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

Case Reference : CHI/29UN/LSC/2018/0006/0018/0037

Property : Flats 1, 2, 3, 4 and 5 38-40 Surrey Road,
Cliftonville, Kent CT9 2LA

Applicant : Mr S G Carter (Flat 1)
Mrs J M Annandale (Flat 2)
Ms G Chick (Flats 3,4 &5)

Representative : Mr B Wales of BW Residential Ltd for Ms
Chick
Mr M Carter for Mr S Carter and Mrs
Annandale

Respondent : RG Securities (No 2) Ltd

Representative : PDC Law
Mr Simon Lane, Counsel

Type of Application : Liability to pay service charges S.27A
Landlord and Tenant Act 1985

Tribunal Member(s) : Judge Tildesley OBE
Mr R Athow FRICS

**Date and Venue of
Hearing** : 26 June 2018
Margate Court, The Court House, Cecil
Square, Margate CT9 1RL
Further directions issued 11 July 2018

Date of Decision : 30 July 2018

DECISION

Decisions of the Tribunal

1. The Tribunal concludes that the Respondent was not entitled under the terms of the lease to demand service charges in advance of the costs and expenses being incurred. The Tribunal, therefore, determines that the service charges for 2015, 2016, 2017 and 2018 have not been demanded in accordance with the lease, and that the Applicants are not liable to pay those service charges until the issue of lawful demands subject to the caveat in respect of Ms Chick for the years 2015/2016 (see 12 below).
2. The Tribunal determines that the demands for service charges and administration charges for the years 2015, 2016 and 2017 were not validly served on Mrs Annandale and Mr Carter. It, therefore, follows that Mrs Annandale and Mr Carter are not liable for those charges until valid demands have been served upon them at their last known places of abode.
3. The Tribunal determines that a service charge of £530 is reasonable for the year ended 31 December 2015. The £530 comprises £380 for fire alarms and light bulbs and £150 managing agent's fees. The amount payable by each leaseholder is £88.34 subject to the service of a valid demand.
4. The Tribunal determines that a service charge of £2,025 is reasonable for the year ended 31 December 2016. The £2,025 comprises £225 for minor works, £300 managing agent's fees and £1,500 for major works. The amount payable by each leaseholder is £337.50 subject to the service of a valid demand.
5. The Tribunal determined that the Respondent was not entitled under the lease to demand payments on account, in which case the Tribunal's decisions on the estimated service charges for 2017 and 2018 are academic.
6. The Tribunal concludes there was no rational basis for the estimated service charge budgets for 2017 and 2018 produced by the Respondent. Given this finding the Tribunal is satisfied that the amounts demanded of £10,708 and £11,731.00 were not reasonable. If there was power in the lease to demand service charges in advance the Tribunal considers a figure of £3,000 for annual service charge would be in the realms of reasonableness.
7. The Tribunal finds that the consultation on external repair and internal redecorations of the property undertaken by the Respondent was flawed and should be started afresh.
8. The Tribunal disallows the insurance administration fee in the sum of £19.99 which was connected with the insurance charge for the year ended 31 December 2018.

9. The Tribunal determines that the Applicants are not liable to pay the administration charges of £30 for reminder letters.
10. The Tribunal determines that Mr Carter is not liable to pay the charge of £120 for registering an under lease.
11. The administration charge for legal costs in the sum of £653 against Mr Carter will be dealt with by Judge Tildesley exercising the jurisdiction of a County Court Judge.
12. The Tribunal understands that Ms Chick paid the outstanding service charges for 2015 and 2016 and the legal costs of £150 and £248 for each flat. It would appear that this payment was made to settle a claim taken out by the Respondent in the County Court in which case the Tribunal's jurisdiction may be ousted by virtue of section 27A(4) of the 1985 Act. **The Tribunal directs the Respondent and Ms Chick to make representations on jurisdiction and supply information regarding the payment together with copies of relevant correspondence Claim forms and Court order, if any, to the Tribunal and each other within 7 working days from release of this decision.**
13. The Tribunal determines with the agreement of the parties that the service charge payable under clause 2(3) of the lease should be apportioned equally between the leaseholders of the six flats. The contribution for each leaseholder is one sixth of the service charge.
14. There is no power to make a section 20C order because the lease does not permit the landlord to recover the costs of proceedings through the service charge.
15. The Tribunal makes an order under paragraph 5A schedule 11 preventing the Respondent from recovering its litigation costs incurred in the Tribunal proceedings against Mrs Annandale and Ms Chick. The question of litigation costs in respect of Mr Carter is a matter for the Court and not the Tribunal.
16. Since the Tribunal has no jurisdiction over County Court costs and fees in respect of the claim against Mr Carter, this matter will be dealt with Judge Tildesley OBE sitting as a County Court Judge exercising the jurisdiction of a District Judge. Separate directions have been issued to progress this issue.

The Application

17. The Applicants seek a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicants in respect of the service charge years for 2015, 2016, 2017 and 2018.
18. The Applicants have also applied for an order under section 20C of the 1985 Act preventing the landlord from recovering its costs in connection with the proceedings through the service charge, and for an order under paragraph 5A of schedule 11 of the 2002 Act limiting payment of the landlord's litigation costs.
19. The Respondent took proceedings against Mr Simon Carter in the county court under claim no. C35yP767. The claim was transferred to the Tribunal by District Judge Burgess by order dated 24 January 2018.
20. In addition to a claim for unpaid service charges and administration charges, the Respondent seeks under the claim to recover from Mr Carter the court fee, legal representative costs, legal charge and interest incurred to the date of judgment. This will be dealt with separately by Judge Tildesley sitting as a County Court Judge exercising the jurisdiction of a District Judge.
21. On 2 March 2018 the Tribunal issued directions to progress the applications of Mr Carter and Mrs Annandale. A hearing date of 26 June 2018 was eventually fixed.
22. On 12 April 2018 Ms Chick applied under section 27A of the 1985 Act to determine liability to pay service charges. The Tribunal held a case management hearing on 10 May 2018 where it was agreed by all parties for Ms Chick's application to be heard together with the application of Mr Carter and Mrs Annandale.
23. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

24. Mr Mike Carter, the previous freeholder, represented his son, Mr Simon Carter, and Mrs Annandale at the hearing. Mr Simon Carter was also in attendance with Mr Annandale, the husband of Mrs Annandale, who had provided a witness statement [43].
25. Mr Bernard Wales FIOD, FIRPM represented Ms Chick at the hearing. Ms Chick was in attendance with her sister.

