

12407



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

**Case Reference** : LON/00AH/LSC/2017/0202

**Property** : Flat 5, Neville Court, 33 Canning Road,  
Croydon, Surrey, CR0 6QE

**Applicant** : Gary Allan Sharpe & Craig Ian Sharpe

**Respondent** : Neville Court (Croydon) Residents'  
Association Limited

**Type of Application** : Section 27A Landlord and Tenant Act  
1985 - determination of the  
reasonableness and payability of  
service charges and section 20ZA  
Landlord and Tenant Act 1985 –  
determination whether to dispense  
with the statutory consultation  
requirements

**Tribunal Members** : Mrs H Bowers BSc (Econ) MSc MRICS  
Mr T Sennett MA FCIEH

**Date and venue of  
Hearing** : 25 September 2017  
10, Alfred Place, London, WC1E 7LR

**Date of Decision** : 2 November 2017

**DECISION**

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**For the reasons given below, the Tribunal finds as follows:**

- **The following service charges are payable by the Applicants:**
    - 2014/5 – £626.00
    - 2015/6 – £476.50
    - 2016/7 – £1,148.33
    - 2017/8 – £1,080.00
  - **The Tribunal grants the application for dispensation from the statutory consultation provisions in respect of the major works. For clarity the works are the roof repairs and tiling work. The Applicants are liable to pay the sum of £2,000.00 as**
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- their contribution to those major works.
- The Tribunal makes an order under section 20C that 50% of the costs in relation to the section 27A application are not to be treated as 'relevant costs' for future service charge years. The Tribunal makes no order under section 20C in relation to the section 20ZA application.
  - The Tribunal makes an order under Schedule 11, paragraph 5A to extinguish the Applicants' liability to pay administration charge in respect of litigation costs.
  - The Tribunal makes no order for costs under Rule 13.
  - The Tribunal makes no order for the Applicants to reimburse the fees incurred by the Respondent in respect of the section 20ZA application.
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## **REASONS**

### **Introduction:**

1.) The Applicants made an application, dated 26 May 2017, under section 27A of the Landlord and Tenant Act 1985 (the Act) for a determination of the reasonableness of service charges for four service charge years 2014, 2015, 2016 and 2017. Directions in respect of that application are dated 29 June 2017. There was a second application made by the Respondent on 17 July 2017 under section 20ZA of the Act for a determination to dispense with the consultation requirements in connection with these service charges. The Directions for this second application are dated 4 August 2017.

### **Background:**

2.) The Directions dated 29 June 2017 identified the issues and set out the timetable as to how the parties should prepare for the case. The issues identified in the Directions are:

- The service charges for years 2014, 2015, 2016 and in advance of 2017
- Whether there had been compliance of the consultation provisions under section 20 of the 1985 Act
- Whether the works undertaken were within the Landlord's obligations and whether they were recoverable under the terms of the lease
- Whether the costs of the works were reasonable in respect of the contract price, supervision and management fee
- Whether the Tribunal should make an order under section 20C

It was also identified that there was an application under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) in respect of administration charges.

3.) The Messrs Sharpe, the Applicants in the first application, are the leaseholders of Flat 5 (the subject flat) and it is also noted that Mr Gary Allen Sharpe is also a director of the Respondent company. Although Messrs Sharpe are the Respondents in the second application, they are identified as the Applicants/Tenants through out this decision. Likewise Neville Court (Croydon) Residents' Association Limited is the freeholder owner of Neville Court, 33, Canning Road a RTM Company and is represented in these applications by Harris Property Management and are identified in these reasons as either the Respondent/Landlord.

**The Law:**

4.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

**The Lease:**

5.) A copy of a lease for the subject flat was provided. The lease is dated 1 August 1969 and the original parties to the lease were Neville Court (Croydon) Residents Association Limited as Lessor and Kenrad Construction Company Limited as the Company and Clive Alexander MacKenzie as the Lessee. The lease is for a term of 99 years from 25 March 1969.

6.) The lease provides a definition of the Property and the subject flat. At clause 4(b) the Lessee covenants, amongst other matters, to *"Pay when demanded by or on behalf of the Lessor as a contribution one equal sixth part of all costs expenses and outgoings relating to maintenance and repair of the property and relating in particular to the matters mentioned in the Fifth Schedule hereto PROVIDED ALWAYS that during the period of three years from the commencement of the term hereby created the amount of the said contribution shall be limited to twenty-five pounds per annum"*. There is also a provision at clause 1 for the Applicants to pay 1/6<sup>th</sup> of the cost of the insurance of the property.

