FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UC/LSC/2019/0082
Property	:	Flats 1-13, 17 Marine Parade, Whitstable, Kent CT5 2BG
Applicants	:	Mr T D Baker and Mrs L J Wise as attornies for Mr S G Baker (Flat 1) Mr J and Mrs J Walkinshaw (Flat 2) Ms M Armstrong (Flat 3) Mr J T Baker (Flat 4) Mr D Price as executor for Mr C C and Mrs E Price (Flats 5 and 6) Mr P Logue (Flat 7) Mr M Battson (Flat 8) Ms N Stott (Flat 9) Mr R Moseley (Flat 10)Mr J L Day (Flat 11) Mr D and Mrs S Robb (Flat 12) Mr J and Mrs S Lowe (Flat 13)
Representative	:	Ms M F Bennett of counsel
Respondent	:	(1) Whitstable Homes Limited (2) Marine Maintenance Limited
Representative	:	Mr J Brown of counsel
Type of Application	:	Service charges
Tribunal Member(s)	:	Judge D. Agnew Mr R Athow FRICS
Date and venue of hearing	:	7th January 2020 at The Holiday Inn, Canterbury
Date of Decision	:	18th February 2020

DETERMINATION

Background

1. By an application dated 6th August 2019 the Applicants applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the payability and reasonableness of service charges levied by the Respondent in respect of Flats 1-13, 17 Marine Parade, Whitstable, Kent CT5 2BG ("the Property"). The Applicants are the long lessees of the 13 flats comprising 17 Marine Parade. The First Respondent is the freeholder/landlord. The Second Respondent is the Management Company and a party to the tri-partite leases of the flats.

2. The service charges in question are for the service charge years 2017-8 and 2018-8th February 2019 at which time the freehold was enfranchised under the terms of the Leasehold Reform, Housing and Urban development Act 1993. Initially the application also concerned the insurance rent for 2018/19 but it was agreed at the hearing that this was no longer in issue.

3. The case came before the Tribunal for hearing on 7th January 2020 at the Holiday Inn, Canterbury. Those attending the hearing were as follows:-
   For the Applicants, Ms M F Bennett of counsel, Mrs L Wise and her brother, Mr R Moseley of Flat 10 at the Property and, for part of the time, Mr and Mrs Robb of flat 12.
   For the Respondents, Mr J Brown of counsel, Mr Rajakanthan (Director of both Respondent companies) and a colleague.

The issues

4. The Applicants raised a number of issues in their statement of case and witness statement which they characterised as procedural challenges. These were as follows:-
   a) The failure to send a summary of rights and obligations with service charge demands as required by section 21B of the Act.
   b) Failure to state on the invoices and demands that the tenant can pay the service charge in two equal instalments on the rent payment dates
   c) Failure, in contravention of the lease, to send out estimated service charges prior to the start of the service charge year
   d) Failure to provide a certificate of service charge expenditure at the end of the service charge year and on the freehold being transferred
   e) Failure to allow tenants to inspect the accounts, invoices and other documentation in relation to the service charges under section 22 of the Act or to provide a written summary of costs under section 21 of the Act
   f) Failure to consult lessees before entering into qualifying long term agreements for the management of the property by Liberty Homes Limited and for the accountancy and bookkeeping agreements with Mr Mani and Mr K Rajathevan respectively.

5. The Tribunal decided to deal with these procedural challenges first, before going on to consider the payability and reasonableness of the individual service charge items that were challenged. It transpired that, at the hearing, the procedural challenges were reduced to two, namely (1) the failure of the landlord to certify the expenditure as soon as possible after the end of the service charge year and (2) the failure to consult with regard to the qualifying long term agreements.

6. Ms Bennett submitted that the lease required the service charge expenditure to be certified by the landlord. The lease provision is at clause 4.3 which states:-
" *As soon as reasonably practical after the end of each Service charge year, the Landlord shall prepare and send to the Tenant a certificate showing the Service Costs and the service charge for that service charge Year".*
She said that this was an important document because there is no other provision in the lease for the lessee to obtain any information as to their liability for service charges. There is, for example, no requirement for the landlord to produce proper service charge accounts.
What the landlord has done is that he has provided a list of expenditure (supplied to the Applicants' solicitors in December 2018) totalling £17584.56 for 2017/18 and for 2018 to 8th February 2019 totalling £8731.43. The landlord has not "certified" that the two lists are true lists of expenditure. There had been no independent verification of the lists.

