



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

Case Reference : **BIR/47UB/LIS/2020/0029**

HMCTS : **CVP**

Property : **2 The Mansion House, Lord Austin Drive,
Marlbrook, Bromsgrove B60 1RB**

Applicant : **Mrs Ann Doyle**
Representative : **Blueprint Estate Management Company
Limited**

Respondent : **The Mansion House RTM Company Limited**
Managing Agent : **Mainstay Residential Limited**

Type of Application : **to determine the reasonableness and
payability of the Service Charges (section
27A Landlord and tenant Act 1985)**

**to determine whether the landlord's costs
arising from the of proceedings should be
limited in relation to the service charge
(section 20C of the Landlord and Tenant
Act 1985)**

**to reduce or extinguish the Tenant's liability to
pay an administration charge in respect of
litigation costs (paragraph 5A of Schedule 11 of
the Commonhold and Leasehold reform Act
2002)**

Date of Application : **10th August 2020**

Tribunal : **Judge J R Morris
Mr R P Cammidge FRICS
Mr T W Jones BSc, Dip Surv, FRICS, MCI Arb,
MEWI, IRRV**

Date of Hearing : **11th November 2020**

Date of Decision : **7th December 2020**

DECISION

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Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines that:
 - a) the apportionment of the Apartment Block Service Charge for the years in issue by the cost of some Apartment Block Services being apportioned by fraction, based on the number of Apartments, and the cost of other Apartment Block Services being apportioned by a percentage, based upon the floor area of each Apartment, is not reasonable and payable;
 - b) that a reasonable and payable apportionment of the Apartment Block Service Charge is that the cost of all Apartment Block Services is apportioned by a percentage based upon the floor area of each Apartment;
 - c) the reasonable and payable apportionment of the Apartment Block Service Charge for the years in issue for Apartment 2 is 10.2124%.
2. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Applicant's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Respondents.
3. The Tribunal makes an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Reasons

Introduction

4. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether service charges incurred for the years ending 31st December 2018, 2019 and to be incurred for the year ending 31st December 2020 (“the years in issue”) are reasonable and payable by reference to their apportionment.
5. The Applicant also seeks an order for the limitation of the Respondent’s costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the Tenant’s liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
6. Directions were issued 18th August 2020.
7. Both the Parties submitted written representations and a remote video hearing was held on 11th November 2020 (the Hearing) which was attended by:
Mr Paul Boothman of Blueprint Estate Management representing the Applicant, Mrs Doyle;
Mr Sean Moran, Senior Property Manager of Mainstay Residential Limited representing the Respondent, together with Mr Alex Siegle, Associate Director and Ms R Guest, newly appointed Property Manager, also of Mainstay Residential Limited.

Background and Description of the Development and Property

8. The following information was taken from the written representations made by the parties and confirmed at the Hearing.
9. The Applicant is the Leaseholder of Apartment 2 (“the Property”) of The Mansion House, Lord Austin Drive, Marlbrook, Bromsgrove B60 1RB (“The Mansion House”). The Respondent is a Right to Manage Company which manages The Mansion House through its Managing Agent Mainstay Residential Limited.
10. The Tribunal did not make an inspection but from the Application Form, the Lease plans, the parties’ submissions and the Internet found The Mansion House to be part of The Grange Park Estate (the Development”) which consists of 29 freehold houses and two Leasehold blocks of apartments: The Mansion House and The Grange. The Grange Park Estate was originally managed by The Grange Park Management Company (Old Birmingham Road) Limited (“the Grange Park Management Company”) with a Board of 10 directors consisting of 6 representing the freehold house owners who are Class A shareholders, 2 representing The Mansion House Leaseholders who are Class B shareholders and 2 representing the Grange Leaseholders who are Class C shareholders.
11. The original design for The Mansion House was for 7 Apartments as follows:

Apartment 1: A Ground Floor two-bedroom Apartment with two garages
Apartment 2: A Ground Floor two-bedroom Apartment with one garage
Apartment 3: A Ground Floor two-bedroom Apartment with two garages
Apartment 4: A First Floor two-bedroom Apartment with two garages
Apartment 5: A First Floor two-bedroom Apartment with one garage
Apartment 6: A First Floor two-bedroom Apartment with two garages
(Apartments 5 and 6 conjoined)
Apartment 7: Penthouse four-bedroom Apartment with two garages
The apartments were of varying floor areas.

12. The Apartments were occupied in 1999. All the Apartments have to pay a service charge. The Service Charge cost specified in the Lease is £1,475.00 for Apartments 1 to 6 and £1,950.00 for Apartment 7, totalling £10,800. This was subsequently extrapolated to allocate the Service Charge on a percentage basis. The apportionment of the Service Charge has since been further varied as set out in the Respondent's Statement of Case so that certain of the Items or Heads of the Service Charge are paid on the basis of 1/6 and others are apportioned according to the percentages based upon the floor area of each Apartment.
13. The scale of apportionments for the Items or Heads of the Service Charge are set out in the Respondents' Case. This scale of apportionments is disputed by the Applicant for the years in issue.
14. Apartments 5 and 6 are owned by the same Leaseholder and were combined during construction with the right to convert them back into two Apartments in the future.

The Issues

15. The Applicant sets out the issues in the Application Form as follows:
 1. The Applicant submits that the apportionment of the Service Charge is unreasonable:
 - a) The method of apportionment cannot be determined by the Respondent (*Windermere Marina Village Limited v Wild & Others* [2014] UKUT 163 (LC) and section 27A (6) of the Landlord and Tenant Act 1985) therefore, the Applicant applies for the Tribunal to determine the method of apportionment.
and
 - b) If the Tribunal determines that the area of the Property is the method of apportionment, which the Applicant contends, then the Applicant applies for the area of the Property to be determined, as the present assessment as determined by the Respondent, is incorrect.
 2. The Applicant applies for an order for the limitation of the Landlord's costs of the proceedings under section 20C of the Landlord and Tenant Act 1985.