7.) The Fifth Schedule sets out the items towards which the Lessee is liable to contribute by means of the service charge. This schedule specifies *"All cost and expense of maintaining cleansing repairing redecorating renewing and making good the main structure of the buildings on the property and all gutters rainwater pipes gas and water pipes electric cables and wires in under or upon the property and enjoyed and used by the Lessee in common with the owners and the lessees of the other residential flats and premises comprised in the property And all cost and expense of cleansing lighting maintaining*

*repairing renewing and making good all parts of the external walls fences drains access drive footpaths forecourt or vehicle parking area and refuse bin area on the property and the bins and garages thereon and also all the internal passages staircases and structural parts of the building used in common as aforesaid And also all the cost and expense of cultivating laying out planting and maintaining or renewing all parts of the grassed areas pleasure gardens grounds and all other land comprised in the property And the payment and reimbursement of any money paid by the Lessor to any Local Authority or other duly constituted public authority by way of rates or to any person firm or company for the provision of any service or of any equipment or appliance required or used in connection with any television or broadcast sound service or supply or the maintenance of any aerial wires or cables in connection therewith or otherwise incidental to any of the above matters”.*

8.) Under clause 5 (h) the Lessor covenants *“That the Lessor will keep an account of all money received from the Lessee and from the owners and the Lessees of other parts of the property and from any other source (if any) and in particular in respect of any money paid and payable as a payment or contribution in accordance with the lessee’s covenants in Clause 4 of this deed and the covenant of the owners and lessees of other parts of the property and of all the money paid or expended by the Lessor in the performance and observance of the covenants on the part of the Lessor herein contained and will permit the Lessee or any person duly authorised in writing by the Lessee upon thirty days’ previous notice in writing to inspect once in every years the books of account and vouchers relating to the said account at such place or places as the Lessor may determine”.*

9.) In clause 3(c) the Tenant covenants *“To pay all costs charges and expenses (including solicitors’ costs and Surveyors’ fees) incurred by the Lessor for the purpose of or incidental to the preparation of a notice under Section 146 of the Law of Property Act 1925 (notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court)”.*

10.) It should be noted that the lease is vague about the service charge mechanism. There are no provisions for a reserve/sinking fund. Additionally it appears that there is no provision for an interim service charge to be paid in advance with a mechanism for a balancing charge with the ability to make further demands for any shortfalls or for the re-payment or holding of any surpluses.

**Inspection:**

11.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the Building. However, the Tribunal understands from the papers

and the parties. It appears that the building contains six self-contained flats and there are communal grounds including garaging for seven cars.

**Hearing:**

12.) A hearing was arranged for Monday 25 September 2017 at 10.00am at 10, Alfred Place, London, WC1E 7LR. In attendance were Mr Gary Allen Sharpe and Ms Jenny Caszo. Mr Roger Harris and Mrs Lynne Harris of Harris Property Management represented the Landlord.

**Representations/Discussion/Determination:**

13.) The Tribunal had the benefit of bundle of documents, a statement from Mr Sharpe and two witness statements from Mr Harris. There were also oral submissions made by Mr Sharpe and Mr Harris who was assisted by his wife. Included in the papers were references to issue beyond the jurisdiction of the Tribunal. The Tribunal has focused on the points that it can resolve for the parties and therefore these reasons provide a summary of the relevant submissions made by the parties.

14.) At the start of the hearing Mr Sharpe confirmed that he was still a director of the Respondent company. It was confirmed that the service charge year ran from 26 March to 25 March. The Tribunal then spent some time with the parties in identifying the service charge accounts, demands and clarifying the service charge process that had been followed.

15.) For the 2014/5 service charge year the service charge demand is dated 24 January 2017 (p102) and is for a sum of £1,440.00. It was confirmed that no other service charge demand had been issued. The Income and Expenditure Account indicates that the total expenditure for that year was £3,756.00 (p121). A 1/6<sup>th</sup> share of that would be £626.00. For the 2015/6 service charge year the only service charge demand was served on 24 January 2017 for the sum of £1,440.00. The service charge accounts (p125) indicated that the total expenditure for that year was £2,859.00 and a one sixth share would be £476.50. In respect of the 2016/7 service charge year there is one service charge demand in the bundle for £600 (p102) dated 24 January 2017 and it was agreed that there was another demand that was not available for the sum of £540.00. The budget for 2016/7 year (p128) was for a sum of £6,480 and the unapproved accounts for that year were provided at the hearing indicated that the total expenditure for 2016/7 was £6,890. Again a 1/6<sup>th</sup> share would be £1,148.33. In respect of the budget service charges for the 2017/8 the draft budget is dated 28 February 2017 (p128) and totals £6,480 with 1/6<sup>th</sup> being £1,080.00.