7. In response, Mr Brown argued that the two lists did constitute certificates. He said there was no definition in the lease as to what a certificate should contain or look like. The lists provided were sufficient to inform the lessees as to what the expenditure for the period was that they would be asked to pay. He asked the Tribunal to find that the two lists provided did comply with the lease in that they did constitute certificates but if not, the situation could be remedied, once the Tribunal had ruled on the amount payable, by the Landlord retrospectively certifying the expenditure so that payment could be enforced.

8. With regard to the failure to consult on qualifying long term agreements, Ms Bennett said that the Respondent had provided no evidence whatsoever as to the contracts with Liberty Homes Limited for the management or maintenance of the building or from Mr Mani or Mr Rajathevan for accountancy and bookkeeping respectively save for the assertion by Mr Rajakanthan in his witness statement that they are subject to a rolling monthly agreement. Ms Bennett said that one would expect to see the terms and conditions under which these contractors supplied their services setting out the tasks and duties they were expected to perform.

9. It was the Respondent's case that there was no documentation to disclose for these contracts: they were simply informal monthly

arrangements which could be terminated at any time. Mr Brown called Mr Rajakanthan to give evidence and he confirmed the content of his witness statement. He stated that he was mainly in the business of running care homes. 17 Marine Parade had originally been a care home run by Nicholas James Care Homes Limited ("NJCH") of which he is a Director. The care home was demolished and the freehold transferred to the First Respondent. Liberty Homes Limited then built the current block of flats in or about 2014. Neither he nor his company had experience of managing flats so he asked Mr David Caulfield of Liberty Homes Limited to look after the maintenance of the building, in particular looking after health and safety items such as the lift and the fire alarm system, on a temporary basis until such time as the management of the property would be taken over by the lessees. Unfortunately, the flats took some time to sell and then there were disputes over service charges and the lessees then decided to enfranchise. This meant that the temporary arrangement with Liberty Homes Limited persisted until the freehold was transferred in 2019. However, it was always just an informal, verbal arrangement which could have been terminated immediately by just one telephone call.

10. There was a similar temporary arrangement with the accountant and the bookkeeper.

The Tribunal's decision on the "procedural challenges"

11. The Tribunal found that the two lists of expenditure for the two years in question (found at pages 135 and 222 of the hearing bundle) did not constitiute a "certificate". The word "certificate" connotes, in the Tribunal's view, the inclusion of a statement certifying the correctness of the content of the document. These lists contained no such statement and were not even signed by the landlord. This is not, however, fatal to the Respondent being able to recover the expenditure listed, subject to the findings that follow in this determination. The defect can be cured by a statement by the landlord certifying that the expenditure listed is a true list of the expenditure incurred by the landlord under the lease for the period stated and this can be done to incorporate the Tribunal's determination below.

12. With regard to the failure to consult on the alleged long term agreements, the Tribunal finds that none of the agreements with Liberty Homes Limited, Mr Mani or Mr Rajathevan were qualifying long term agreements requiring consultation under section 20 of the Act. Having heard Mr Rajakanthan give evidence the Tribunal accepts that he did not enter into any formal arrangement with these entities. Liberty Homes Limited had constructed the building and Mr Rajakanthan considered that that company would be best placed to know the building and deal with any repair or maintenance issues. It was only supposed to be a temporary measure until the lessees became members of the management company and took over the management themselves. This, however, became a protracted process and in the end the lessees enfranchised. Mr Rajakanthan could not produce a copy of

an agreement with Liberty Homes Limited if one did not exist. The Tribunal accepts that the arrangement was ad hoc and could be terminated at any time on short or no notice. The position with the accountant, Mr Mani, was even closer in that he was also the financial director of Mr Rajakanthan's care homes company and a co-director of that company with Mr Rajakanthan. The Tribunal finds it understandable (albeit not ideal) that there should be no formal contract with Mr Mani and finds that it could be terminated at short or no notice. The Tribunal had no reason to think that the arrangement with the bookkeeper, Mr Rajathevan, was any different. Consequently, none of the arrangements in question required consultation under section 20 of the Act and are not, therefore, limited to £100 per annum for each flat. In any event, Mr Rajathevan's invoices did not exceed this sum.