3. The Applicant also applies for an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should be made.

The Lease

16. A Copy of the Lease for Apartment 2 dated 17th December 1999 between Chase Midland PLC (the Landlord) (1) The Grange Park Management Company (Old Birmingham Road) Limited (the Management Company) (2) John Christopher Fittus (the Tenant) (3) was provided. The Lease was assigned by the Tenant to the Applicant in 2010. The Lease is for a term of 999 years commencing on 18th June 1997. The relevant terms which are understood to be common to all the Leases, are set out below.
17. Following the identification of the Parties the lease sets out a series of definitions. The most relevant are as follows:

“the Apartment Block” means the building and its curtilage for identification shown coloured green on Plan B of which the Demised Premises form part This is The Mansion House.

“the Apartment Block Service Charge” means prior to the commencement date the sum of £1,475 per annum and thereafter such sum as the Management Company shall consider fair and reasonable for the expenditure incurred by the Management Company in performance of the Apartment Block Services

“The Apartment Block Services” means the services set out in Schedule 4 hereto

“the Maintenance Expenses” means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company from time to time in carrying out the obligations specified in Schedule 6

“the Tenant’s Proportion” means the proportion of the Maintenance Expenses ascertained in accordance with Schedule 7 hereto

“the Service Charges” means the Apartment Block Service Charge and the Tenant’s Proportion of Maintenance Expenses
18. Clause 6 of the Lease sets out a series of Provisos. Clause 6.1 (i) states:

If in the reasonable opinion of the Landlord or the Management Company it should at any time or times become necessary or equitable to do so the Landlord or the Management Company may recalculate the percentages comprising the Apartment Block Service Charge or the Tenant’s Proportion of the Maintenance Expenses payable by the tenant hereunder with effect from the date specified in any notice requiring such change served on the Tenant the Tenant shall pay the revised percentage or percentages required

(which shall thereafter be deemed to be substituted for that set out in any preceding clause of this Lease)

Preliminary Finding

19. The Tribunal found, and the Parties in their representations drew the Tribunal's attention to, a difference between: a) the Apartment Block Service Charge and the Apartment Block Services as set out in Schedule 4 of the Lease; and b) the Maintenance Expenses as set out in Schedule 6 and the Tenant's Proportion of Maintenance Expenses as set out in Schedule 7. The Parties submitted that only the Apartment Block Service Charge and the Apartment Block Services were the subject of these proceedings. For the avoidance of doubt the Tribunal considered the Lease and made the following finding with which the Parties concurred at the Hearing.
20. The Apartment Block Service Charge and the Apartment Block Services set out in Schedule 4 of the Lease are for the maintenance of the Apartment Block in this instance The Mansion House. These services together with the responsibility for complying with Clause 4 of the Lease in respect of them, were the responsibility of the Management Company i.e. The Grange Park Management Company (Old Birmingham Road) Limited. However, since June 2017 those obligations have been taken over by the Respondent as a Right to Manage Company. It is the apportionment of the Apartment Block Service Charge and the Apartment Block Services set out in Schedule 4 that are the subject of these proceedings.
21. The Maintenance Expenses are payable by the Tenants in respect of the Items set out in Schedule 6 which are to be carried out by the Management Company which for these matters continues to be The Grange Park Management Company (Old Birmingham Road) Limited. The services include:
 - 1.1 *Repairing cleaning maintaining and renewing the Access Roads and footpaths within the Development including any walls or fences (which are not the responsibility of any other person or maintainable at the public expense) to a standard appropriate for the houses on the Development*
 - 1.2 *Repairing cleaning maintaining and renewing the private Drains within the Development and any service installations within the Development (which are not the responsibility of any other person or maintainable at the public expense)*
 - 1.3 *Repairing cleaning maintaining and renewing the Street Lighting and lighting of common areas within the Development (which are not the responsibility of any other person or maintainable at the public expense)*
 - 1.4 *Keeping all landscaped areas and all parts of the Development not included in the sale or lease individual house apartment or flat in good order and condition...*

- 1.5 – 1.11 Together with insuring, employing workmen or contractors, paying rates, taxes etc, engaging managing agents, accountants, recovering costs and enforcing covenants.
22. Schedule 7 sets out a formula for calculating the Tenant's Proportion of the Maintenance Expenses. These continue to be payable to The Grange Park Management Company (Old Birmingham Road) Limited. It is not within the Tribunal's jurisdiction to alter this formula (see below) unless the Management Company sought to vary in accordance with Clause 6(i).
23. The Maintenance Expenses as set out in Schedule 6 and the Tenant's Proportion of Maintenance Expenses as set out in Schedule 7 are not part of these proceedings.

Preliminary Legal Issue

24. The Applicant submitted in her Statement of Case that the method of apportionment cannot be determined by the Respondent under the Definition of the Apartment Block Services and Clause 6(i) of the Lease. The Applicant referred to *Windermere Marina Village Limited v Wild & Others* [2014] UKUT 163 (LC) but made no other submissions.
25. The Respondent, in its Statement of Case, did not address the validity issue of the Definition of the Apartment Block Services and Clause 6(i) but was of the opinion that it was able to set an apportionment which would be binding by reason of it being the subject of an Ordinary Resolution at a meeting of the Right to Manage Company or alternatively, was effective by reason of it being agreed by the majority of residents. The Applicant was the only resident to disagree with the apportionment proposed.
26. This raised two questions to be considered before a determination could be made by the Tribunal:
1. Does the Tribunal have jurisdiction to adjust the apportionment of the service charge determined by the Respondent.
 2. If it does have jurisdiction, is it entitled to substitute its own view of a reasonable apportionment.
27. The Applicant referred the Tribunal to *Windermere Marina Village Limited v Wild & Others* [2014] UKUT 163 (LC) (*Windermere*) and section 27A (6) of the Landlord and Tenant Act 1985 to support her argument that the answer to both questions is in the affirmative.
28. At the Hearing the Tribunal asked the parties whether they had any further submissions to make to which they answered that they had not. The Tribunal therefore set out what it considered to be the reasoning and answers to the two questions.
29. In answering the first question the Tribunal found that it was held in *Windermere* that section 27A (1) of the 1985 Act gave authority to a Tribunal

to determine the apportionment of a service charge. Deputy President, Martin Roger QC stated:

