



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

<b>Case Reference</b>	: CHI/00MR/2020/0034
<b>Property</b>	: Flat 1, 110 Waverley Road, Southsea, Hampshire, PO5 2PS
<b>Applicants</b>	: Long Term Reversions (Torquay) Ltd
<b>Representative</b>	: Charlotte Atkinson SPL Property Management LLP
<b>Respondents</b>	: Martin John Hedley
<b>Representative</b>	: Tom Oliver solicitor Glanvilles LLP
<b>Type of Application</b>	: Liability to pay service charges and administration charges
<b>Tribunal Members</b>	: Judge N Jutton and Mr P D Turner-Powell FRICS
<b>Date and Venue of Hearing</b>	: 8 September 2020 By video enabled hearing
<b>Date of Decision</b>	: 8 September 2020

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DECISION

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## **Background**

1. The Applicant instituted proceedings issued against the Respondent in the Northampton (CCMCC) County Court under Claim No. F25YM002. The Respondent filed a Defence and the proceedings were then transferred to the County Court at Portsmouth.
2. By an Order made on 5 May 2020 the proceedings were transferred to this Tribunal.
3. Directions were made by this Tribunal on 2 July 2020. The directions provided that this was a suitable case for a Judge sitting first as a Tribunal Judge and then as a County Court Judge to determine all of the issues which form part of the Claim No. F25YM002. The matters to be determined by this Tribunal were in respect of the Applicant's claim for payment of service charges and administration fees. The matters to be determined by the Judge sitting as a County Court Judge were the claims for interest, court fees and costs.
4. At the start of the hearing the Tribunal identified that the issues before it (as opposed to those before the County Court) were: The Respondent's liability to pay service charges for the years ending 31 December 2018 and 31 December 2019. Whether or not such charges were reasonably incurred. The Respondent's liability, or otherwise, to pay administration charges as set out in the County Court Particulars of Claim and the fees of the Applicant's managing agents incurred in respect of these proceedings.
5. The documents before the Tribunal comprised a hearing bundle running to 270 pages. References to page numbers in this decision are references to page numbers in the bundle. The bundle included the County Court Claim Form, the Particulars of Claim, the Defence, Court Orders, Statements of Case, the lease and witness statements made by the Claimants' expert Mr Thomas Green.
6. The Tribunal Directions provided that the Tribunal would not inspect the property unless either party made an application for it to do so no later than the date provided for the provision of the hearing bundle which date was 27 August 2020. No such application was made.

## **The Law**

7. The statutory provisions relevant to service charge applications of this nature are to be found in sections 18, 19, 20 and 27A of the Landlord & Tenant Act 1985 (the 1985 Act). They provide as follows:

### **The 1985 Act**

- 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.*
- 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 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*
- 20 *Limitation of service charges: consultation requirements*
- (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with either sub-section (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 .....*
  - (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 sub-section (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 sub-section, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contributions would otherwise exceed the amount prescribed by, or determined in accordance with the regulations, is limited to the amount so prescribed or determined.*

8 The relevant provisions of the Service Charge (Consultation Requirements) (England) Regulations 2003 are set out in Schedule 4 part 2 of those Regulations.

9 It is not proposed to set out those provisions in detail here. In summary the requirements may be divided into 3 stages.

10 Stage 1 provides for the Landlord to serve a notice of intention to carry out qualifying works on each Leaseholder. The notice must describe in general terms the proposed works or specify a place and hours where the description of the works may be inspected. The notice must state the reason for the works and invite written observations specifying where they should be sent, over what period (30 days from the notice) and the end date. The notice must contain an invitation for nominations of persons from whom the Landlord should obtain estimates. The Landlord must have regard to written observations that he receives during the consultation period.

11 Stage 2 provides for the Landlord to seek estimates. Thereafter the Landlord must issue a statement setting out the estimated cost from at least two of the estimates, and a summary of the observations received during the Stage 1 consultation period and his responses to them. If any estimates have been received from the Leaseholder's nominees, they must be included in the statement.