Issues as to payability or reasonableness of the service charges

13. The service charge demand for the Year Ended 28 June 2018 was divided into six headings as follows:-
    i) Repairs and maintenance £9205
    ii) Legal and professional fees £3000
    iii) Light and heat £1482
    iv) Postage and stationery £112
    v) Telephone £417
    vi) Bank charges £69.

14. There was no challenge to the Postage and stationery charge or the Bank charges.

15. The Respondent's evidence with regard to the disputed charges was as follows:-

    a) The charge of £9205 for Repairs and maintenance
    The the vast majority (£8286) of this charge was made up of 12 monthly amounts of £689 charged by Liberty Homes Limited. However, there were no invoices from Liberty Homes Limited addressed to either of the Respondents in support of these charges. What there was were a series of monthly invoices from NJCH addressed to Marine Maintenance Limited showing what were described as "on-call charges" of £53 per month for each of the 13 flats at the Property. The figure of £689 per month was exactly the same amount sought to be charged to the lessees in 2017 when, at that time the £689 was shown as broken down into twelve sub-headings. An example of such itemised invoice was at page 331 of the hearing bundle. That breakdown included Liberty Homes Limited's management charge of £240 per month.

    b) Legal and professional fees £3000

This comprised £2500 for the Accountant's (Mr Mani) fees and £500 for the bookkeeper's fees. In this instance there were in the hearing bundle invoices from Mr Mani and Mr Rajathevan addressed to Marine Maintenance Limited for the amounts claimed.

c) Light and heat £1482
Invoices from the electricity supplier EON were included in the hearing bundle.

d) Telephone £417
Invoices from BT were included in the hearing bundle

16. The Applicants' challenges to the charges for 2017/18 were as follows:-
a) Repairs and maintenance £9205
The Applicants pointed out that the invoices in support of the expenditure of £689 per month were simply described as "on-call charges" without any breakdown as to how the figure was arrived at. As it was precisely the same figure as for 2017 where there had been a breakdown it was reasonable to assume that the same breakdown applied for the Year ended June 2018. The only charges that had been reasonably incurred under this heading were £462.77 for an invoice from Southern County Care Group relating to firefighting equipment, a charge of £50 to £70 for a call-out to attend to the fire alarm and £792 for communal cleaning. Mrs Wise's evidence was that either no other charges had been incurred or, as far as Liberty Homes Limited were concerned, they had carried out no management functions whatsoever. What maintenance had been done had been carried out by the lessees themselves. The £689 charged includes maintenance of the lifts but there was no lift maintenance contract in place between 1st March 2018 and 1st October 2018.

b) Legal and professional fees
Mrs Wise queried what Mr Mani and Mr Rajathevan had done to justify their charges totalling £3000. No description of the work done was included in their invoices and no proper accounts had been prepared and issued. Mrs Wise questioned the competence of Mr Mani in that service charge invoices had previously been issued not in compliance with statutory requirements. Mrs Wise had obtained quotes from two firms of accountants to compare with the amounts charged to the lessees. The company the lessees are currently using is charging £571 including vat for the annual accounting. The quotes from the other, larger, firm were higher. She would accept that for annual accounting and bookkeeping combined a fee of £1800 per annum would be reasonable.

c) Light and heat
Mrs Wise's objection to this charge was that the tariff for electricity had been left at the default rate instead of at a more favourable available rate. Mrs Wise produced evidence that the one year fixed contract they have negotiated for 2019 demonstrates a lower standing charge then the Respondents achieved in 2017/18 and the

following year albeit at a higher Kilowat per hour rate for electricity consumed.

d) Telephone £417
The Applicants' case with regard to this charge was that this was for a telephone line to the lift which is required in case of a lift malfunction and someone is trapped in it. However, there was a period when there was no lift maintenance contract in place so this line was not being monitored. The lessees were therefore paying for a facility which was useless. They should not have to pay for the line during the period when it was not being monitored.