38. *It is perfectly possible to contemplate an application to the first-tier tribunal under section 27A (1) where the only question in issue concerns the proper method of apportionment of a sum which is agreed to have been incurred reasonably on services provided to a reasonable standard and which otherwise to fall within a tenant's contractual liability.*
30. The Application in this case only concerns the apportionment of the Service Charge.
31. The Tribunal having found that it does have jurisdiction to determine apportionment it considered the second question of whether it is entitled to substitute its own view of a reasonable apportionment. In reading *Windermere*, it noted that this was dealt with in two stages.
32. Firstly, the Tribunal noted that the Deputy President drew attention to a restriction on the Tribunal's jurisdiction to substitute its own apportionment as follows:
39. *Having identified that section 27A (1) is not confined to issues of quantification, and may include issues of apportionment, it is then necessary to consider section 27A (4).*

The effect of this sub-section is:

Where the parties have agreed in their lease how service charges are to be apportioned (for example, in fixed proportions or percentages, or in proportions referable to floor area or rateable value) section 27A (4) will preclude an application under section 27A (1) in respect of that matter.

33. It is now established that where a Lease specifies a means of apportionment then the Tribunal has no jurisdiction to alter what has been agreed between the parties by reason of section 27A (4). The Deputy President confirmed his view in *Gater v Wellington Real Estate Ltd* [2014] UKUT 0561 (LC) and more recently confirmed in *Williams v Aviva Investors Ground Rent* [2020] UKUT 111 (LC).
34. Secondly, the Tribunal considered whether the Lease in the present case specifies an apportionment and so came within the restriction on the Tribunal's jurisdiction. There is an initial apportionment in the form of a stated amount to be paid by way of Service Charge prior to the commencement of the Lease. This is a sum to put the Service Charge account into funds at the beginning of the term. After the amount is paid the Lease states that *thereafter such sum as the Management Company shall consider fair and reasonable for the expenditure incurred by the Management Company in performance of the Apartment Block Services*

35. This is not a specified sum, proportion or calculation and therefore this provision in the Lease is, by virtue of section 27A (6), void so far as it limits the Tribunal's jurisdiction to determine a fair and reasonable apportionment under section 27A (1); as recognised in *Windermere*:
40. *The prohibition in section 27A (4) on re-opening matters which have been agreed must, however, be considered in the light of section 27A (6). This renders void any agreement by the tenant in so far as it "purports" to provide for the determination of any question which could be the subject of an application under sub-section (1) or (3) "in a particular manner" or "on particular evidence". The purpose of the provision is clearly to avoid agreements excluding the jurisdiction of the first-tier tribunal on questions which could otherwise be referred to it for determination.*
36. The Tribunal referred to the further provision in the Lease of Clause 6(i) which purports to enable the Landlord or the Managing Company to determine an apportionment of the Apartment Service Charge if it considers it *equitable or necessary*. The Tribunal is of the opinion that this too is void by reason of section 27A (6).
37. Reference was made by the Applicant to the Maintenance Expenses as set out in Schedule 6 and the Tenant's Proportion of Maintenance Expenses as set out in Schedule 7. These are not part of these proceedings but by way of illustration of the above decision, as Clause 6(i), which also refers to the Tenant's Proportion, is void, then Schedule 7 alone applies. This specifies a method of apportionment for the Maintenance Expenses i.e. The amount payable as the commencement of the term is to be increased annually in accordance Retail Price Index. In which case a tribunal would not have jurisdiction to determine an apportionment as it is already determined by the Lease.
38. The Tribunal having set out the above, the Parties did not dispute the reasoning.
39. The Tribunal therefore determines that the part of the definition of "*the Apartment Block Service Charge*" that states that it shall be *such sum as the Management Company shall consider fair and reasonable for the expenditure incurred by the Management Company in performance of the Apartment Block Services* and Clause 6(i) of the Lease are void in so far as limiting the Tribunal's jurisdiction in determining a reasonable Apartment Block Service Charge apportionment.

Submissions

40. The Directions attached a Schedule requiring the Applicant to identify and comment on the items in issue and for the Respondent to comment in reply. The items identified and commented on the Schedule and in a Statement of Case by the Applicant and in a Statement of Case by the Respondent are précised and paraphrased below. The submissions of both parties on each

item that is raised as being in issue by the Applicant is followed by the Decision.

Applicant

41. The Applicant provided a Statement of case which is précised and paraphrased here together with the comments made by the Respondent in reply.
42. The Applicant referred the Tribunal to the Lease identifying the definitions and Items or Heads of Expenditure in particular as being of crucial importance when assessing the apportionment of the Service Charge. The Applicant said that there were two types of Service Charge. One relating to the Apartment Block Services which are set out in Schedule 4 and which are now carried out by the Right to Manage Company and the other relating to the Maintenance Expenses as set out in Schedule 6 which have been, and still are, carried out by the Grange Park Management Company.
43. The Applicant said that the apportionment for the Apartment Block Service Charge is set out in the definitions as:
“the Apartment Block Service Charge” means prior to the commencement date the sum of £1,475 per annum and thereafter such sum as the Management Company shall consider fair and reasonable for the expenditure incurred by the Management Company in performance of the Apartment Block Services
44. The Applicant then referred to the definition of Tenant’s Proportion which is calculated in accordance with Schedule 7 in respect of the Maintenance Expenses which are set out in Schedule 6.
45. She said that Schedule 7 specified a certain amount (£500.00) payable at the commencement of the term. This amount then increased annually in accordance with the Retail Price Index. This provision makes no reference to areas of Apartments.
46. The Applicant addresses the issue of both the definition specifying that after the initial sum the apportionment should be “fair and reasonable” and Clause 6(i) states that should it *become necessary or equitable to do so the Landlord or the Management Company may recalculate the percentages*. She submits that according to *Windermere Marina Village Limited v Wild & Others* [2014] UKUT 163 (LC) (*Windermere*) and section 27A (6) of the Landlord and Tenant Act 1985 these provisions are void in so much as they cannot preclude an Application for the Tribunal to make a determination as to what apportionment is fair and reasonable.
47. The Applicant said that she was not arguing that the clause being void meant the service charge in respect of the Apartment Block Services is not payable but that she considered the most appropriate form of calculating the apportionment would be a percentage based on floor area. The Applicant alleged that the current mixed method of apportionment only serves to benefit

certain residents, is unduly complicated and not considered by the Applicant to be fair and reasonable.