26. Mr Simon Lane counsel represented the freeholder, RG Securities Ltd. Ms Lisa Burton director of GQ Property Management, the managing agents, attended the hearing and had provided a witness statement [104].
27. Mr Wales had prepared a hearing bundle for the Tribunal. References in the decision to documents in the bundle are in []. The Tribunal also had with it the County Court file because Mr Wales had not included the Court documents relating to Mr Carter in the hearing bundle.
28. Immediately prior to the hearing the Tribunal inspected the property in the presence of the parties.
29. The Tribunal concluded the evidence on 26 June 2018. The parties indicated that they did not wish to make final submissions in writing. The Tribunal, however, issued directions requiring the parties to supply various documentation referred to in their evidence, and to make representations on the UT decision in *Barrett v Robinson* [2014] UKUT 0322 by 11 June 2018.
30. Judge Tildesley indicated that following publication of the Tribunal decision, he would sit as a County Court Judge exercising the jurisdiction of the District Judge and determine the outstanding matters under claim number C35yP767 on the papers. In this regard Judge Tildesley would invite further submissions.

The Property

31. The property is situated about 1 ½ miles from Margate town centre in the residential area of Cliftonville, about 200 yards from the seafront. The area consists mainly of terraced houses of a similar style to the subject property, most are converted into flats which are let in the lower end of the rental market.
32. The property comprises two adjoining houses both on four floors, which have at some time in the past been converted into six self-contained flats with one central entrance. The structure is typical of houses built about 100 years ago with brick elevations under a mansard style roof to the front. The roofing materials vary. The front has Rosemary style tiles, the main rear roof is slate, and the rear extension has a flat roof, which it is understood, was replaced about 2015, but the actual finish was not established. Windows are uPvc throughout. There is a front porch with a flat roof.
33. During the inspection the Tribunal were shown the dilapidated state of the property. The Tribunal noted the lower part of the front mansard roof had several tiles which were slipped or missing. The main front roof similarly had some tiles which had slipped. Gutters and downpipes throughout the property had not been maintained.

Where they were in situ weeds were seen growing from them and in many areas the fixing brackets had failed and the gutters were hanging loose and in danger of falling.

34. The Tribunal is satisfied that external decorations have not been carried out for many years and as a result there was considerable deterioration to the timbers. The front porch roof was in substantial disrepair and there was a temporary covering over the roof. The leak had obviously been ongoing for many years as the underside of this roof was visible where the ceiling had fallen down due to the water penetration; substantial rot to the roof timbers was visible. At the rear of the property the condition was similar to the front. There was an area of render missing above the window of the rear extension first floor flat.
35. The Tribunal inspected the internal common parts and found them to be in very poor decorative condition. One light was not working on the first floor landing. On the second floor top landing an area of ceiling and wall plaster was missing, caused by long term water ingress. It was stated that the roof had now been repaired externally.
36. The front gardens are being maintained by the residents of the ground floor Flats. The rear gardens are within the demises of the ground floor flats. The tenant of Flat 1 permitted the Tribunal and the parties access to the garden so that the building could be inspected from the rear.

The Leases

37. RG Securities (No 2) Limited is the freehold owner of 38-40 Surrey Road, Cliftonville Margate, CT9 2LA and the Respondent in these proceedings. The Respondent's title is registered at HM Land Registry under Title number K587550. The Respondent acquired the freehold on 13 February 2015.
38. The Applicants hold title to long leases for their various flats at the property. The Applicants let out the flats on assured shorthold tenancies. The Applicants supplied copy leases for Flats 1, 3, 4 and 5 [362-432], which were all in the same form. The Tribunal understood that the lease for Flat 2 replicated the leases for the other flats.
39. The Tribunal refers to the lease for Flat 1 to highlight those terms that are common to all leases. The lease was made between Lee Russell Comber of the one part and Justine Marie Horne of the other part for a term of 125 years from 1 January 2003.
40. Under clause 2(1) of the lease, the tenant covenants to pay the rents hereby reserved at the time and in the manner aforesaid. The tenant was required to pay a proportionate part of the insurance

premium for the building as further rent. Clause 2(3) deals with the tenant's liability to pay a contribution to the expenses of repairing and maintaining and renewing the items set out in the Sixth schedule hereto including management fees. Clause 2(17) requires the tenant to pay all proper cost, charges and expenses incurred by the lessor for the purpose of or incidental to the preparation of forfeiture proceedings. Under clauses 3(d) and 3(e) the lessor covenants to repair maintain and renew the items set out in the Sixth schedule hereto and to insure the building.

The Issues

41. The dispute concerned liability to pay service charges for 2015, 2016, 2017 and 2018. The service charges had been demanded in advance at six monthly intervals starting at 1 July 2015 until 1 January 2018 when the full year estimate was demanded in advance. The amount demanded against each leaseholder was:

Date of Demand	Amount (£)
1 July 2015	887.50
25 November 2015 (roof)	2,164.50
1 January 2016	887.50
12 April 2016 (roof)	158.33
1 July 2016	887.50
1 January 2017	892.50
1 July 2017	892.50
1 January 2018	1,955.16

42. The Respondent had provided service charge accounts for the years ending 31 December 2015 and 31 December 2016 which had prepared and audited by Burns & Co Solicitors [114 -119] & [120-125].
43. The actuals for the year ended 31 December 2015 and for the year ended 31 December 2016 were £3,778.00 and £4,734.00 respectively.
44. The estimated service charges for the years ended 31 December 2017 and 31 December 2018 were £10,708.00 and £11,731.00 respectively [76 & 69].
45. The Applicants also disputed a range of administration charges.