17. Mr Rajakanthan's response to these challenges was as follows:-

a) He accepted that the £689 per month "call-out charge" was based on an estimate of the costs of the various heads of charge as appeared in the invoice for 2017 which appeared at page 331 of the bundle. He accepted that the figures making up that total were not therefore based on actual costs. The Liberty Homes Limited cost was a reasonable cost for everything they did. He said this included all issues to do with the day to day management and maintenance of the Property and included the cleaning of common areas, maintenance of safety equipment, maintenance of the lifts and electronic gates and the communal garden. He said that this company was on call 24 hours per day, seven days per week.

b) The Accountancy and bookkeeping work done included dealing with the accounts and producing financial statements, dealing with enquiries from lessees, dealing with Liberty Homes Limited, the tax office and Companies House "amongst other things". In addition they were "to check incoming invoices for correct services, pay the suppliers, carry out bank reconciliation, produce a profit and loss account, deal with the bank manager and submit accounts to the management company".

c) No true comparison of electricity charges had been carried out by Mrs Wise.

d) Although there was a gap in time between the two lift contracts he had an arrangement with one company on an individual call-out basis for repairs and the telephone line would be monitored.

18. For the Year ended 2017/18 there were two other charges that the Applicants referred to. They were the Southern County Care Group invoice referred to in paragraph 16a above and a survey carried out by Height Safe Systems for £474. The Applicants accepted that the former was payable but that as the service they provided should have been covered by the Liberty Homes Limited contract, they should not be charged twice. With regard to the latter, Mrs Wise's evidence that the management of the several abortive appointments to carry out the survey were so badly organised that the contractor gave up and simply

charged for the time lost. The lessees should not have to pay for this. Mr Rajakanthan's reply to this was that the contractors could have gained access to the area they need to get to through the ceiling of one of the flats but the lessee concerned refused access.

19. The charges sought for the following year from 30 June 2018 to February 2019 are as follows:-
    a) Maintenance charges £5800
    b) Accountancy and bookkeeping £1833.31
    c) Electricity £727.58
    d) Telephone £325.15
    e) Bank charges £45.29

    The challenges and responses to these charges was the same as for the previous year, the same costs for maintenance charges, accountancy and bookkeeping simply being apportioned to reflect the fact that only part of the year was chargeable until the freehold was acquired by the lessees.

The relevant law

20. By section 19 of the Act:-
    "Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is payable, and, after the relevant costs have been incurred, any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise".

21. By Section 27A of the 1985 Act it is provided that:-
    (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.

The Tribunal's determination

22. The Tribunal finds that what the Respondents have done is, effectively, to sub-contract their management duties to Liberty Homes Limited for their repair and maintenance responsibilities and to Mr Mani and Mr Rajathevan for their financial responsibilities under the lease. There is nothing wrong, in principle, with this, and they may do this on whatever terms they think fit with these sub-contractors but the legislation contained in the Act is there to ensure that they can only pass on to the lessees charges that are reasonably incurred and of a reasonable amount. When these charges are challenged the landlord or management company must be in a position to demonstrate that the charges have been reasonably incurred and are of a reasonable amount.

23. With regard to repairs and maintenance, the Respondent has totally failed to satisfy the Tribunal that the charge of £689 per month had been reasonably incurred and was a reasonable charge for the work done. There was hardly any evidence of what had been done for this money. Mr Rajakanthan was vague as to what it covered save that it included;
    a. cleaning common areas, windows
    b. maintenance of safety equipment and common areas
    c. maintenance of lifts and electronic gates
    d. maintaining the communal garden