12 With the said statement, the Landlord should issue a notice detailing where and when all the estimates may be inspected and inviting each Leaseholder to make written observations on any of the estimates, specifying an address where they should be sent, the consultation period (30 days from the notice) and the end date. The Landlord must then have regard to written observations received within this second 30 day consultation period.

13 Stage 3 provides that unless the chosen contractor is the Leaseholder's nominee or the lowest estimate, then the Landlord must give notice within 21 days of entering into the contract to each Leaseholder stating

his reasons for the selection or specifying a place and hours for inspection of such a statement.

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.*

14. The statutory provisions relevant to administration charge applications can be found in Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). They provide as follows:

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 which is payable, directly or indirectly –*

- (a) *for or in connection with a grant of approvals under his lease, or applications for such approvals:*
- (b) *for or in connection with the information or documents by*

or  
lease

- (c) *otherwise than as landlord or tenant, in respect of a failure by the tenant to make a payment by due date to the landlord or a person who is party to his lease*

the

- (d) *otherwise than as landlord or tenant, or in connection with a breach, (or alleged breach) of a covenant or condition in his lease*

.....

- (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.*

.....

- 2 *A verbal administration charge is payable only to the extent that the amount of the charge is reasonable.*

.....

- 5 (1) *An application may be made to the appropriate tribunal for a determination on whether 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.*

## **The Lease**

15. A copy of the Respondent's lease is at pages 45 - 91. By clause 4(4) the lessee covenants to pay a service charge as follows –

*“Pay by way of further or additional rent the Interim Charge and the Service Charge at the times and in the manner provided in the Fourth Schedule hereto PROVIDED THAT if the Interim Charge or the Service Charge or any part thereof shall at any time remain unpaid for 14 days after becoming due and payable then the amount thereof (without prejudice to the Lessors right of re-entry hereinafter contained or any other right or remedy of the Lessor) shall as from the date when such Interim Charge or Service Charge became due and payable and until the same as shall have been paid bear and carry interest thereon (as well after as before any judgment) at the rate of four (4) per cent per annum above Barclays Bank Plc Base Rate for the time being prevailing AND the Lessee shall in such circumstances and during such period or periods as foresaid pay to the Lessor in addition to the Interim Charge or Service Charge interest thereon at the aforesaid rate”.*

16. The Fourth Schedule to the Lease sets out details of the service charge. It is the Lessees proportion (described in the Lease as the “Percentage Contribution”) of the expenditure incurred by the Lessor, to include money set aside by the Lessor, “...in carrying out it's obligations under Clause 5 of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Property including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents and (b) the cost of any Accountant employed to determine the Total Expenditure and the amount payable by the Lessee hereunder”.
17. The Fourth Schedule defines the “Interim Service Charge” as sums paid on account in respect of each accounting period as the Lessor reasonably estimates it is likely to incur in that period in complying with its obligations under Clause 5. The Lease provides for the Interim Service Charge payments to be made by equal half yearly payments in advance on 1 January and 1 July in each year.
18. The Fourth Schedule further provides that if the actual Service Charge in any accounting period (defined as the period commencing on the 1 January and ending on 31 December in each year) exceeds the Interim Service Charge paid by the Lessee then the Lessee will pay the excess to the Lessor within 14 days of service on the Lessee of Service Charge accounts prepared and certified by the Lessor's accountant. If the Interim Service Charge paid by the Lessee exceeds the actual Service Charge then the additional sum will be credited to the Lessee's account in computing the Service Charge payable by the Lessee in the next accounting period.
19. Clause 5 provides inter alia for the Lessor to arrange the insurance of the Property, to repair and keep in good and substantial repair and condition the structure of the Property, the main water tanks drains gutters etc, conduits in under or upon the property enjoyed in common by the Lessees and the common parts (as defined in the Lease).