46. Mrs Annandale challenged the following charges which had been imposed for Flat 1

Date	Charge (£)	Details
2 March 2016	30.00	Reminder letter [111]
30 March 2016	30.00	Reminder letter [110]
1 July 2016	30.00	Reminder letter [109]
1 November 2017	30.00	Reminder letter [79A] ¹
6 February 2018	30.00	Reminder letter [79A]

47. Mr Carter challenged the following charges which had been imposed for Flat 2

Date	Charge (£)	Details
2 March 2016	30.00	Reminder letter [80A]
1 April 2016	30.00	Reminder letter [81]
1 July 2016	30.00	Reminder letter [80]
2 May 2017	653.00	Legal Services [260]
14 September 2017	120.00	Registration for Underlet [309]
17 November 2017	30.00	Reminder letter [64] ²
6 February 2018	30.00	Reminder letter [64]

48. Ms Chick challenged the following charges which had been imposed for each of her Flats:

Date	Charge (£)	Details
2 March 2016	30.00	Reminder letter? [148]
2 March 2017	150.00	Legal Expenses [184]
2 May 2017	248.00	Legal expenses [185] [212]
6 February 2018	30.00	Reminder letter [181]

49. As at 21 March 2018 the Respondent claimed that Mrs Annandale owed the sum of £8,958.49 [79A], Mr Carter owed the sum of £9,731.49 [64], and Ms Chick £3,486.49 in respect of each flat making a total of £10,459.47 [150, 169³].

50. The Claim C35YP767 against Mr Carter was in the sum of £6,821.13 which comprised £5,158.66 unpaid service and administration charges as at 1 July 2016, legal charge of £660, Court fee £455 and legal representative's costs of £100 plus interest. The court fee and

¹ Statement of Account. No invoice in the bundle.

² Statement of Account. No invoice in the bundle.

³ There is no current statement for Flat 4 in the bundle. It is assumed that the arrears owing on Flat 4 is the same as the other flats.

legal costs are included in the administration charge of 2 May 2017. The judgement for £6,821.13 was entered on 19 January 2017, and set aside on 24 January 2018.

51. At the commencement of the hearing the Tribunal identified the following issues to be determined:
- i. Whether the lease entitles the landlord to demand payment of service charges on account?
 - ii. Whether the demands for service charges and administration charges have been correctly served upon the leaseholders?
 - iii. Whether the actual service charges for 2015 and 2016 are authorised by the lease and are reasonably incurred?
 - iv. Whether the estimated service charges for 2017 and 2018 are authorised by the lease and are no greater amount than is reasonable?
 - v. Whether the Respondent has complied with the consultation requirements in respect of the proposed major works in 2018?
 - vi. Whether the charges for insurance are reasonable?
 - vii. Whether the administration charges are payable?
52. Mr Carter and Mrs Annandale completed a “Scott Schedule” in respect of the challenged items to which the Respondent supplied a response.
53. Mr Wales on behalf of Ms Chick set out in the Application form dated 11 April 2018 the principal grounds for her Application, namely, no authority under the lease to demand on account payments, and that many of the expenditure items were not authorised by the Sixth schedule. The Tribunal directed the Respondent to provide a “Position Statement” five days before the case management hearing on 10 May 2018.
54. At the case management hearing the Tribunal with the agreement of the parties required the Respondent to supply Mr Wales with a copy of the Respondent’s case to Mr Carter and Mr Annandale by 22 May 2018. In turn Mr Wales was obliged to provide the Respondent and the other Applicants with a statement of Ms Chick’s case identifying new points that have not been raised by Mr Carter and Mrs Annandale’s case. The Tribunal also directed the parties to exchange copy witness statements of fact upon which they rely on or before 31 May 2018. The Respondent was given a brief right of reply by 7 June 2018
55. Mr Wales supplied a statement on behalf of Ms Chick [27-42] in which he elaborated upon the case presented in the application form. At paragraph 13 of the statement Mr Wales asked for the Tribunal to apply the arguments of Mr Carter and Mrs Annandale to the case for Ms Chick. Also in the statement he challenged the invoices of Thackeray Williams for legal costs, and the validity of the consultation for major works in 2018.

56. Mr Wales said that he sent this statement by email to the Respondent's solicitors on 27 May 2018 at 21.33pm and it was included in the hearing bundle which was delivered by hand on 20 June 2018.
57. Counsel stated that it was the Respondent's position that it had not seen a copy of Mr Wales's statement until the bundle was received on the 20 June 2018. According to Counsel, the Respondent's solicitors had searched his email inbox and found no email of 27 May 2018 from Mr Wales.
58. Counsel argued that Mr Wales was not entitled to rely on any new points raised in the statement and the Tribunal should limit itself to the points raised by Mr Carter and Mrs Annandale in the "Scott Schedule" citing *Birmingham City Council v Keddie* [2012] UKUT 323.
59. The Tribunal is not persuaded by Counsel's argument. The Respondent was fully aware from the application and the case management hearing of the substantive part of Ms Chick's case as advanced by Mr Wales on the construction of the lease. The only potential new points raised by Mr Wales in his statement were the failure to comply with consultation requirements, and the construction of clause 2(17) which dealt with the recovery of the landlord's costs in connection with forfeiture proceedings. In respect of the former Mr Wales' submissions did not add materially to those put forward by Mr Carter and Mrs Annandale in the "Scott Schedule". In respect of the latter the Respondent knew that the construction of clause 2(17) was in issue because it was addressed in its statement of case.
60. The Tribunal is also of the view that the Respondent was not unduly prejudiced if it did not receive Mr Wales' statement on 27 May 2018. The Respondent accepts that it saw the statement in the bundle which was delivered on 20 June 2018, and in that respect there was no ambush at the hearing. Further the Tribunal gave the Respondent an opportunity to make written representations on these two points after the hearing.
61. The Tribunal notes that the Upper Tribunal in *T Hilling & Co Ltd* [2016] UK UT 60 said at paragraph 30:

"Keddie was an extreme case in which a tribunal took it upon itself to raise and determine an issue which was not in dispute between the parties. It is relied on too frequently in support of technical submissions that a particular tribunal lacked jurisdiction, but it is more appropriately regarded simply as an example of a tribunal acting in breach of the rules of natural justice".

62. The Tribunal is satisfied that the principles in *Keddie* have no application to the circumstances of this case. The parties raised the issues regarding the consultation process and the construction of clause 2(17) not the Tribunal. The Respondent was aware of these issues and given the opportunity to make representations.

Whether the lease entitles the landlord to demand payment of service charges on account?

63. The lease does not contain extensive service charge provisions. In fact the service charge provisions are limited to one clause and a short Schedule.

64. Under clause 2(3) the lessee covenants *"to pay on signing hereof the sum of three hundred pounds (£300.00) on account of and thereafter a rateable contribution towards the cost and expenses of repairing maintaining and renewing the items set out in the Sixth schedule hereto including management fees"*.