16.) The major works expenditure related to works to the roof and hanging of tiles. The Applicants' demand for these works was for a sum of £2,000.00 and

was dated 4 March 2014 (p92). The demand was addressed to Mr G Sharp, G & C Rental.

Applicants' Representations:

17.) Mr Sharpe explained that the service charge demands that he had received were out of time and were for the wrong amount. He takes no issue as to the reasonableness of the costs or the standard of work carried out. He had made requests for the service charge accounts and the details of the amount held as a sinking fund, which currently stands at £14,381.00. For the normal service charge accounts there was a batch of demands dated 24 January 2017 but no earlier requests for payment had been received. The demands were issued solely to his name and although G & C Rental was also noted on each demand. This was a trading name and not a company name used by Mr G Sharpe and his brother and co-Applicant, Mr C Sharpe. Whilst he was aware that there would be costs and works were being carried out he claims that as 18 months had passed since the sums were incurred and the date he was invoiced on 24 January then he should not be liable for the demands. In respect of the claim by Mr Harris that Mr Sharpe had made a payment of £600 on 13 April 2017, Mr Sharpe does not admit this in his statement of case and no further expansion of this point was given.

18.) Responding to the section 20ZA application, Mr Sharpe explained that he was in dispute with his brother and could not speak for him on this matter. He acknowledged that the work was necessary, he had been involved with the programme of works and that he was not concerned about the amount of money relating to the major works. In response to the Tribunal's question about what prejudice had been caused, Mr Sharpe indicated that he had no evidence of prejudice.

Respondent's Representations:

19.) In his first witness statement Mr Harris stated that he had been appointed as managing agent for the development from 1 October 2016. He provided a background to the case and also explains previous arrangements made with the Applicants for the payment of outstanding arrears. It was explained that Mr Sharpe owns a 1/6<sup>th</sup> of the Respondent Company. It is acknowledged that there had been no formal request for payment other than the service charge demands dated 24 January 2017. However, Mr Harris asserts that there were informal requests for payment during the relevant periods. He also refers to a letter from Mr Sharpe dated 12 January 2017 which states "*Further to our meeting yesterday morning, I write to confirm that despite the 18 month time limit on producing demands in arrears in compliance with Section 20B of the Landlord and Tenant Act 1985, I will settle the 3 outstanding Neville Ct Rent demands from March 2015 and I wish to agree a payment plan for the outstanding balance. Please send me these demands as soon as possible and I will*

*commence the £90.00 payment in January and the following months following receipt of your demands for period September 2016 to March 2017".* The demands were prepared and dated 24 January 2017 and sent out to Mr Sharp as noted above. It is explained that there was no payment from Mr Sharpe other than the sum of £600.00 was paid to the Respondent on 13 April 2017.

20.) Regarding the major works Mr Harris explained in 2014 the roof to the property was leaking water into the two top floor flats including the flat owned by the Applicants. Because of the water ingress the works had been of an urgent nature. He had not been involved in obtaining the quotations, but that Mr Sharpe had assisted in seeking the estimates. It was acknowledged that the proper consultation process had not been undertaken. In email correspondence from the Applicants it was raised whether there was sufficient money in the kitty for the payment of the roof works. Mr Sharpe also indicated that he did not have sufficient funds at the time and suggested a monthly payment arrangement. There is also the letter of 12 January 2017, mentioned in the previous paragraph in which Mr Sharpe stated that he will ignore the lack of consultation for the roof repairs and offers a payment arrangement for that sum.

21.) Mr Harris confirmed that he had complied with the Tribunal's Directions by informing the other leaseholders of the section 20ZA application. He also confirmed that none of the other leaseholders were objecting to the section 20ZA application.

22.) At the hearing Mr Harris expressed his concerns about the on-going management of the development given the terms of the lease. The Respondent has tried to resolve matters with the Applicants and responded to a further offer of payment of the arrears made on 8 May 2017 at a rate of £750 per month, by making a counter offer of £800 per month. No monthly payments were made; instead the Applicants had brought the application to the Tribunal.