    He said that Liberty Homes Limited were on-call 24 hours a day, 7 days per week and that they had been called on on a number of occasions to attend to various problems but there was a lack of specificity. It would have been a simple matter for Mr Caulfield of Liberty Homes Limited to have provided a witness statement and attend the hearing to explain what his company did for the monthy sum of £689 but the only evidence provided was a few invoices for cleaning the common parts. The evidence from Mrs Wise was that there was no cleaning of the ground floor for a period as the electricity supply was not working for a time, the lessees themselves had arranged and paid for a number of maintenance items. The Applicants accepted that the cleaner's charges for cleaning the communal parts of the building were justified in the sum of £792 for 2017/18 and £216 for 2018/part 2019. They also accepted that the invoice from Southern County Care group in the sum of £462.77 incurred in January 2018 was a justified expense and a fire alarm call out charge of £50-£70 in November 2017 would be reasonable. In the absence of any proper evidence to the contrary the Tribunal finds that the charges accepted by the Applicants as stated above were reasonably incurred and payable. As for Liberty Homes portion of the £689 per month charged for management (£240 per month) the Tribunal using its own knowledge and experience of such matters would have found that a management fee of £200 to £250 per flat per annunm would have been a reasonable fee if a good service was being provided. In this case the Respondent has not demonstrated that a good management service was being provided. However, there would have been some management carried out in arranging the cleaning and the occasional maintenance issue. The Tribunal, doing the best it can in the absence of any proper evidence from the Respondent finds that a management fee of £50 per flat per annum would be a reasonable charge to reflect the amount of work it has been demonstrated was involved on the part of Liberty Homes Limited. This means that the total recoverable by way of service charge from the lessees for "General maintenance is £1924.77 for 2017/18 and £372 for 2018/19.

24. With regard to the Height Safe invoice for £395 in 2017/18, the Tribunal finds that the work was aborted due to the failure of either Liberty Homes Limited or the Respondents properly to organise access for the company to carry out the work. Hence the charge was not reasonably incurred and is not recoverable from the lessees.

25. With regard to Accountancy and bookkeeping the Tribunal accepts that a certain amount of work was carried out. However, evidence from Mr Mani and Mr Rajathevan would have assisted the Tribunal in determining a reasonable fee for that work. The Applicants say that they have secured the services of an accountant at a charge of £571 per annum and this is the sort of figure the Tribunal would expect but this would include the preparation of proper accounts which Mr Mani has not done in this case. The Applicants suggested that £1800 for accountancy and bookkeeping combined would be a reasonable charge for a complete year. The Tribunal finds that this is a fair and reasonable offer in the circumstances of this case and so determines.

26. With regard to the electricity charges, the Applicants have not shown that the charges that have been incurred by the landlord or management company could have been lower had management been more pro-active in securing the lowest tariff available in the years in question and will therefore be payable in full. If there was a deficiency in the management in this regard it has already been reflrected in the disallowance of much of the management fee.

27. With regard to the BT charges.for the emergency line for the lift, the Tribunal does not find that the Applicants have demonstrated to the satisfaction of the Tribunal that the cost of the line was of no value whilst there was a gap in the maintenance contract cover. Further, it may have been the case that the cost of having the line disconnected and re-connected may have outweighed the cost of the line rental during that period. We just do not know, as there was no evidence either that the line was definitely useless or what the cost of disconnection and reconnection would have been. In all the circumstances the Tribunal has decided to allow the BT costs to be recovered.

Conclusion

28. The Tribunal determines that the service charges recoverable from the lessees are as follows:-
For 2017/18
£1800 for accountancy and bookkeeping

General repairs and maintenance:
£792 for cleaning
£462.77 for Southern County Care Group
£70 fire alarm call out
£600: management fees

£417 BT charges
£1482; light and heat
£112: postage and stationery
£69: bank charges

The above totals £5804.77

29. For 2018/19
£1200 for accountancy and bookkeeping
General repairs and maintenance:
£216 for cleaning
£400 for management fees
£288 for lift maintenance contract

£325.15 for telephone
£727.68 for light and heat
£45.29 for bank charges
The foregoing for 2018/19 totals £3202.12

Costs

30. There was insufficient time to deal with the question of costs at the hearing on 7 january 2020 and so the tribunal directed that there be written submissions from the parties by 16 January 2020. Both parties were content with this procedure rather than there having to be a re-convene. Counsel for both parties duly submitted their final submissions on costs and on the case generally.

31. The Applicant applied for an order under section 20C of the Act and also under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The former enables a Tribunal to order that the landlord's costs of Tribunal proceedings are not recoverable in a future service charge, if the Tribunal considers it just and equitable so to order. Paragraph 5A gives a Tribunal a similar power in respect of the costs a lessee individually might be liable for in costs as a contractual provision in their lease. The Applicant also applied for an order for costs in their favour under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Tribunal Procedure Rules") on the basis that the Respondent had acted unreasonably in connection with the proceedings.