65. The Sixth Schedule has a title in brackets of "Items to be Repaired" followed by three categories, namely:

1. The main structure of the building including the foundations and roof thereof with its gutters and rain-water pipes.
2. All such gas and water pipes drains and electric cables and wires serving the building as are enjoyed or used by the Lessee in common with the Lessor or lessees of the other parts of the building.
3. The entrance way entrance hall stairs and pathway leading to the building and all other things the use of which is in common to all the flats in the building.

66. The Applicants contended that it was clear from the wording of clause 2(3) that the sum of £300.00 was to be paid when the lease was originally signed, and that the "on account of" was restricted to the initial payment of £300. According to the Applicants, any subsequent payments by way of the service charge would only arise when costs and expenses had been incurred on repairing, maintaining and renewing the items identified in the Sixth schedule. In contrast the Respondent asserted that under clause 2(3) the lessees covenant to pay the service charge in advance.

67. In support of their proposition on their construction of the ordinary and natural meaning of clause 2(3) the Applicants referred to other parts of the lease, namely, dealing with the payment of insurance which said *"And yielding and paying by way of further rent such monies as shall be paid out by the Lessor insurance premiums for the demised premises pursuant to the covenant set out in clause 3(4)"*. In the Applicant's view, the lessees' contribution to the premium was only payable in respect of monies that had been paid

out by the lessor. Further the Applicant stated that if the contribution for the insurance was to be made in advance the clause would have read "such monies as the lessor shall pay out".

68. The Applicants commented upon the absence within the lease of the trappings that would be expected if the lease permitted payments in advance, such as interim service charges, balancing payments and a budget.
69. The Respondent relied upon the particulars in The Second Schedule which gave a payment date of 1 January in each year and a contribution of one sixth. The Respondent also relied on the heading in brackets of The Sixth Schedule which stated "*Items to be Repaired*" which in the Respondent's view supported the notion the payments were linked with future works.
70. Lord Neuberger in *Arnold v Britton and Others* [2015] UKSC 36 at para. 15 set out the principles for interpreting leases which he said was no different from the principles governing written contracts:
- "15 When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", And it does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions".
71. On balance the Tribunal agrees with the Applicants' construction of clause 2(3). In the Tribunal's view, the natural and ordinary meaning of the clause is that the lessee is obliged to pay £300 up front when the lease is signed and then make contributions as and when costs and expenses are incurred on those items identified in The Sixth Schedule.
72. The Tribunal finds that if the parties had intended contributions in advance for service charges there would be clear wording in the lease to that effect. In this regard the Tribunal contrasts the covenant to pay service charges with the rent provision in clause 1 which specifies explicitly that the rent is to be paid yearly in advance.
73. The Tribunal places weight on the complete absence of service charge machinery within the lease which would be expected if

service charges were payable in advance. The Tribunal notes that this is a Modern lease having been executed in 2003, and which incorporated an escalating rent review clause typical of Modern leases. In the Tribunal's view, the parties when executing this lease in 2003 would have known of the requirement for a comprehensive service charge provision. The fact that no such provision was included in the lease is part of the background that the Tribunal is entitled to take account of when construing the lease.

74. The Tribunal considers the Respondent's reliance on the Particulars in Schedule 2 misplaced. The Tribunal is satisfied that the Particulars are restricted to the payment of rent and have nothing to do with the covenant to pay service charges. Equally the Tribunal finds that the heading ("*Items to be Repaired*") is simply a label for the items which are subject to the landlord's covenant to repair, and is not linked to how the contributions to service charges are made.
75. The Tribunal favours the Applicant's interpretation of the payment clause for insurance as further rent. The Tribunal considers the phrase "*shall be paid out*" infers certainty associated with costs incurred, and adds to the Tribunal's finding of the necessity for clear wording if the parties intended for the service charges to be paid in advance.
76. The Tribunal's overall assessment of the lease is that it is a basic repairing and insuring lease which provides the lessor with a reasonable return on ground rent protected against inflation, and gives the lessor no onerous responsibilities beyond protecting its investment. In this regard the Tribunal's construction of the covenant to pay service charges as making contributions as and when costs and expenses are incurred is a good fit with a basic repairing and insuring lease.
77. The Tribunal concludes that the Respondent was not entitled under the terms of the lease to demand service charges in advance of the costs and expenses being incurred. The Tribunal, therefore, determines that the service charges for 2015, 2016, 2017 and 2018 have not been demanded in accordance with the lease, and that the Applicants are not liable to pay those service charges until the issue of lawful demands. This is subject to the caveat that the Tribunal might not have jurisdiction to deal with the 2015 and 2016 service charges in respect of Ms Chick.

Whether the demands for service charges and administration charges have been correctly served upon the leaseholders?

78. Mr Carter and Mrs Annandale contended that the demands for service charges and administration charges from the 13 February 2015 to December 2017 were not served on them at their last known addresses or abodes.

79. Ms Chick did not join in with Mr Carter and Mrs Annandale in respect of this challenge. Ms Chick accepted that she had agreed with the Respondent's managing agent that the demands should be sent to her at the e-mail address given.
80. The Respondent asserted in its response in the "Scott Schedule" that the demands had been served on the addresses of Mr Carter and Mrs Annandale as disclosed in the leasehold title held at HM Land Registry Title, and that Mr Carter and Mrs Annandale had not provided the Respondent with an alternative address for service.
81. The evidence painted a different picture from that presented by the Respondent. Up and until the service charge demand for 2018 which was sent on 22 December 2017 the Respondent served the demands on Mrs Allendale and Mr Carter at Flats 1 and Flats 2 at 38-40 Surrey Road respectively. The Respondent's managing agent knew or should have known that Mrs Allendale and Mr Carter did not live at the flats. Also none of the flats in the building have a letterbox which meant that all mail delivered to the property was deposited in the communal area and collected by the tenants of the respective flats if it was addressed to them. Mr Carter assumed that uncollected mail was either destroyed or returned to the sender.
82. Mr Carter and Mrs Annandale produced letters showing that when the freehold of the property was transferred to the Respondent in February 2015 the solicitors acting for the previous freeholder provided the Respondent's solicitors with Rent Authority letters with the correct home addresses for Mr Carter and Mrs Allendale [19 & 20].
83. The Respondent conducts its property business through various connected companies. In this case Pier Management operates as its management arm and collects the ground rent and the contributions for the building insurance from the Applicants. G Q Property Management is the provider of services and collects the service charge.
84. Since February 2015 Pier Management has served its demands for ground rent and insurance on the home addresses of Mr Carter and Mrs Annandale and as a result Mr Carter and Mr Annandale had paid these demands.
85. Mrs Annandale supplied a letter dated 23 September 2016 to Thackray Williams, the solicitors appointed by G Q Property Management to collect service charge advising them of her correct address [21]. Mrs Annandale also queried why G Q Property Management had considered Flat 1 as her correct address when the Respondent and Pier Management had always been aware of her contact address where she had lived for the last ten years.