48. It was also submitted that the areas determined were not accurate and that she had commissioned a Chartered Surveyor who had calculated the area of the Apartment, on a Gross Internal Area basis, to be 1,192 square feet. (letter stating calculation provided).
49. The Respondent in its written reply stated that the Tenant's Proportion to the Maintenance Expenses as set out in Schedule 7 and the Maintenance Expenses as set out in Schedule 6 are not in issue.
50. The Respondent stated that an apportionment of the Service Charge of a percentage based on the area of each Apartment was not considered fair and reasonable by the other Tenants. It was accepted that such a calculation would mean the Applicant would pay less than other Tenants but so also would the method of apportionment based a) on area for maintenance and b) equal contributions towards administration and gardening. The Applicant's recalculation was objected to in the Respondent's submissions.
51. At the Hearing Mr Boothman confirmed the written representations. He addressed the point regarding the recalculations which are set out below.

Respondent

52. The Respondent provided a statement of case in which it outlined the background to the setting up of the Respondent Right to Manage Company in 2017 partly as a result of The Mansion House Tenants being unhappy about the apportionment of the Apartment Block Service Charge.
53. The Respondent stated that early in the life of the Development the decision was made, pursuant to paragraph 6 of the Provisos under the Lease, by the Landlord or Management Company to recalculate the Service Charge percentages payable by The Mansion House Apartments according to the square footage of each Apartment.
54. Over the years the Leaseholders of The Mansion House have been unhappy with the manner in which the Service Charge apportionment was calculated. As the Grange Park Management Company Board was not prepared to change the method of calculation The Mansion House Leaseholders formed a Right to Manage Company, particularly with the objective of consulting The Mansion House Leaseholders on devising a fairer and more reasonable apportionment and implementing the same. It appears from the minutes of the Meeting held on 23rd March 2017 that the Respondent took over the management of the Mansion House on 5th June 2017.
55. Consultations took place over a period of 5 years and a schedule of apportionments for the Items or Heads of the Service Charge was agreed by a majority of the Leaseholders by an Ordinary Resolution of the Right to Manage Company.

56. The Respondent referred the Tribunal to the series of meetings that took place before and after the setting up of the Right to Manage Company at which the apportionment of the Apartment Block Service Charge was discussed.
57. Both the minutes and a Summary of the minutes of the meetings were provided. The main points of the meetings in respect of these proceedings are set out in the table as follows:

Date of Meeting	Type of Meeting and Relevant Minutes
10th August 2015	<i>Mansion House Residents' Meeting</i> Issue of apportionment was raised
12th April 2016	<i>Mansion House Residents' Meeting</i> Proposed that Garden, Management and Accountancy charges should be more fairly apportioned. 5 of the 6 Tenants voted to reapportion these charges to be shared equally 1/6.
24th October 2016	<i>Mansion House Residents' Meeting</i> Apportionment raised as an issue and the Grange Park Management Company refused to ratify the decisions of the Mansion House Residents' meeting. The establishment of a Right to Manage Company was discussed.
23rd March 2017	<i>Mansion House Residents' Meeting</i> The Grange Park Management Company stated that the setting up of a Right to manage Company by The Mansion House Tenants would be unopposed. The Applicant said that she would not join the Right to Manage Company
27th November 2017	<i>Right to Manage Company Meeting</i> RTM Company established 5 th June 2017. The minutes record that the Articles of Association of the Respondent were amended by Ordinary Resolution removing the reference to the Grange Park Management Company in respect of the Apartment Block Service Charge so that any change in the method of calculating the apportionment of the Service Charge could be agreed by the Respondent without the need to obtain the approval of the Grange Park Management Company. 2 alternative scenarios were proposed for the apportionment of the Apartment Block Service Charge for 2018 following. Agreed to apply percentage contributions based on corrected area of Apartments for Building and Maintenance and 1/6 for Garden, Management and Accountancy charges.
21st January 2019	<i>Meeting</i> It was stated that the Apartment Service Charge would be

	presented under three headings of “Apartment Maintenance”, “Management and Administration” and “Total Annual Expenditure”.
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58. The Respondent said that the general view of the Tenants is that not all costs can be related to the area of the apartment and that the following costs should be paid for equally.
- The maintenance of the 2 acre private gardens. The reason is that they are only accessed directly by the Tenants of the three ground floor Apartments. The first floor Apartments have no direct access but have views from the balconies. The larger second floor Apartment has neither direct access nor views.
 - Accountancy, audit fees and managing agents’ fees.
59. It was submitted that certain Service Charge costs had in the past been handled differently from the basis of the floor area of an Apartment. In particular:
- In 2006 it was proposed and agreed that the cleaning of the internal communal areas be paid for on an equal 1/6 basis.
 - In 2007 it was proposed and agreed that the Tenants would each pay for the replacing of the timber windows with upvc in respect of their own Apartments.
 - It was proposed and agreed that the cleaning of the Apartment windows would be undertaken by the individual Tenants.
60. It was submitted that when the Applicant moved into The Mansion House in 2010 the arrangements with regard to internal cleaning and window cleaning were explained and accepted by the Applicant and this showed that she agreed that some costs should be apportioned equally and others according to a percentage calculated on the basis of the area of the Apartment.
61. The method of apportionment for the year ending 31st December 2018 was proposed to the Tenants who were members of the Right to Manage Company in a document prior to the General Meeting on 27th November 2017. This proposed two scenarios. Both were that the Service Charge Items relating to the maintenance of the Apartment Block were to be a percentage based upon floor areas and that the balance was to be split on a 1/6th basis as stated at a meeting on 12th April 2016 i.e. the Garden, Management and Accountancy charges. It appeared that the cleaning costs had been paid on a 1/6th basis since 2006.
62. The difference between the two scenarios was the floor areas. It was agreed that these had not been correctly determined since the Grange Park Management Company had begun using them in 2002. The Right to Manage Company had therefore instructed Lapworth’s the Architects who had planned and designed The Mansion House in 1999 to provide a definitive schedule of the floor areas of each Apartment. This they had done and a report (“the Report”) was provided to all the Tenants.