23.) Responding to the point about the address on the service charge demands, it was explained that this was the same address and salutation used in past correspondence.

**Conclusions:**

24.) In respect to the main service charge years no issue is taken with the reasonableness of the costs or that the services or works were to a reasonable standard. The issues are to do with compliance with section 20B of the 1985 Act and whether the service charge demands were properly addressed.

25.) It was accepted that the only formal service charge demands were those dated 24 January 2017. As such the demands in respect of 2014/5 would be outside the 18-month period. In respect of 2015/6 the expenditure would have

been incurred after March 2015 but before March 2016. This spans the 18-month period, but only just. For 2016/7 and 2017/8 the issue of section 20B does not arise. The next question for the Tribunal is whether Mr Sharpe waived his right to rely upon section 20B.

26.) The Tribunal has had consideration of the case of London Borough of Southwark v Runa Akhtar, Stel LLC [2017] UKUT 0150 (LC) where the subject of waiver in relation to section 20B was considered. This case stated '*that waiver is usually a representation, usually by conduct that makes it clear that an irregularity is accepted*'.

27.) In this case there was the letter of Mr Sharpe dated 12 January 2017 that there was an unequivocal statement that despite the non-compliance with section 20B he would settle the 3 demands and that he wished to propose a payment schedule. In the opinion of the Tribunal, Mr Sharpe was aware of the implications of section 20B and by sending the letter of 12 January 2017 he chose to waive his rights by the express words and potentially by his conduct in proposing a payment schedule that although was not adhered to, we note that a payment of £600 was made in April 2017. As such the rights provided by section 20B are waived and the service charge demands for 2014/5 are payable by the Applicants.

28.) The next point though is how much can be recovered under the terms of the lease. There is no provision in the lease for any sinking fund and no detail as to how any under or overspends are to be dealt with. However, the apportionment for the Applicants in the relevant service charge years is the relevant expenditure that has been or will be expended on the building and as such the sums of £626.00 for 2014/5; £476.50 for 2015/6 and £1,148.33 for 2016/7 are payable. Although no interim payment provisions are in place the wording of clause 4(b) may be taken as being broad enough for a sum to be claimed in advance of the final accounts. In respect of the budget service charges for the 2017/8 the draft budget is £6,480 with 1/6<sup>th</sup> being £1,080.00. As such the Tribunal determines that this is payable under the terms of the lease.

29.) Mr Sharpe raised the question as to the salutation and address on the service charge demands and whether this had the consequence of invalidating the demands. The demands clearly relate to the subject flat and they were addressed to one of the joint tenants with the trading name of both tenants identified (G&C Rentals). Mr Sharpe produced no evidence that any alternative was required. It appears that Mr G Sharpe received the demands and even if Mr C Sharpe had not, this is not enough to invalidate the demands.



30.) In relation to the application under section 20Za for dispensation for the whole or part of the consultation process the Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

31.) None of the other leaseholders made any objection to the section 20ZA application. Mr Sharpe indicated that he was unable to speak on behalf of his brother. However, it was clear from the Tribunal's case file that Mr Craig Ian Sharpe had been served with all the relevant documents, he had been given an opportunity to respond to the application and show evidence of any prejudice. As he did not do so, we conclude that he does not oppose the application and that he suffered no prejudice. Mr Gary Sharpe was not able to evidence that he suffered any prejudice from the lack of the consultation process. In fact it appears that he had a substantive role in administering the major works contract. Given the position of the leaseholders in this matter and that the work was of an urgent nature, with damp ingress into the subject flat, then the Tribunal grants dispensation from the consultation process in respect of the major works, being the roofing and tiling work. The Tribunal does not place any conditions on this dispensation. In reaching this decision the Tribunal is conscious of the nature of the Respondent Company and the lack of any financial resources other than the service charges. Any shortfall in the costs if not met by the service charge will need to be sought from another source and this may mean a call on the shareholders of the Respondent company, essentially the leaseholders under a different guise.