86. Mr Carter gave evidence that he had informed J B Leitch solicitors in 2016 and Thackray Williams in 2017 of his correct contact address and that both firms of solicitors had confirmed that they had informed their client of the contact address.
87. Ms Burton, the director of G Q Property Management said that she had not seen the letters dated February 2015 and those to the Respondent's solicitors in 2016 and 2017 supplied by Mr Carter and Mr Annandale giving information about their home addresses. Ms Burton could not explain why Pier Management had not supplied details of the home addresses for Mrs Annandale and Mr Carter. Ms Burton insisted that the only addresses that she had for Mrs Annandale and Mr Carter were the flats at 38-40 Surrey Road.
88. The Tribunal finds that the Respondent has been aware since 2015 of the correct home addresses for Mrs Annandale and Mr Carter and has served the rent and insurance demands on them at their home addresses. The Tribunal is also satisfied that the solicitors acting for the Respondent had reminded its client of the home addresses for Mrs Annandale and Mr Carter. Given the Respondent's state of knowledge, the Tribunal finds that the managing agent had no valid reason for continuing to serve the demands for service charges and administration charges on Mrs Annandale and Mr Carter at Flats 1 and 2.
89. Clause 7 of the lease stipulates that section 196 of the Law of Property Act 1925 applies to all notices required to be served under the lease. Essentially section 196 provides that service is effected by sending the notice to the lessee at the last known place of abode.
90. Counsel argued that the requirements of section 196 were not prescriptive and that the requirements of the lease would be met if the Respondent could show that the service charge demands had come to the attention of the leaseholders. The Tribunal does not agree with Counsel's submission. In the Tribunal's view the lease does not permit service by other means unless the parties agreed an alternative means of service. In the case of Mrs Annandale and Mr Carter no such agreement existed. Also Counsel's argument fell down on the facts. The Respondent produced no evidence that the relevant demands had come to the attention of Mrs Annandale and Mr Carter. The evidence pointed to the contrary. Mrs Annandale and Mr Carter denied that they had seen them and also pointed out that the solicitors who had been instructed to take legal proceedings against them in 2016 and 2017 had failed to supply them with copies of the demands despite requests by Mrs Annandale and Mr Carter.
91. The Tribunal is satisfied that the Respondent had failed to comply with the terms of the lease when its agent sent the demands for service charges and administration charges to Mrs Annandale and Mr Carter at Flats 1 and 2 of 38-40 Surrey Road respectively when

the Respondent knew that those addresses were not the places of abode of Mrs Annandale and Mr Carter.

92. The Tribunal determines that the demands for service charges and administration charges for the years 2015, 2016 and 2017 were not validly served on Mrs Annandale and Mr Carter. It, therefore, follows that Mrs Annandale and Mr Carter are not liable for those charges until valid demands have been served upon them at their last known places of abode.

Whether the actual service charges for 2015 and 2016 are authorised by the lease and or are reasonably incurred?

93. The audited service charge accounts for the year ended 31 December 2015 showed expenditure of £3,778 comprising £400 cleaning, £132 refuse collection, £250 health and safety (fire risk assessment), £380 fire alarm maintenance, £900 management fees, £216 accountancy fees, and £1,500 for reserves [116].
94. The audited service charge accounts for the year ended 31 December 2016 showed expenditure of £4,734.35 comprising £192 refuse collection, £610 health and safety, £44.75 electricity supply, £1,800 management fees, £300 accountancy fees, £287.50 sundry expenditure and £1,500 for reserves [122].
95. The 2016 accounts also showed expenditure of £12,707 from Reserves [124]. This comprised roof works and guttering: £8,550 TMI Roof Coatings [221 & 222]; scaffolding: A level scaffolding Ltd £2,100 [223]; professional fees for section 20 works: Pandora Property Services, £1,152 [234]; Tribunal fee for dispensation application, £315 [314], plastering works: Leo Property Maintenance Ltd, £3,708 [235]; repair artex ceilings: Leo Property Maintenance Ltd, £90 [236]. The works carried out by Leo Property related to Flat 5 and was subject to an insurance claim which resulted in a payment of £3,208 in settlement [225].
96. The Applicants contended that under clause 2(3) and The Sixth Schedule of the lease the Respondent's recovery of costs through the service charge was limited to the costs and expenses incurred in the repair, maintenance and renewal of the main structure of the building, the common parts and the shared service installations eg water, gas pipes and drains.
97. The Applicants asserted that expenditure on health and safety assessments, fire alarm maintenance, refuse collection, and accountancy fees were not recoverable through the service charge under the terms of the lease. The Applicants also contended that there was no facility under the lease to set aside monies as reserves.
98. The Respondent argued that the disputed items of expenditure were authorised under paragraph 3 of The Sixth Schedule, namely

they fell under the category of “*all other things the use of which is in common to all the flats in the building*”. The Respondent made no submissions on whether the lease permitted service charge monies to be held in reserves.