20. There is provision at Clause 5(16) for the Lessor to set aside sums of money to meet future anticipated costs as a form of sinking fund (which sinking fund then forms part of the Service Charge).
21. By Clause 3(11) of the Lease the Lessee covenants as follows:  
*“To pay to the Lessor all costs charges and expenses (including Solicitors Counsels and surveyors costs and fees) incurred by the Lessor :-*  
*(i) .....*  
*(ii) of and incidental to the contemplation of and service of all notices and schedules relating to wants of repair and non-payment of rent and Service Charge or the performance and observance of the covenants contained in this Lease”*
22. Further by Clause 4(6) the Lessee covenants *“To pay all legal costs and other proper costs (plus any VAT) incurred by the Lessor”*

### **The Issues**

23. The issues before the Tribunal were as follows:
  1. The amount of Service Charge payable by the Respondent for year ending 31 December 2018.
  2. The amount of Service Charge payable by the Respondent for the year ending 31 December 2019.
  3. Whether administration charges totalling £563.87 sought by the Applicant from the Respondent were payable and if so whether they were reasonable in amount.
  4. Whether managing agent’s fees incurred by the Applicant in respect of representation before this Tribunal totalling £3,871.80 were payable by the Respondent under the terms of the Lease and if so whether they were reasonable in amount.

### **Service Charges for the Year Ending 31 December 2018 and 31 December 2019**

#### **The Applicants’ Case**

24. Mrs Atkinson said that the Applicants were satisfied that the Service Charges incurred for both years were reasonably incurred. She confirmed that as per paragraph 37 of the Applicant’s Statement of Case (page 41) that the Interim Service Charge demands for proposed works to the staircase at the Property dated 8 January 2019 and 22 May 2019 each in the sum of £2,500 were no longer being pursued by the Applicant following the transfer of the management of the Property to a Right to Manage Company.
25. Mrs Atkinson said that there may be elements of the Service Charge which the Respondent may not think were reasonable because they were



not necessarily the cheapest that they could be but that the test was whether or not the charges had been reasonably incurred. She made reference to Clause 5(15) of the Lease (page 72) whereby the Lessor covenants to use his reasonable endeavours to keep the Service Charges at the lowest reasonable figure but which provides that the Lessee is not entitled to challenge a Service Charge item or object to expenditure incurred by the Applicant on the ground that the materials work or services in question “*might have been provided or performed at a lower cost*”.

26. As to the works to the chimney, the cost of which appears in the Service Charge accounts for the year ending 31 December 2019 the Applicant says that the chimney was found to be in poor condition such that it was allowing water ingress into the Leasehold of the top flat of the Property. That was not disputed by the Respondent. That the Applicant was therefore obliged to carry out the necessary repair works under the terms of the Lease. The Applicant instructed an expert surveyor, Mr Tom Green of Greenward Associates, Chartered Surveyors to inspect the Property and to produce a Schedule of Works. There were two Witness Statements from Mr Green in the hearing bundle and he gave oral evidence at the hearing.
27. The chimney is shared with a neighbouring property, No. 108 Waverley Road. The Schedule identified two options. Firstly, to carry out repairs to the chimney (option 1). Secondly, the complete removal of the chimney (option 2). The second option was dependent upon the agreement of the owner of the neighbouring property which was not forthcoming. Nor in the event was the owner of the neighbouring property prepared to pay for works to No. 108’s side of the chimney and therefore works were just carried out to the No.110 side.
28. Prior to commencing the works the Applicant served a notice on the Lessees at the Property pursuant to Section 20 of The Landlord and Tenant Act 1985. There is a copy of the Notice at page 142 and 143 of the bundle. The Notice identified the works to be carried out as “*Chimney Works to repair or remove the chimney which is shared between 110 and 108 Waverley Road, together with any associated and necessary repairs*”.
29. The notice went on to state that the works were considered necessary because of water ingress coming in through the chimney and that the chimney was considered to be unsafe. The notice invited the Lessees to make written observations in relation to the proposed works and provided for a consultation period which was stated to end on 7 November 2018. It also invited the Lessees to nominate a contractor from whom the Lessees might wish an estimate to be obtained.
30. Mrs Atkinson said that no response, certainly no response in writing, was received from the Lessees to the Section 20 Notice.
31. Mr Green put the works out to competitive tender. In respect of both option 1 and option 2. Of the four contractors approached one did not respond and three replied. They were C&D Roofing Limited who quoted

a figure of £22,351.59 excluding VAT. Stan Randell Construction Limited who quoted the sum of £17,836 excluding VAT and a company called Colonial Contractors who quoted a figure of £5,315 excluding VAT.