32.) No issue has been raised in respect of the cost of the major works or the standard of the works that were undertaken. As such the Tribunal confirms that the costs are reasonable. The service charge demand in respect of the major works was dated 4 March 2014 and the email correspondence seeking quotations were dated early 2014. Mr Sharpe stated that the demand was only addressed to him, although it mentioned G & C Rental. In all other matters it would appear that the demand is in compliance with the statutory requirements. Regarding the name on the invoice, the Tribunal is of the opinion that the address of the lack of Mr C I Sharpe's name on the demand does not invalidate the demand. Reference was made to Mr C I Sharpe by the inclusion of G and C Rental on the address details of the demand, although it is accepted that this is just a trading name. The arrangements that the Applicants have are between themselves and no evidence was provided that any alternative address should have been used. Accordingly the Tribunal determines that the sum of £2,000.00 for the major work is reasonable and payable by the Applicants.

Section 20C:

33.) Mr Sharpe submitted that the Tribunal should make a section 20C order as he had tried to resolve matters but he had been threatened with court action and

he considered that the best place for the problem to be resolved was with the Tribunal. The Respondent had offered a payment scheme but this had been conditional on Mr Sharpe accepting the amount of the arrears. The total costs are disproportionate for the sums in dispute and that the matter could have been pursued without the involvement of the solicitors.

34.) In responding to the section 20C application, Mr Harris requests that the Tribunal makes no order as the Applicants have previously admitted liability for the full sums and had proposed various payment plan arrangements that have not been fulfilled. It is also explained that the respondent company is made up of leaseholders and has no other resources other than the service charge funds. Attached to Mr Harris' second witness statement was a Schedule of Costs totalling £5,565.96. This was made up from £2,418.50 plus VAT for the solicitors costs in dealing with the section 27A application; £813.50 plus VAT for solicitors costs in dealing with the dispensation application; agent's cost of £1,350; disbursements of £337.56 including the £100.00 fee for the section 20ZA application. Mr Harris is frustrated that the leaseholders, other than the Applicants are contributing to the service charges and he also has concerns about the future management of the property. He considers that the costs are not disproportionate but represent the work undertaken.

35.) Having considered the scope of the service charge provisions in the Fifth Schedule, the items that can be recovered as service charges do not appear to extend to the collection of legal/agents' fees in the pursuance of the application. However, if the Tribunal are wrong about that interpretation then we make an order that only 50% of any fees in connection with the section 27A application should be treated as 'relevant costs' for future service charge purposes. In reaching this decision the Tribunal is mindful that the Respondent has tried to deal with the matters in a practical sense, but it has not complied with its obligations under the lease and statute. As to the costs in relation to the section 20ZA, this is an application made by the Respondents as a consequence of its non-compliance with the statutory consultation process. As mentioned above in paragraph 31 the difficulty is that any costs not met by the service charges will need to be financed by another means, namely the shareholders of the Respondent Company. Given those difficulties and that if there had been a full consultation process the costs associated with that process may have been recovered by the service charge regime, then the Tribunal makes no order that the costs incurred in respect of the section 20ZA application are not to be treated as 'relevant costs' for future service charge accounts.

Schedule 11, Paragraph 5A:

36.) Mr Sharpe has made an application under Schedule 11 Paragraph 5A for an order reducing or extinguishing the Applicants' liability to pay a particular administration charge in respect of litigation costs. Mr Harris acknowledged that

no steps had been taken to commence the section 146 process. In response Mr Sharpe relied on his other submissions in respect of costs.

37.) The Tribunal can see no clause within the lease for the landlord to recover any administrative charges against the Applicants, other than the conventional section 146 clause. However, as explained in paragraph 35, the Respondents have not complied with the terms of the lease and the statutory provisions for the recovery of service charges. The section 27A application was brought to test the mechanism adopted by the Respondent. As such all the leaseholders benefit from some clarity as to how service charges should be recovered. It would be unjust for the Applicants to bear those costs alone. It is more appropriate that such legal/agents costs should be treated as service charge expenditure insofar as the lease would allow rather than specific administration charges to be borne solely by the Applicants. As to the section 20ZA costs this was an application brought by the Respondents in respect of their failure to consult. None of those costs should be treated as administration charges to be recovered from the Applicants and so the Tribunal makes an order to extinguish the Applicants' liability to pay administration charge in respect of litigation costs.

Rule 13 Application:

38.) Mr Harris makes an application for costs against the Applicants on the basis that they have been unreasonable and vexatious in bringing the initial application. The application is based upon the Schedule of Costs set out in paragraph 34. Mr Harris explained that the statement from the Applicants was received on 18 September 2017 and was not in compliance with the timetable set out in the Directions. The Directions required the tenants' case to be sent to the landlord by 27 July 2017 and any reply by the tenants to the landlord's case was to be sent by 31 August 2017. Also there was no previous mention of the difficulties expressed by Mr G Sharpe in respect of his brother. Mr Harris refers to correspondence from Mr Sharpe that indicated that he agreed he was liable to pay the various charges. As indicated in paragraph 22 above, there was a proposal for a payment schedule that the Respondent made a counter offer but this was ignored and the section 27A application was made.