99. The Tribunal considers that the Respondent’s reliance on “*all other things the use of which is in common to all the flats in the building*” misplaced. This part of paragraph 3 to The Sixth Schedule does not stand in isolation, and requires to be interpreted in the context of clause 2(3) and The Sixth Schedule. The Tribunal is of the view that the costs which can be recovered through the service charge is limited to costs of repair, maintenance and renewal. Thus “*all other things*” is not a catch all provision which includes services. In the context of The Sixth Schedule “*all other things*” is the object of the activities of repair maintenance and renewal.
100. The Tribunal finds in relation to the year ended 2015 the expenditure on rubbish clearance (£400) and £132 [205 & 207]; health and safety (£250) [208]; and accountancy fees (£216) [241] was not recoverable through the service charge. The Tribunal is satisfied that the foregoing expenditure items did not involve repair and maintenance. The Tribunal finds that the expenditure of £380 on the replacement of smoke alarms and light bulbs [206] was authorised by the lease. The Tribunal disallows the allocation to reserves.
101. The Tribunal finds in relation to the year ended 2016 the expenditure on refuse collection (£192) [240]; health and safety which comprised risk assessments and asbestos management survey (£610) [224 & 239]; and accountancy fees (£300) [284] was not recoverable through the service charge. The Tribunal is satisfied that the foregoing expenditure items did not involve repair and maintenance. The Tribunal disallows the allocation to reserves.
102. The Respondent charged management fees of £900 in 2015 and £1,800 in 2016. The Respondent said that the management fees were a fixed fee calculated at £300 inclusive of VAT for each flat making an annual total of £1,800 for the building. The Respondent said that the fee included regular inspections of the property, instruction of contractors, setting up a database of service charge accounts, sending out demands and credit control. The Respondent contended that the unit fee of £300 was comparable with the fees charged by other managing agents in the locality.
103. Mr Wales for Ms Chick was forthright in his criticism of the managing agents. Mr Wales stated that the poor condition of the property demonstrated there was no effective management in place. Mr Wales questioned the competence of the managing agents because they had no understanding of the terms of the lease, and no comprehension of conflict of interest when choosing contractors.

104. Ms Burton asserted that the responsibility for the state of disrepair rested solely with the leaseholders who, in her view, had wilfully refused to meet their service charge obligations. Ms Burton stated that she and her fellow director had paid from their own pockets the balance outstanding to the contractor for repairs to the roof. Ms Burton stated that the managing agent had a written agreement with the Respondent for the services provided.
105. Mrs Annandale and Mr Carter supplied an extract from a previous Tribunal decision (CHI/29UN/LSC/2009/01210 in relation to Flats 3-5 when Mr Mike Carter and Mrs Carter were the landlord [308]⁴. In that case there was no dispute about the terms of the lease. Mrs Annandale and Mr Carter referred to the previous Tribunal's finding that £70 per year per unit was a reasonable amount for the management fee having regard to the minimal level of management carried out.
106. This Tribunal places no weight on the previous Tribunal's decision because it was decided on its facts. This Tribunal, however, considers that the wording of the lease restricts the scope of chargeable management activity. The Tribunal is satisfied that under clause 2(3) the phrase "*including management fees*" means those management fees that are incurred on the repair, maintenance and renewal of those items in the Sixth Schedule. This construction limits the ability of the Respondent to recover management fees through the service charge. The Respondent is at liberty to engage GQ Property Management to provide the complete range of management services to the building but the Respondent can only recover the costs of those services through the service charge that have some connection to the repair and maintenance of the building and its common parts. The Tribunal notes that GQ Property Management was not responsible for arranging the building insurance.
107. The Tribunal applying its general expertise and knowledge considers a management fee of £300 per unit high where the only services that are provided are those connected with repair and maintenance. The Tribunal decides that a fee of £150 inclusive of VAT per unit is reasonable in these circumstances.
108. The Tribunal is also satisfied that the services provided by the managing agent were not to the required standard. The Tribunal finds that the managing agent had not set up arrangements to repair and maintain the building, the agent had not issued the demands to the correct addresses of Mrs Annandale and Mr Carter (the agent could have discovered the correct addresses by asking the Respondent), the agent had no understanding of the terms of the lease and no evidence that the agent took meter readings. The

⁴ The Tribunal had a copy of the full decision.

Tribunal, therefore, reduces the unit fee of £150 by 66.66 per cent to reflect the fact that the services of the managing agent were not to the required standard.

109. The Tribunal determines that a management fee of £150 inclusive of VAT for the year ending 31 December 2015 (six months charged) and a management fee of £300 for the year ending 31 December 2016 were reasonable.
110. The 2016 accounts had an item of sundry expenditure in the sum of £287.60 which appeared to comprise £35 in bank charges [217, 218, & 243], £9.60 in postal charges [246], and £225 for minor external works [209] leaving £18 unaccounted. The Tribunal finds that there is no authority under the lease to recover bank charges, and that the postal charges should be included in the management fee. The Tribunal is satisfied that the charge of £225 for minor works was authorised by the lease. The Applicants did not challenge the reasonableness of the charge. The Tribunal finds that the expenditure on external minor works in the sum of £225 was reasonable.
111. The final item of expenditure in the year ended 31 December 2016 accounts was £44.75 for the electricity supply. The Applicant produced two bills based upon estimated readings: £19.04 [228], and £25.71 [244]. The Tribunal is not convinced that the costs of electricity supply was recoverable under the terms of the lease. These costs did not meet the description in "The Sixth Schedule" of "Items to be repaired". The costs did not fall within the definition of charges under clause 2(2) because they did not relate to demised premises. The Tribunal also has concerns about the documentary evidence substantiating the expenditure. The Tribunal notes that the first bill [228] did not identify the property and included a charge for "non-energy" services. The Tribunal questions why the bills were based on estimated amounts particularly in view of the managing agent's statement that the property was visited on a regular basis. The Tribunal disallows the sum of £44.75 for the electricity supply from the service charge year ended 31 December 2016.
112. The last item for consideration by the Tribunal in respect of the 2015 and 2016 actuals was the expenditure of £12,707.00 defrayed from the reserves more particularly described in paragraph 96 above.
113. The Tribunal starts with the invoices from Leo Property Maintenance Ltd in the sums of £3,708 (plastering works) and £90 (repairing Artex ceilings) for which the Respondent received £3,208 from an insurance claim. The amount taken from reserves was £590. These works related to the repair of the damage to the interior of Flat 5 arising from water ingress. As such this was not expenditure chargeable to the service charge account because it

related solely to the demised premises. The Tribunal, therefore, disallows the sum of £590.