32. On 18 October 2018 Mr Green produced a Tender Report (pages 146 to 197). He reported that the initial figures produced by both C&D Roofing Limited and Stan Randell Construction Limited had contained miscalculations which his company had raised with each of them and that both contractors had subsequently confirmed the correct totals as set out above (see the emails at pages 160, 161, 176, 177, 178 and 179 ).
33. In his Tender Report Mr Green stated that each contractor was requested on receipt of their Tender Reports to confirm their individual prices via email. C&D Roofing Limited and Stan Randell Construction Limited responded. Colonial Contractors did not. The Colonial Contractors tender figure was substantially less than the two other returns. Colonial Contractors had not provided a detailed breakdown of the works within the returned Schedule of Building Works. Mr Green said that there was no response from Colonial Contractors to requests sent to them to confirm their figures. There are copies of emails sent by Mr Green's company to Colonial Contractors at pages 264, 265, 266 and 267.
34. Mr Oliver asked Mr Green to explain a statement in his Tender Report (page 151) where with reference to the Colonial Contractors' figure the report states "*..... it can only be assumed that they have been priced correctly although substantially lower than the other two returns*". Mr Green suggested that may well have been a typographical error. Mr Green said that Colonial Contractors had not priced for the works correctly. They hadn't properly followed the specification and they hadn't responded to requests to confirm their price. Mr Green said that he had spoken to Colonial Contractors and that they had confirmed they hadn't visited the Property and hadn't considered the use of scaffolding. In his view there was insufficient information from Colonial Contractors for their price to be properly considered. In answer to a question from the Tribunal he stated that in his view Colonial Contracts had not "*tendered correctly*". That it was not therefore possible in his view to take their tender into account in assessing which contractor to recommend.
35. Mr Green made reference to a meeting held on site on 30 January 2019 attended by Mr Green, the Respondent Mr Headley and Tasmin Withers from SPL Property Management LLP. Mr Green's recollection of that meeting differed from that of Mr Headley's. Mr Green said that at the meeting he invited Mr Headley to let him have contact details of any contractor that he would like Mr Green to approach to tender for the work. That although in Mr Green's view the time for the Respondent to nominate a contractor under the Section 20 process had passed, he took a pragmatic view in making that suggestion.
36. Mr Green explained that because the works that were eventually carried out and completed by Stan Randell Construction Limited to only one half of the chimney the cost of the works were halved. He referred to photographs of the completed works at pages 202 to 209. In answer to a

question from the Tribunal Mr Green stated that the works carried out were such works as were necessary to the chimney which didn't necessarily constitute a complete renewal of the chimney.

37. In summary Mrs Atkinson said that the Respondent had his opportunity to nominate a contractor at the time of the service of the Stage One Notice as part of the Section 20 consultation process. He failed to do so. Further that the quotes that he had subsequently obtained from alternative contractors (pages 243 and 244) were not based upon the specification. They were therefore not like for like quotes.

### **The Respondents' Case**

38. There has been, the Respondent says, a failure on the part of the Applicant to provide information. To provide documentary evidence to support the Service Charge figures claimed. Mr Oliver made it clear that the Respondent didn't dispute the fact that some Service Charges may be payable but that he was surprised as to the extent that was claimed. That the Respondent couldn't properly assess the amount that would be reasonable to pay until such time as the Applicant produced the information that he had asked for, albeit information asked for orally not in writing. Mr Oliver said that the Respondent did not feel that the Service Charges claimed were reasonable.
39. As to the works to the chimney the Respondent says that the Section 20 consultation procedure had not been not properly followed. That the Applicant had been wrong to disregard the Colonial Construction tender.
40. That the Section 20 Notices served did not provide sufficient detail of the proposed works to allow the Respondent (who is a builder by trade) to make observations.
41. The Respondent says that he asked for a copy of the Schedule of Works but that it was never forthcoming.
42. That at the meeting on 30 January 2019 he was told that it was too late for him to nominate contractors.
43. The Respondent says that it was only at the meeting on 30 January 2019 that he was told what the proposed works would entail. At paragraph 11 of the Statement of Case (page 238) he states that the works that he was told were required were –
  1. Strip off all of the render from the chimney.
  2. Repair the damaged brickwork.