63. The floor areas referred to in Scenario 1 were those in accordance with the areas provided most recently by Lapworth’s (“the Revised Floor Areas”). The floor areas referred to in Scenario 2 were those that had been used by the Grange Park Management Company and were based on an assessment made in 2002 by the managing agents it had employed. The Tenants were asked to select which they considered to be the more fair and reasonable and they selected Scenario 1.
64. The Report provided prior to the General Meeting on 27th November 2017 was included in the Bundle and is summarised below.
65. The Report states that the Service Charge cost specified in the Lease is £1,475.00 for Apartments 1 to 6 and £1,950.00 for Apartment 7, totalling £10,800. These amounts were then used to calculate the Apartment Block Service Charge with 13.657% for Apartments 1-6 and 18.055% for Apartment 7 which is said to be larger than Apartments 1-6. The percentage for the conjoined apartments of 5 and 6 was 27.315%. Mr Nigel Thompson was then instructed in 2001 to calculate the apportionment of a percentage based upon the area of each apartment. His finding’s being set out in the following table:

Apartment Number	2002 Service Charge Percentage
1	13.25
2	9.75
3	13.25
4	13.00*
5/6	24.25
7	26.50
Total	100.00
*Apportionment before enlargement in 2007	

66. The Report goes on to identify the changes and error made by Mr Thompson in his initial calculation to the sizes.
- On the Ground Floor Apartments 1 and 3 are ‘handed’ and identical in size.
 - Apartment 4 and 6 are ‘handed’ and both originally slightly smaller than 1 and 3. However in 2007 Apartment 4 was extended by circa 45 square feet making it identical to Apartments 1 and 3 and Mr Thompson adjusted his figures accordingly (Memorandum dated 1st October 2007).
 - Apartment 6 remains the same as Apartment 4 was before the extension i.e. circa 45 square feet smaller than Apartments 1, 3 and 4.
 - Apartments 2 and 5 are the same size.
67. An error was made by Mr Thompson who assumed Apartment 6 had been extended like Apartment 4. Therefore, the conjoined Apartments of 5 and 6 should have been attributed with a percentage of 9.75% + 13.00% = 22.75% not 24.25%.
68. To correct previous errors the Architects for The Mansion House were asked to provide precise areas. These were derived from drawing numbers 201, 272,

354, 280 and 268. From the email provided by Lapworth's the following area measurements were calculated:

Apartments 1, 3 and 4 are the same size	1,652.3 square feet
Apartments 2 and 5 are the same size	1,268.0 square feet
Apartment 6 = Apartment 4 less 45 square feet	1,607.0 square feet
Apartments 5 and 6 conjoined	2,875.0 square feet
Apartment 7	3,316.4 square feet

As the common unit of measurement is square feet this has been used by the Tribunal. The drawings were annexed to the original Report but these were not provided in the Bundle.

69. The Report stated that the percentages relative to the area are as follows:

Apartment Number	Area in Square Feet	Percentage
1	1,652.3	13.3075
2	1,268.0	10.2124
3	1,652.3	13.3075
4	1,652.3	13.3075
5/6	2,875.0	23.1550
7	3,316.5	26.7101
Total	12,416.4	100.000

70. The Respondent noted that the Applicant had obtained an independent assessment by Chamberlains Surveyors which had provided a slightly reduced area of her flat of 1,192 square feet. This is different from that provided by Lapworth's and the original managing agents. It was contended that the Lapworth areas were to be preferred because they were based upon the original drawings and took all the Apartments into account. The purpose of the exercise is to determine the area and hence the percentage payable by each apartment based upon the ratio of one to another. To measure one apartment in isolation is not meaningful.
71. It was appreciated that the Applicant was of the opinion that the whole service charge should be apportioned according to the floor area of each flat. The Respondent submitted that the Apartment Block Maintenance charges should be apportioned according to a percentage based on the Revised Floor Areas and the costs of the Garden, Management and Accountancy should be based on 1/6th because that was agreed by 5 out of the 6 Tenants and is the same as the Cleaning apportionment to which the Applicant has not objected in the past.
72. At the Hearing the Tribunal asked Mr Moran about the Report. He said that it had been prepared by Mr Wheelan who was a Director of the Respondent Right to Manage Company and whom he believed had been a Tenant for a number of years. He was therefore well acquainted with the background.
73. The Tribunal asked Mr Moran why it had been decided to use the percentages calculated from floor areas for some items of the service charge and equal fractions for other items.