114. The remainder is connected with the major works: £8,550 TMI Roof Coatings, £2,100 A level scaffolding Ltd, £1,152 professional fees for section 20 works: Pandora Property Services, and the Tribunal fee £315 for the dispensation application.
115. The Tribunal understands that the application for dispensation was withdrawn in October 2015. The Tribunal is satisfied that there is no authority under the lease to recover Tribunal application fees through the service charge. The only avenue open to the Respondent was to apply to the Tribunal for reimbursement of the fee from the leaseholders pursuant to rule 13(4) of the Tribunal Procedure Rules. No such application was made. The Tribunal disallows the sum of £315.
116. The Tribunal finds that the costs of the roof works, scaffolding and professional services were all connected with the same project of works, and exceeded the threshold of £1,500 (£250 per flat x 6). The Tribunal was, therefore, satisfied that the works were subject to the consultation requirements of section 20.
117. In this regard the Respondents supplied a Notice of Intention dated 2 September 2015 [138], Statement of Estimates giving the quotations from two companies dated 6 October 2015 [136], and Notice for Reasons awarding the Contract to TMI Roof Coatings dated 25 November 2015 [140].
118. Mrs Annandale and Mr Carter contended that they had not received the section 20 documentation because the Respondent had sent the documents to Mrs Annandale and Mr Carter at Flats 1 and 2, 38-40 Surrey Road which was not their last known places of abode.
119. Mr Wales for Ms Chick argued that the Respondent had not complied with the consultation requirements. Mr Wales stated that the roof continues to leak and that there has been no attempt by the Respondent to claim under the 20 year guarantee purportedly given by TMI in its invoice dated 27 March 2016 [221]. Mr Wales considered that the costs were unreasonable.
120. The Tribunal makes the following findings of fact in relation to the major works:
 - a) The consultation notices were not served on Mrs Annandale and Mr Carter. The lease required notices to be sent in accordance with section 196 of the Law of Property Act 1925, namely at their last known place of abode. The Respondent knew the home addresses of Mrs Annandale and Mr Carter but its managing

agent chose to post consultation notices to Flats 1 and 2 at which Mr Annandale and Mrs Carter did not reside.

b) The Respondent adduced no evidence that the consultation notices had not come the attention of Mrs Annandale and Mr Carter.

c) The statement of estimates and the notice to award contracts did not mention the contracts with A level scaffolding Ltd and with Pandora Property Services. The statement of estimates referred to a charge of 10 per cent (£960) by the managing agent for the administration connected with the major works which did not appear to be part of the monies defrayed from reserves..

d) The Respondent adduced no evidence to contradict Mr Wales' claim that the roof continues to leak.

121. The Tribunal is satisfied that the Respondent did not comply with the consultation requirements. The notices were not served on Mrs Annandale and Mr Carter⁵ and that the statement of estimates and notice to award contract did not contain all the necessary information about the costs of the project. The Tribunal decides to limit the amount payable in respect of each leaseholder to £250 for the major works.

122. The Tribunal makes no decision on whether the roof works were completed to the required standard.

123. The Tribunal, therefore, determines that a service charge of £530 is reasonable for the year ended 31 December 2015. The £530 comprises £380 for fire alarms and light bulbs and £150 managing agent's fees. The amount payable by each leaseholder is £88.34⁶ subject to the service of a valid demand.

124. The Tribunal, therefore, determines that a service charge of £2,025 is reasonable for the year ended 31 December 2016. The £2,025 comprises £225 for minor works, £300 managing agent's fees and £1,500 for major works. The amount payable by each leaseholder is £337.50⁷ subject to the service of a valid demand.

⁵ See Lands Tribunal decision in Rita Akorita v 36 Gensing Road Limited LRX/16/2008

⁶ In Ms Chick's case £1,012.50 for the three flats.

⁷ In Ms Chick's case £1,012.50 for the three flats.

Whether the estimated service charges for 2017 and 2018 are authorised by the lease and or are no greater amount than is reasonable?

125. The estimated service charges for the years ended 31 December 2017 and 2018 were £10,708 [76] and £11,731.00 [69] respectively which equated to an annual contribution of £1,784.67 and £1,955.16.
126. The Tribunal has determined that the Respondent was not entitled under the lease to demand payments on account, in which case the Tribunal's decisions on the estimated service charges for 2017 and 2018 are academic.
127. The managing agent did not comply with RICS Code of Practice (paragraph 7.3 3rd edition) in respect of the preparation of an estimated service charge. The Tribunal is satisfied that the managing agent did not use due diligence and professional expertise when it made an assessment of the expenditure required for the services to the property for the forthcoming year. The managing agent had no regard to the terms of the lease as to what counted as legitimate expenditure, no regard to the actual costs for the previous years and no regard to the current state of the property and what was there when producing the estimated service charges for 2017 and 2018. The managing agent had included in both sets of demands £400 for entry door and phone maintenance and £1,200 for grounds maintenance despite the facts that the entry door system had not functioned for a significant number of years, and the grounds at the property were limited to a small area at the front which had been maintained by the leaseholder at Flat 1.
128. The Tribunal finds that the following expenditure estimates included in the service charge demands were not recoverable through the service charge under the terms of the lease: TV & satellite maintenance, waste collection, pest control, entry door and phone maintenance, electricity, periodic electrical testing, ground maintenance and services, reinstatement valuation, preparation of accounts, bank charges, and sundries if restricted to postage and allocations to reserves.
129. The Tribunal concludes there was no rational basis for the estimated service charge budgets for 2017 and 2018 produced by the Respondent. Given this finding the Tribunal is satisfied that the amounts demanded of £10,708 and £11,731.00 were not reasonable. If there was power in the lease to demand service charges in advance the Tribunal considers a figure of £3,000 for an estimated annual service charge would be in the realms of reasonableness.

Whether the Respondent has complied with the consultation requirements in respect of the proposed major works in 2018?