3. Repointing the half of the chimney that belongs to 110 Waverley Road.
44. He believed that the figures that had been quoted for the works were extortionate. Further that the works had been not completed as had been proposed, eg. repointing work had not been undertaken. That the quotes that he had obtained from other contractors (pages 243 and 244 were substantially lower.
45. In summary the Respondent's case was that the Section 20 procedure had not been followed correctly. That the tender process had not been carried out correctly. That Service Charges generally could not be substantiated. As Mr Oliver put it the Respondent felt that throughout the process he had been kept in the dark. That he hadn't been allowed sufficient opportunity or ability to put forward his own observations or to obtain quotations. The Respondent had, in effect, Mr Oliver said in its pleaded defence in the County Court asked for further information but this had never been received.

### **The Tribunal's Decision**

46. The Respondent doesn't dispute that Service Charges are payable. His concern is the amount that has been claimed. He says that he needed to be provided with further information so that he could properly evaluate the amount being claimed. It is assumed that by that he means he wishes to see copies of not just accounts but invoices and receipts to which the Service Charge items relate. Indeed, Mr Oliver made reference to Section 22 of The Landlord and Tenant Act 1985. Section 22 entitles a Lessee who has receive a written summary of costs which forms part of the Service Charge (requested pursuant to Section 21) to require the Lessor to afford the Lessee reasonable facilities to inspect the documents and to take copies.
47. There is no evidence that the Respondent made such a request. Mr Oliver confirmed that all requests made by the Respondent had been made orally and not in writing.
48. Mr Oliver says that the defence in the County Court proceedings is in effect such a request or at least a request for information. In the view of the Tribunal it is not.
49. The Respondent has had opportunity over the years to serve a written notice on the Applicant to seek more information. To, if he so wished, make an application to this Tribunal pursuant to Section 27A of the 1985 Act for a determination as to whether Service Charges were payable and if so reasonable.
50. There is no evidence before the Tribunal that the Service Charges demanded by the Applicant were unreasonably incurred. Save for the works to the chimney the Respondent didn't seek to challenge individual items of the Service Charges claimed. He just makes a general complaint that the Service Charges appear to him to be unreasonable.

51. Details of the Service Charges are set out in the accounts for each of the years ending 31 December 2018 and 31 December 2019. Those accounts have been prepared by a firm of Chartered Accountants. The accounts state that they have been prepared with '*...regard to TECHO3/11 Residential Service Charges published jointly by the professional accountancy bodies with ARMA and RICS*'. The report to the accounts states that they are sufficiently supported '*by accounts, receipts and other documents which have been made available to us*'. The accounts do quite properly say that they do not constitute an opinion as to whether or not the costs incurred were reasonable.
52. As to whether or not the expenditure that constitutes the Service Charge was reasonably incurred the Tribunal is satisfied upon the evidence before it that it was. No evidence was produced at all from the Respondent to support his contention that the expenditure was unreasonably incurred. He didn't for example produce alternative quotes or estimates for cleaning, gardening, accountants' fees, management fees etc.
53. The cost of works to the chimney appear in the accounts for the year ending 31 December 2019. The cost is put at £12,521. That is made up as follows:
  1. Stan Randell Construction Limited (50% of the Tender price of £17,836 as the works are to half of the chimney) £8,918.
  2. VAT £1,783.60
  3. The managing agent's fees for undertaking the Section 20 consultation process (see paragraph 2 of the Applicant's reply page 245) £1,070.16
  4. Surveyor's fees at 7% (as set out in the letter to the Respondent from the managing agents dated 7 December 2018 at page 200): £1,248.52 plus VAT of £249.70 X 50% = £749.11.
54. The need for works to be carried out is not disputed. Indeed, in the view of the Tribunal the works were significant in nature and the Applicant was correct to instruct a specialist Chartered Surveyor to advise and to produce a Schedule of Works. The matter was complicated by the fact that the chimney was jointly owned and that ultimately the owner of the neighbouring property would not co-operate. As such the works to a degree were always going to be something of a compromise.
55. In the view of the Tribunal the works carried out were reasonably incurred. It is satisfied based on the evidence before it based on the photographs and the evidence of Mr Green that the work was properly carried out. The works included works to the parapet wall and lead flashing. The Tribunal is satisfied that the tender process was fairly and reasonably carried out.
56. The Tribunal is satisfied that Mr Green was correct to disregard the estimate received from Colonial Contractors. It was significantly less than the other prices received. More particularly Colonial Contractors