74. Mr Moran said that, as was noted in the Respondent's written representations, there had been long standing dissatisfaction with the apportionment calculated by the Grange Park Management Company to the point where The Mansion House Tenants had established the Respondent Right to Manage Company in order that they could apply their own apportionment.
75. He cautioned that he had not been present at the earlier meetings as the Managing Agent had only been appointed when the Respondent had come into existence. However, from the minutes of these meetings and the subsequent Right to Manage Company meetings it was apparent that the Tenants had had extensive discussions prior to arriving at the present apportionment of percentage based on floor area for some items and 1/6th for others. He said it was disappointing that the Applicant had not attended to contribute to that discussion.
76. He said that there was a logic to the Accountancy and Management fees being paid equally as they were services from which all Tenants benefited equally.
77. With regard to Gardening he confirmed what had been said in the Respondent's Statement of Case that the Apartments on the ground floor and those on the first floor enjoyed direct access and views, respectively, of the garden not shared by the top floor flat. On balance the Respondent considered that notwithstanding the differing floor areas of the flats the relative benefits in respect of the garden warranted the equal contributions to its maintenance. He added that the cleaning costs had for a number of years been divided equally and had been agreed to by the Applicant.
78. The Tribunal referred Mr Moran to the risks of apportioning the service charge according to whether or not, or the extent to which, a Tenant benefited from a service. For example, Tenants on the first and second floor benefit from a lift more than those on the ground floor and those on the top from the roof more than those on the ground floor. Mr Moran said that he appreciated the point made but said that the Tenants had identified the Garden, Management and Accountancy and previously the Cleaning to justify an equal contribution.
79. The Tribunal noted the list of services in the Lease. It said that it could not find any particular division between the paragraphs or grouping of services to justify a different method of apportionment for some rather than others. The distinction between percentages and fractions appeared to be an artificial construct. Mr Moran said that so far as he knew the Tenants had considered all the services in Schedule 4 and considered that it was fair for the Tenants to contribute to the cost of the ones identified equally and the others in accordance with the floor area of the Apartments.
80. The Tribunal referred Mr Moran to the risks of apportioning the service charge by 1/6th when two of the Apartments (5 and 6) were conjoined but that there was a provision in their Lease to allow the Tenant to divide them, making 7 Apartments. Mr Moran said that if this occurred there would need to be a re-assessment of the apportionment.

81. Mr Boothman said that although the Respondent had emphasised the agreement of the Tenants to the mixed apportionment of percentages and fractions, many of those who had agreed are now no longer Tenants. He suggested that if the matter were put to the vote today the outcome may well be different.
82. In reply Mr Moran said that he understood that most of the Tenants currently resident are longstanding.
83. With regard to the use of the floor areas to calculate a percentage apportionment for some of the services, Mr Moran was able to verify certain facts regarding the extension of the Apartments. Apartment 4 had been extended over either Apartment 1 or 3 making all three the same size, and that Apartment 6 could be so extended but had not been. Mr Moran said that the Respondent had done its best to arrive at an apportionment that reflected the relative size of the Apartments in a consistent way using the same set of measurements i.e. those provided by Lapworth's the original architects.
84. The Tribunal asked whether it was known upon what basis the original measurements were made as there are a number of different ways of measuring e.g. gross or net internal or external area. Neither party knew more than was stated in the Report.
85. Mr Boothman said that the sizes appearing on the drawings may well have altered in the course of construction. Apartments 5 and 6 have been conjoined and Apartment 4 has been extended so it is not clear what their measurements are now. He also questioned the reliability of how the calculations were made by Lapworths from the plans. He referred to the recent sales particulars for Apartment 7 which gave the size excluding patio, balcony and void as 319.7 m²/3,441.22 square feet, larger than the figure provided by Lapworths. He submitted that it was time for fresh measurements to be made upon which the apportionment could be based.
86. The Tribunal had noted that the Respondent had obtained Counsel's opinion and asked to what this had related. Mr Moran said that when the Right to Manage Company was established it was advised that it was still not independent of the Grange Park Management Company so far as The Mansion House Apartment Block Service Charge and the Apartment Block Services were concerned. It therefore took Counsel's advice on how it could achieve this and in accordance with that advice altered its Articles of Association.
87. Mr Moran said that currently the revised floor areas were not being used to calculate the percentage contributions instead the Respondent had resorted to using a percentage based on the original financial contributions referred to in the Lease.

Section 20C & Paragraph 5A of Schedule 11

88. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account

in determining the amount of any Service Charge payable by the Applicant. The Applicants also applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

89. The Tribunal explained that the Leases may contain one or both provisions enabling a landlord to obtain their costs of proceedings. The difference between these two types of provisions was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258. The provision enabling the landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other lessees as part of the service charge. The provision enabling the landlord to claim its costs directly from the tenant might be seen as an individual liability, whereby the tenant alone bears the landlord's costs of the proceedings. Where the lease contains these provisions, the costs of the proceedings could be claimed by the Respondent under either Lease provision but not both.
90. Neither Party identified specific provisions within the Lease.
91. The Tribunal said it had examined the Lease and found the only provision which might relate to these costs being claimed through the Service Charge is paragraph 18 of the Schedule 4 which is a general provision for the recovery of the costs of management of the Property.
92. With regard to claiming these costs directly from the Applicant the Tribunal found that the only provision was contained in Clause 2.7 which states "to pay all reasonable and proper expenses including Solicitor's costs and Surveyor's fees incurred by Landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred or in contemplation of proceedings under sections 146 or 147 of that Act notwithstanding that in any such case forfeiture is avoided otherwise than by relief granted by the Court".
93. The Tribunal asked the parties for submissions regarding these Applications.
94. Mr Boothman for the Applicant said what had not been included in the Bundle was the extensive correspondence for the last three years in which Mrs Doyle tried to understand the methods of calculation. Mrs Doyle had tried to find a resolution but following the meeting resolutions she felt she was left with no alternative but to apply to the Tribunal.
95. Mr Moran said that it could be seen from the minutes of the meetings that the issue had been going on for a number of years and the mixed apportionment had been discussed and agreed. It was disappointing that Mrs Doyle had not contributed more to these meetings. A lot of time and energy has been expended by the Respondent in trying to find a solution to suit everyone and avoid the expense of legal action.

96. In response to the lack of involvement of Mrs Doyle in the meetings, Mr Boothman said that she had felt uncomfortable as she was clearly in a minority.

