.

45. Even if the second limb of section 19(2) conferred jurisdiction to relieve the appellants of their contractual liability to make the payments which the FTT considered to be reasonable, I would not direct any such adjustment in this case. As the FTT found, the balance of account between the parties in this case is wholly

unclear at present. It should shortly become much clearer when the FTT gives its decision on the sums payable from 2008 to 2014 and when the respondents produce final year accounts for 2015. If a balance is then due to the appellants it can be taken into account when calculating the sum payable on-account for the forthcoming year. The respondents are entitled under clause 2(q) of the lease only to such sum on-account of the service charge as they may reasonably require, and are restricted by section 19(2) to an amount which is no greater than is reasonable before the costs are incurred. If it appears that they already hold a balance in the leaseholders' favour that balance can be taken into account in determining the amount of future payments on-account.

46. For these reasons I dismiss the appeal and confirm the liability of each of the appellants to pay the sum of £1,757.52 plus VAT (less any sum paid as a condition of obtaining permission to appeal) on-account of their service charge liability for 2015.

Martin Rodger QC

Deputy Chamber President

10 January 2017