only completed one page of a six page schedule. The Tribunal was told that they had not inspected the Property. That they had not considered the need to erect scaffolding. It would appear that they had not understood the nature and extent of the works required. They had failed to respond to requests from Mr Green's office to confirm the price that they had put forward, to discuss whether or not they had quoted for the works correctly. Indeed, in the view of the Tribunal from the evidence before it they hadn't. In the event the only two priced tenders which the Applicant and Mr Green were able to give proper consideration to were those produced by C&D Roofing Limited and by Stan Randell Construction Limited.

57. The Tribunal is satisfied that the Section 20 consultation process was properly and correctly carried out. The Stage One Notice at page 142 describes in general terms the works that were proposed to be carried out. It states the Applicant's reason for considering it necessary to carry out the proposed works. It invites the Respondent to make written observations in relation to the proposed works and specifies an address to which those observations should be sent. It provides a date by which such observations should be made albeit the date given 7 November 2018 is far in excess of the 30 days stated. It invites the Lessee to propose the name of a person from whom the Applicant should try and obtain an estimate for carrying out the proposed works.
58. The second Notice at page 198 which is dated 7 December 2018 provides details of two estimates and sets out the amounts specified in the estimates as the estimated costs of the proposed works. It states where the estimates may be inspected. It invites the Respondent to make observations in writing in relation to those estimates and explains where those observations should be sent. It provides for those observations to be received within 30 days and states that that date ends on 8 January 2019.
59. In the event the Respondent didn't submit written observations. Instead he arranged a meeting on site on 30 January 2019. By that date the time for making written observations had passed. Mr Green says in his first witness statement that the works were completed in November 2019 (page 213).
60. Annexed to the Respondent's Statement of Case are two quotes that the Respondent states he obtained for the entirety of the works, one from 'J Mann Roofing Services' dated 12 January 2020 for £2,600 (page 243) and one from 'Batchroofing' dated 11 January 2020 for £2,400 (page 244). The Respondent has not provided a written form of specification to explain the basis upon which the two quotes were obtained. The Tribunal accepts Mr Green's evidence that the quotes are not comparable with the specification for the works. They make no reference to works to the party parapet wall. They make no reference to the replacement of lead flashing to the chimney, parapet wall and dormer roof.
61. In all the circumstances the Tribunal is satisfied based on the evidence before it that the costs of £12,521 incurred by the Applicant in carrying out repairs to the chimney were reasonably incurred.

62. In answer to a question put to them by the Tribunal both Mr Oliver and Mrs Atkinson confirmed that their understanding was that the “*Percentage Contribution*” of the Service Charge payable under the terms of the lease was 33.33% of the total Service Charge.
63. Accordingly, with reference to the Service Charge accounts for the year ending 31 December 2018 the Tribunal determines the amount of Service Charge payable for that year by the Respondent is one-third of £6,211, namely £2,070.33. With reference to the accounts of the year ending 31 December 2019 the Service Charge payable by the Respondent for that year is one-third of £16,313, namely £5,437.67.