130. The major works involved the external repair and internal redecorations of the property. The Respondent gave notice of intention to carry out the works on 7 November 2017 with observations by 8 December 2017. The Notice of Intention was sent by post to Mrs Annandale at Flat 1 38-40 Surrey Road [72], to Mr Carter at his home address [74] and by email to Ms Chick [202].
131. The Respondent supplied a Statement of Estimates on 25 January 2018 with receipt of observations by 2 March 2018. This was served on Mrs Annandale at her home address [60], and on Ms Chick by email [193]⁸
132. The Statement of Estimates stated that the Respondent approached five contractors. The two local contractors, Rowe & Martin and DK Building Services, failed to submit tenders. Thameside Property Services Ltd, Iconic Facilities Management Limited and Metro Contracting Limited supplied tenders of £34,715, £34,800 and £40,800 exclusive of VAT respectively. The Statement of Estimates also included the managing agents' administration fee of 5 per cent which equated to £2,136.90 when set against the lowest tender.
133. Mrs Annandale and Mr Carter questioned the validity of the consultation. They pointed out that no specification was provided and that the tenders were from service companies whose registered addresses were at significant distance from the Thanet area.
134. Mr Annandale gave evidence [43] that he contacted the local contractors to discover why they had not submitted tenders. According to Mr Annandale, DK Building Services informed him that they had made numerous requests of the managing agent to provide details of the specification. Eventually the managing agent contacted DK Building Services and advised them "Not to bother to quote as they had already received an offer from another body". Rowe and Martin informed Mr Annandale they did not tender as they only received a brief specification of the work which Rowe and Martin considered to be "amateurish". Further Rowe and Martin said to Mr Annandale that the managing agent had suggested a price to them to which Rowe and Martin responded that they did not do business in this manner.
135. Mr Wales informed the Tribunal that he had not received copies of the consultation notices despite the fact that he informed the Respondent and the managing agent by e-mail dated 11 December 2017 that he was now acting for Ms Chick and that all future correspondence to Ms Chick should be addressed to him.

⁸ The Statement of Estimates sent to Mr Carter was not included in the bundle. Mr Carter does not dispute that he was sent the Notice to his correct address.

136. The Respondent contended that it had complied with the consultation requirements under section 20 of the 1985 Act. The Respondent maintained that there was no requirement to supply the Applicants with a specification of the proposed works. The Respondent disputed the allegations regarding Mr Annandale's conversations with the two local contractors but the Respondent adduced no evidence to rebut them.
137. The Tribunal considers that the Applicants have raised sufficient concerns which undermine the integrity of the consultation process. Under the statutory requirements the Respondent is required to have regard to the observations made by the leaseholders, and not simply dismiss them as irrelevant. The Tribunal considers the leaseholders request to see a specification reasonable, especially considering the scope of the proposed works, and that the Respondent should provide a response to Mr Annandale's conversations with the local contractors. It also appears to the Tribunal that Respondent has not complied with the request to send all documentation to Mr Wales, which meant that Ms Chick through her representative had not been given the opportunity to comment on the Statement of Estimates.
138. The Tribunal finds that the consultation on external repair and internal redecorations of the property undertaken by the Respondent was flawed and should be started afresh.

Whether the charges for insurance are reasonable?

139. The Applicants accepted that the costs of the insurance premium were reasonable.
140. The sole matter in dispute concerned an insurance administration fee in the sum of £19.99 charged in 2018 [309A]. The managing agent was unable to explain what this charge was for as it appeared to be one imposed by Pier Management. The Respondent was also unable to point to a clause in the lease which authorised such a charge.
141. The Tribunal disallows the insurance administration fee in the sum of £19.99 which was connected with the insurance charge for the year ended 31 December 2018.

Whether the administration charges are payable?

142. The administration charges fall into three categories⁹. The first category was the £30 charge for debt recovery letters which have been imposed against all three Applicants. The Tribunal is satisfied that there was no authority under the lease to charge for debt

⁹ See paragraphs 46,47 & 48 for the details of the charges.

recovery letters. Also these letters related to service charges which have not been demanded in accordance with the lease. Finally all the demands for administration charges except the one dated 6 February 2018 were not served because they were not sent to the last places of abode of Mrs Annandale and Mr Carter

143. The second category concerns the charge for legal services which comprised a charge of £653 dated 2 May 2017 against Mr Carter, and two charges of £150 dated 2 March 2017 and £248 against Ms Chick for each of her three flats.
144. The administration charge for legal costs in the sum of £653 against Mr Carter will be dealt with by Judge Tildesley exercising the jurisdiction of a County Court judge.
145. The Tribunal understands that Ms Chick paid the outstanding service charges for 2015 and 2016 and the legal costs of £150 and £248 for each flat. It would appear that this payment was made to settle a claim taken out by the Respondent in the County Court in which case the Tribunal's jurisdiction may be ousted by virtue of section 27A(4) of the 1985 Act. **The Tribunal directs the Respondent and Ms Chick to make representations on jurisdiction and supply information regarding the payment together with copies of relevant correspondence Claim forms and Court order, if any, to the Tribunal and each other within 7 working days from release of this decision.**
146. The third category concerns a single charge of £120 dated 14 September 2017 against Mr Carter for the Respondent's costs in registering an underlease. The Respondent accepted there was no authority under the lease to require Mr Carter to register an assured shorthold tenancy under the lease.
147. The Tribunal determines that Mr Carter is not liable to pay the charge of £120 for registering an under lease.

Applications under section 20C of the 1985 Act and Para 5A Schedule 11 of the 2002 Act and refund of fees

148. There is no power to make a section 20C order because the lease did not permit the landlord to recover the costs of Tribunal and Court proceedings through the service charge.
149. As the Applicants have been successful with their section 27A applications the Tribunal finds it just and equitable to make an order under paragraph 5A schedule 11 preventing the Respondent from recovering its litigation costs incurred in the Tribunal proceedings against Mrs Annandale and Ms Chick. The question of litigation costs in respect of Mr Carter is a matter for the Court and not the Tribunal.

Apportionment

150. The parties agreed that the apportionment for the service charge by means of rateable contribution as laid down into clause 2(3) was no longer valid because of the abolition of the domestic rating system based on rateable value. The parties also accepted that the Contribution of "A one sixth share in The Second Schedule related solely to the rental clause which included insurance. Where there is no longer a valid means of apportionment, the Tribunal has jurisdiction to determine what the apportionment should be. The Tribunal determines with the agreement of the parties that the service charge payable under clause 2(3) of the lease should be apportioned equally between the leaseholders of the six flats. The contribution for each leaseholder is one sixth of the service charge.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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 of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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

- (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 provisions 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 27A

- (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 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 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 to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (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 20C

- (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 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 a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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 a 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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 to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

- (b) on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11 paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(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."

Law of Property Act 1925

196.— Regulations respecting notices.

(1) Any notice required or authorised to be served or given by this Act shall be in writing.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned [by the postal operator (within the meaning of [Part 3 of the Postal Services Act 2011]) concerned] undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears.

(6) This section does not apply to notices served in proceedings in the court.