Decision

97. Having decided that it has jurisdiction, the specific issue for the Tribunal is to determine the method of apportionment of the Apartment Block Service Charge payable for the Apartment Block Services.
98. The Tribunal firstly examined the Lease.
99. The initial Apartment Block Service Charge payable on the Commencement Date in 1999 was specified in the definitions section of the Lease as £1,475.00 for Apartments 1 to 6 and £1,950.00 for Apartment 7, totalling £10,800. The Tribunal finds that this amount was to put the Landlord and Management Company in funds to provide the Apartment Block Services.
100. The Lease goes on to state that thereafter the Apartment Block Service Charge shall be “such sum as the Management Company shall consider fair and reasonable for the expenditure incurred in performance of the Apartment Block Services”. By reason of Section 27(6) of the Landlord and Tenant Act 1985 the role of the Management Company in this regard is taken by the Tribunal.
101. The Tribunal considered whether the apportionment should be based upon the initial amounts specified in the Lease. The Tribunal found that the initial amounts reflected the difference in the size of Apartment 7 but not the difference between the other Apartments. The Tribunal found that it was “fair and reasonable” for the difference in size between the other Apartments to be reflected in the apportionment and so was of the opinion that that the apportionment should not be based upon the initial amounts specified in the Lease.
102. The Tribunal then noted the way in which the Grange Park Management Company and later the Right to Manage Company had sought to apportion the Apartment Block Service Charge for the years following the initial payment. This was recorded in the Report provided.
103. In 2000 the Grange Park Management Company had used the initial Apartment Block Service Charge amounts to calculate the apportionment on a percentage basis with 13.657% for Apartments 1-6 and 18.055% for Apartment 7. The percentage for the conjoined apartments of 5 and 6 was 27.315%.
104. In 2001 the Grange Park Management Company instructed a surveyor to recalculate the apportionment on a percentage based upon the area of each apartment. His findings being set out in the Report provided. The floor areas were said to be incorrect and in spite of an amendment, the Tenants of the Mansion House were so dissatisfied that on 5th June 2017 they established a Right to Manage Company in order to set an apportionment different from that set by the Grange Park Management Company.

105. The Tribunal found from the Report provided that since the Leases were drafted circa 1997 Apartments 5 and 6 had been conjoined and Apartment 4 had been enlarged. Under Clause 6(1)(i) of the Lease the Landlord or the Managing Company (as stated by reason of Section 27(6) of the 1985 this role is taken by the Tribunal) may if “it should at any time become necessary or equitable...recalculate the percentages comprising the Apartment Block Service Charge”. The Tribunal found that these changes made it “equitable and necessary” to recalculate the “percentages” comprising the Apartment Block Service Charge.
106. On 27th November 2017 the members of the Right to Manage Company voted that the apportionment should be split between different Apartment Block Services in Schedule 4 as follows:
- a) by percentage based on Apartment floor area for the Building maintenance; and
 - b) on the basis of 1/6th (because that at the moment is the number of flats) for gardening, accountancy, audit and management, it already being on a 1/6th basis for cleaning.
- It is this apportionment which the Respondent now submits should be applied.
107. Irrespective of whether the apportionment voted upon at the meeting on 27th November 2017 is reasonable, the members of the Right to Manage Company cannot change the manner in which a Service Charge is apportioned by an ordinary resolution without reference to the Lease. The Lease is paramount and any variation to the apportionment must comply with the Lease or in accordance with statutory measures which may modify the provisions of the Lease.
108. The Applicant submits that the apportionment for all the Apartment Block Services in Schedule 4 should be the same, namely by percentage based on Apartment floor area.
109. The Tribunal found that it is common ground that the cost of at least some, if not all, the services in Schedule 4 should be apportioned by percentage based on Apartment floor area. The first issue is therefore whether all or only some of the services should be apportioned in this way. If some of the services should be apportioned differently, which ones and whether 1/6th was an appropriate apportionment.
110. Therefore, the Tribunal considered whether any of the services should be treated differently than others in respect of the apportionment.
111. The Tribunal noted the services which are set out in Schedule 4 of the Lease the costs of which are met by the Apartment Block Service Charge. It found that, in summary, these are:
- Paragraph 1, the maintenance of the main structure and the installations such as the lift.

- Paragraph 2, decoration and cleaning and maintenance of the entry phone system.
 - Paragraphs 3, 4, 5, and 6, respectively: payment of utilities; compliance with order, notices, regulations etc; insurance valuations; and payment of insurance excesses.
 - Paragraph 7, maintenance of the garden.
 - Paragraph 8, maintenance of the driveway and fences.
 - Paragraphs 9, 10, 11, 12, 13 and 14, respectively: paying rates and taxes; compliance with local authority notices; insuring the lift; employment of persons for the upkeep of the Common Parts; compliance with competent authority requirements and directions; maintaining the lighting and security apparatus.
 - Paragraph 15, costs of borrowing.
 - Paragraph 16, enforcement of covenants.
 - Paragraph 17, provision of other service and facilities.
 - Paragraph 18, engaging a managing agent.
112. On examining Schedule 4 the Tribunal could not find any grouping or differentiation between one service and another or in the way the paragraphs were ordered or set out that justified the cost of a service being apportioned differently; nor could the Tribunal find any intention in the wording to treat certain costs in a different manner to others.
113. On looking at the services of Cleaning, Gardening, Accountancy and Management the Tribunal could not see any nexus or link between them, other than perhaps Management and Accountancy, that set them apart from other services and more particularly which justified them being based on an equal apportionment as opposed to a percentage apportionment based on Apartment floor area. The Tribunal could not find any such distinction in the Lease and therefore the differentiation appeared artificial.
114. The Tribunal was aware that the Tenants who were members of the Respondent Right to Manage Company had agreed that there should be some distinction. The Tribunal could not find any justification for their decision either in the Lease or in the minutes of the meetings. Mr Moran said that the discussions as to why certain services were to be apportioned differently had occurred before he was involved with the management and was only in a position to give effect to their wishes.
115. Having found that there was no difference between one service and another with regard to apportionment the Tribunal considered whether a fraction of 1/6th should be applied or a percentage based on area. There is no mention in the Lease of an apportionment by fraction. Although, Clause 6(i) is void so far as the Tribunal's jurisdiction is concerned, it refers to recalculating "the percentages" and is an indication of the intention of the parties when drafting the Lease that a percentage calculation based on floor area should be used. To do so would avoid the difficulty of deciding whether or not, or the extent to which, a Tenant benefited from a service, a distinction which was not

mentioned in the Lease and also avoids the difficulty of Apartment 5 and 6 being divided and a recalculation of factions.