### **Administration Charges**

64. The administration charges sought by the Applicant can conveniently be divided into two parts.

### **The First Part**

65. The first part are those which appear in the County Court Particulars of Claim and Defence and in the Schedules at pages 268 and 269 of the bundle. They are as follows:
  1. Debt collection incurred and late payment fee 15 March 2019: £60
  2. Debt collection: sent to solicitors 26 March 2019: £132
  3. Debt collection incurred and late payment fee 15 July 2019: £60
  4. Claimant’s solicitors legal costs incurred in enforcing the terms of the Lease 10 September 2019: £311.87
66. Mrs Atkinson said that the Applicant had actively endeavoured to control and contain the costs of enforcing the collection of Service Charges. It hadn’t, for example, instructed counsel to appear before the Tribunal. It hadn’t instructed solicitors to take further action save for initially advising. That the costs claimed were costs incurred and time expended in taking action against the Respondent to recover the arrears of Service Charges.
67. That it was the Applicant’s case that the fees were recoverable from the Respondent pursuant to Section 3(11) of the Lease which is set out above.
68. Mrs Atkinson said that the £60 charge was a standard charge that the managing agents apply to all their leaseholders for the collection of

arrears. It was she said an administration fee that was for the managing agent's accounts staff to send reminders and to chase debts. It was not, she said, a punitive fee.

69. Upon being questioned by the Tribunal Mrs Atkinson said that if the two fees of £60 each and the fee of £132 were not paid by the Lessee they would not be the responsibility of the Lessor to pay. That the managing agents would not seek to recover those fees from their Lessor client.
70. As to the fee of £311.87 which is described as '*Claimant's solicitors legal costs incurred in enforcing the terms of the Lease*' Mrs Atkinson wasn't able to produce a copy of a relevant invoice or a breakdown of that sum. She confirmed upon being questioned by the Tribunal that she believed it covered the cost of drafting the County Court claim form and Particulars of Claim. She confirmed that if this was not paid by the Lessee that it would be paid by the Applicant.
71. Mr Oliver said that the Respondent should not be liable to pay the administration fees claimed because they had only arisen due to a failure on the Applicant's part on multiple occasions to respond to the oral requests made by the Respondent to provide further information in relation to the Service Charge accounts. As he put it the Applicant had '*jumped the gun*' in bringing proceedings and thus incurred administration fees which fees could he said have been avoided had the Applicant produced the information requested.

### **The Tribunal's Decision**

72. Mrs Atkinson stated that the two sums of £60 each and the sum of £132 would not be payable by the Applicant if they were not paid by the Respondent. By that the Tribunal understood that the Applicant's managing agent would not send an invoice seeking payment of those fees to the Applicant. As such in the view of the Tribunal that they were not fees that were '*incurred*' by the Applicant as provided for by Clause 3(11) of the Lease. Accordingly, the Tribunal determines that the sums of £60, £60 and £132 as set out above are not payable by the Respondent.
73. As to the sum of £311.87 the Tribunal is satisfied that these are fees incurred by the Applicant and are recoverable pursuant to Clause 3(11) of the Lease from the Respondent. Given that the invoice is dated the same date as the Particulars of Claim the Tribunal anticipates and understands that the fees cover the drafting of the County Court claim form and the Particulars of Claim. The Tribunal is satisfied that they are reasonable in amount for such work. The Tribunal therefore determines that the sum of £311.87 is payable by the Respondent.

### **The Second Part**

74. The second type of administration charges sought by the Applicant are the Applicant's managing agent's charges for representing it before the



Tribunal, particulars of which are set out in the Schedule at page 270 of the bundle. The amount claimed including VAT is £3,871.80. The charges are calculated on a time spent basis applying an hourly rate of £135 plus VAT.