39.) Mr Sharpe does not consider that he had acted unreasonably. He thought he had sent the Scott Schedule in compliance with the Directions, but it would not have been long, amounting to only 3 -4 items. He had been waiting for the Directions relating to the section 20ZA application and that his actions have not been detrimental to the Respondent.

40.) The Tribunal has considered the useful guidance provided in Willow Court Management Company (1985) Limited and others v Alexander and others [2016] UKUT 290 (LC). The First-tier Tribunal is essentially a no - cost forum to resolve residential landlord and tenant disputes. Only in rare cases will there be

any cost shifting between the parties. From the guidance provided in the Willow Court case the Tribunal needs to take a three-staged approach to the determination of costs under Rule 13. The first stage is to determine whether there has been unreasonable behaviour by the Applicants. The second stage is the discretion of the Tribunal in the light of the unreasonable behaviour whether or not to make an order for costs and the final stage is what would be terms of any order. In examining whether to exercise its discretion at the second stage the Tribunal should consider the Overriding Objective as set out in Rule 3 of the Tribunal's Rules.

41.) In respect of the s27A application the Tribunal is required to consider whether the Applicants were unreasonable in bringing and conducting the application. Whilst there have been previous concessions made by the Applicants as to their liability and the waiver of their rights in respect of section 20B, it is clear that the Respondent did not follow its obligations either under the lease or comply with the statutory provisions. There is no provision in the lease for an interim service charge and the sums claimed by the Respondents have not been fully in accordance with the lease. There was some merit in bringing the application in order to clarify the proper mechanism and the liability of the Applicants. As to the Applicants none compliance with the Tribunal's Directions, it is noted that there has been very little engagement by the Applicants in the process, but that lack of engagement, whilst unfortunate is not necessarily unreasonable. In all the circumstances the Tribunal exercises its discretion not to make an order for costs.

**Reimbursement of Fees:**

42.) Mr Harris made an application that Mr Sharpe reimburses the Respondent company that application fee in respect of the section 20ZA application. He claims that it was a valid application but acknowledges that there had been no consultation. In response Mr Sharpe stated that the application had nothing to do with him and he should not be liable to reimburse the fees.

43.) The consultation process is an important part of property management. It is appreciated that Mr Sharpe had been involved in the project and had assisted in obtaining the lowest quote. However, it is still the responsibility of the landlord to consult with all the leaseholders by the prescribed method. The dispensation process assists landlords when it has not consulted with the leaseholders. In these circumstances it would be inappropriate for one specific leaseholder to reimburse the application fee when the consultation process is the responsibility for the landlord. Therefore the Tribunal makes no order for the Applicants to reimburse the section 20ZA application fees.

**Chairman:** *Helen C Bowers*

**Date:** *2 November 2017*

## ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this 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**

#### **LANDLORD AND TENANT ACT 1985**

##### **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 of 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 27A Liability to pay service charges: jurisdiction**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and if it is, as to -
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.....
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance,

improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

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

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been subject of determination by a court, or
- (d) has been subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement,
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

**20B Limitation of service charges: time limit on making demands.**

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

**Section 20ZA. - Consultation requirements: supplementary**

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“*qualifying works*” means works on a building or any other premises, and  
“*qualifying long term agreement*” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

- (a) if it is an agreement of a description prescribed by the regulations, or
- (b) in any circumstances so prescribed.

(4) In section 20 and this section “*the consultation requirements*” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

- (a) to provide details of proposed works or agreements to tenants or the

- recognised tenants' association representing them,
- (b) to obtain estimates for proposed works or agreements,
- (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
- (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
- (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
- (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**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 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.

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**Schedule 11 Paragraph 5A - Limitation of administration charges: costs of proceedings**

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—

(a) "*litigation costs*" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "*the relevant court or tribunal*" means the court or tribunal mentioned in the table in relation to those proceedings.

*Proceedings to which costs relate*      "*The relevant court or tribunal*"

Court proceedings      The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court

First-tier Tribunal proceedings      The First-tier Tribunal

Upper Tribunal proceedings      The Upper Tribunal

Arbitration proceedings      The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court."