116. As stated earlier, the Parties agree that the cost of at least some, if not all the services, should be apportioned by a percentage based on Apartment floor area. Therefore, with this agreement in mind and having found, by reference to the Lease, that there was no reason to treat the services differently, the Tribunal determines that all the services be apportioned by percentage based on Apartment floor area.
117. The second issue is to determine the floor area of each Apartment in order to calculate a percentage upon which the Apartment Block Service Charge can be apportioned.
118. The Tribunal considered the Report of Mr Wheelan which provided several versions settling on one based on the original drawings by Lapworths. Although, the return to the original drawings appears to give an authenticity to the figures nevertheless their accuracy is open to question.
119. Firstly, the architectural drawing may not reflect the actual or relative sizes of the Apartments when complete. Secondly, it is not clear how the measurements were made e.g. gross or net, internal or external, room by room. There are also vagaries in the extracting of measurements from scale drawings which themselves may suffer distortion from copying. Thirdly there have been changes in that Apartment 4 has been extended and in the course of construction Apartments 5 and 6 were conjoined. Therefore, the Tribunal is of the opinion that new measurements should be taken of each Apartment in a consistent manner, to ensure that they are proportionate to one another. These measurements should be taken by an independent surveyor whose appointment is agreed by all the tenants
120. However, until such measurements are taken the Tribunal can only make its determination upon the evidence that has been adduced. Although the Tribunal has no reason to doubt that the Chartered Surveyor commissioned by the Applicant correctly calculated the Gross Internal Area of Apartment 2, nevertheless, the area of one Apartment calculated by a particular method in isolation cannot be used as a basis for the apportionment of the Apartment Block Service Charge, when it is agreed that some Apartments are probably the same size but others are different. To achieve an accurate apportionment, all the Apartments must be measured in the same way.
121. The most reliable and consistent set of measurements before the Tribunal that can be said to show the relative proportion of one Apartment with another on the basis of floor area at the present time, are those set out in the Report. Therefore, the Tribunal determines that in the absence of any better evidence the apportionment is to be a percentage based upon the floor areas as set out in the Report and in the table below:

Apartment Number	Area in Square Feet	Percentage
1	1,652.3	13.3075
2	1,268.0	10.2124
3	1,652.3	13.3075
4	1,652.3	13.3075
5/6	2,875.0	23.1550
7	3,316.5	26.7101
Total	12,416.4	100.000

122. Therefore, the Tribunal determines that the apportionment of the Apartment Block Service Charge for the years in issue by the cost of some Apartment Block Services being apportioned by fraction, based on the number of Apartments, and the cost of other Apartment Block Services being apportioned by a percentage, based upon the floor area of each Apartment, is not reasonable and payable.
123. The Tribunal determines that a reasonable and payable apportionment of the Apartment Block Service Charge is that the cost of all Apartment Block Services is apportioned by a percentage based upon the floor area of each Apartment.
124. The Tribunal determines that the reasonable and payable apportionment of the Apartment Block Service Charge for the years in issue for Apartment 2 is 10.2124%.

Section 20C & Paragraph 5A of Schedule 11

125. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent’s costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicants also applied for an Order to reduce or extinguish the Applicants’ liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
126. The first issue is whether the Lease contains a provision enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge.
127. The Tribunal examined the Lease and found the only provision which might relate to these costs being claimed through the Service Charge is paragraph 18 of the Schedule 4 which is a general provision for the recovery of the costs of management of The Mansion House. The Tribunal is of the opinion that costs relating to engaging a firm of managing agents ...to manage the Apartment Block” do not include the costs incurred in taking or defending proceedings.
128. With regard to claiming these costs directly from the Applicant the Tribunal found that the only provision was contained in Clause 2.7 which states “to pay

all reasonable and proper expenses including Solicitor's costs and Surveyor's fees incurred by Landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred or in contemplation of proceedings under sections 146 or 147 of that Act notwithstanding that in any such case forfeiture is avoided otherwise than by relief granted by the Court". The Tribunal finds that these proceedings are not "for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925".

129. Although there appears to be no provision in the current leases which entitles the lessor to reclaim the costs of these proceedings, for the avoidance of doubt, the Tribunal considered whether it was just and equitable in the circumstances to do so.
130. With this in mind the Tribunal considered whether an Order should be made under the section 20C of the 1985 Act. In deciding whether or not it is just and equitable in the circumstances to grant an order the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.
131. With regard to the conduct of the parties, the Tribunal considered that neither had acted unreasonably.
132. With regard to the outcome the Tribunal has found in favour of the Applicant. The Tribunal felt that the Respondent should have sought advice in respect of the Apartment Block Service Charge Apportionment, in much the same way it instructed Counsel regarding the powers of the Right to Manage Company. The Tribunal appreciates that the law is difficult in the area due to the interplay between the Lease and the legislation. However, knowing how long the apportionment issue had gone on and how potentially divisive it might be, when it appeared likely that a tribunal application would be made legal advice would probably have come the same conclusion as the Tribunal and prevented the proceedings.
133. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
134. The Tribunal also makes an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 would have been made.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

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

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord’s costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period
3. Section 19 Landlord and Tenant Act 1985
 - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
 - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
4. Section 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 the demand for payment of the service charge 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.

5. Section 21B Notice to accompany demands for service charges
 - (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
 - (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
 - (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
 - (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
 - (5) Regulations under subsection (2) may make different provision for different purposes.
 - (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Section 27A Landlord and Tenant Act 1985
 - (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which –
 - (a) has been agreed or admitted by the tenant,
 - (b) has been or is to be referred to arbitration pursuant to a post arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

7. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
8. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 2 parts and 4 stages as follows:

Part 1

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

Part 2

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord’s response to them.

9. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –

- (1) Where an application is made to a leasehold valuation 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—
if it is an agreement of a description prescribed by the regulations, or 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) and (7)... not relevant to this application.

10. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;

- (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

11. Schedule 11 Commonhold and Leasehold Reform Act 2002

5 A Limitation of administration charges: costs of proceedings

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.