75. Mrs Atkinson said that these fees had been incurred (save for that element of the final item relating to the time spent at the hearing to the extent that the hearing had taken less time than anticipated). They contained, she said, no element of profit. They covered a considerable amount of work she said in preparing for and liaising with the Applicant in relation to the hearing. That the hourly rate of £135 had been agreed with the Applicant for professional costs provided by her company over and above fees incurred in the day to day management of the Property.
76. As to the first item in the Schedule on which there was a claim for 3 hours spent preparing for mediation, Mrs Atkinson said that the notification of the possibility of mediation provoked a full review of the matter which included various meetings and emails over a period of some 18 months and discussions on how to proceed if the mediation went ahead. She said that significant costs had been saved by the Applicant's decision not to instruct counsel to represent it at the Tribunal. These proceedings, she said, were not some form of knee jerk reaction, they arose because the Respondent had had arrears of Service Charges since 2014. That the Applicant had not just withheld Service Charges relating to repair works to the chimney but every element of the Service Charges demanded.
77. Mr Oliver, was asked by the Tribunal whether or not he agreed that Clause 3(11) of the Lease allowed the recovery of such administration charges. Mr Oliver was offered time to consider the wording of the clause. He offered no opinion save to say that the clause was '*wishy washy*'. Mr Oliver said that the fees incurred were not reasonably incurred and that these proceedings and the resultant fees were a form of '*knee jerk reaction*'. He objected to the three hours claimed for preparing for mediation when a date for mediation had not been fixed. He said that as no date had been fixed for mediation then time couldn't have been spent in preparing for it. That the Applicant's managing agents had jumped the gun in carrying out preparation works for mediation. He suggested that the Tribunal was not a costs forum. The Tribunal agreed that was generally the case but these were not fees that had been claimed as costs but fees which had been claimed as administration charges and therefore did fall within the Tribunal's jurisdiction to determine.

### **The Tribunal's Decision**

78. The Tribunal is satisfied that the fees incurred by the Applicant's managing agents in representing the Applicant before the Tribunal can be recovered pursuant to the terms of the Lease from the Respondent as administration charges provided that they are reasonable. At the hearing the Tribunal carried out a form of summary assessment of those fees to determine the amount which it considered to be reasonable. With

reference to the schedule of fees at page 270 it made the following deductions:

1. Preparation for mediation 3 hours. The Tribunal agreed with Mr Oliver that it was unreasonable to claim for time spent in preparing for a mediation that had not been fixed. The time claimed of 3 hours was disallowed.
  2. Total time claimed for drafting a Statement of Case and to include a revision of Statement of Case 5 hours was reduced to 2 hours.
  3. Total time claimed for reviewing Respondent's case and drafting response to include finalising the Applicant's reply 3 hours was reduced to 2 hours.
  4. Preparation of hearing bundle and submission. Total time claimed 1.5 hours. In the view of the Tribunal this was work that should properly be carried out by administrative staff at a much lower rate than £135 per hour. The Tribunal reduced the figure from 1.5 hours to 0.5 hours.
  5. Total time claimed for hearing preparation 3 hours which the Tribunal reduced to 2 hours.
  6. The hearing concluded at 1.40pm and therefore the Tribunal reduced the hearing attendance time from 6 hours to 4 hours.
79. The effect of the above reductions was to reduce the fees claimed down to £2,089.80 inclusive of VAT which the Tribunal rounded down to £2,000. The Tribunal therefore determined that the amount of administration fees payable by the Respondent in respect of the Applicant's representation before the Tribunal was £2,000.

### **Summary of Tribunal's Decision**

80. 1. The amount of Service charges payable by the Respondent for the year ending 31 December 2018 are £2,070.33.  
2. The amount of Service Charges payable by the Respondent for the year ending 31 December 2019 are £5437.67.  
3. Administration charges payable by the Respondent are £311.87 and £2,000.00 total £2,311.87.

### **Referral to the County Court**

81. At the conclusion of the hearing before the Tribunal and in accordance with the directions referred to above the outstanding issues in relation to the Applicant's claim for contractual legal costs, expert's fees, interest and court fees were referred to Tribunal Judge Jutton sitting as a Judge of the County Court (Deputy District Judge) to be heard immediately after the conclusion of the Tribunal hearing

Dated this 8<sup>th</sup> day of September 2020

Judge N P Jutton

### **Appeals**

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