Section 20C

32. The Applicant says that there is no provision in the lease entitling the landlord to recover its costs of proceedings such as those concerned in this case and that there is therefore no need for an order under section 20C of the Act but that if the Tribunal decides otherwise, it is pertinent for the Tribunal to make the order as it was necessary for the Applicants to bring the proceedings in the absence of receipts and records justifying the service charges claimed.

33. In his written submission Mr Brown seems to suggest that it is not correct that the landlord cannot recover its costs of the proceedings via the service charge. He says that paragraph 7(a) of Schedule 4 to the lease provides a covenant for the lessee "To pay on demand the costs and expenses of the landlord (including any solicitors surveyors or

other professionals' fees costs and expenses and any VAT on them) properly incurred by the landlord….in connection with or in contemplation of any of the following:
(a) The enforcement of any of the Tenant's covenants…."
He says that "No restriction is stated in that paragraph as to the mechanism by which those costs can be recovered".

34. The Tribunal has no hesitation in finding that this provision is not a service charge provision enabling the costs to be recovered through the service charge but one entitling the Landlord to recover any such costs from the individual tenant who is the party to the lease. A possible entitlement to the costs of the proceedings being recoverable through the service charge could be said to lie in Part 2 of Schedule 7 to the lease and in particular at sub-paragraph 1(b). This provides that the "Service Costs" payable by the lessee are the total of;
(a)……
(b) the costs, fees and disbursements reasonably and properly incurred of:
(i) ……
(ii)……..
(iii) any other person reasonably and properly retained by the Landlord or the Management Company to act on their behalf in connection with the Building or the provision of Services".

The Tribunal does not, however, construe this provision of the lease to apply to costs of proceedings. In the Tribunal's view, this provision is restricted to persons other than manging agents, their employees and accountants engaged in the management and maintenance of the building.

35. If the Tribunal is wrong in its construction of the lease in this respect and the costs of proceedings are recoverable through the service charge the Tribunal nevertheless does find it just and equitable to make an order under section 20C of the Act. The Applicants have succeeded in those proceedings in reducing significantly the amount payable by them by way of service charge. Although this is not necessarily the only factor in the exercise of a Tribunal's discretion as to whether or not to make such an order, it is a very weighty factor. The Tribunal also takes into account the highly unsatisfactory way in which the Respondents levied the charge, not basing it on actual expenditure, and maintaining its stance throughout the proceedings. The Tribunal does, therefore, make an order under section 20C of the Act.

Rule 13 Costs

36. It does not follow, however, that this entitles the Applicant to an order for costs in their favour against the Respondents, as the Applicants seek. In order to succeed in such an application the Applicants must show to the Tribunal's satisfaction that the Respondents or either of them acted unreasonably in connection with the proceedings (Rule 13 of the Tribunal Procedure Rules). The leading case on this provision is

Willow Court Management Company (1985) Limited v Alexander and others [2016] UKUT 0290 (LC). In that case the Upper Tribunal held that the Tribunal is required to undertake a three stage process when deciding whether to make an order under this Rule. The first stage is an objective determination as to whether the party has acted unreasonably in the sense that "unreasonable conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case". The Upper Tribunal also said that "tribunals ought not to be over-zealous in detecting unreasonable behaviour and that, generally, the behaviour must be unreasonable in connection with the proceedings themselves. Unless the first stage of the three-stage test is satisfied there is no need to proceed to the other two stages.

37. In this case Ms Bennett does not state on what basis she says that the Respondents have been unreasonable in their defence and conduct of the proceedings save that if the Tribunal agrees with her submissions as to the service charges payable, they will be significantly reduced from the amounts claimed by the Respondents. With respect, that is not sufficient to reach the high bar set by the Willow Court decision as to unreasonable conduct. The mere fact that a party has been unsuccessful in the proceedings is insufficient.

38. The Tribunal does not find that the Respondents have conducted the proceedings unreasonably and so declines to make an order for costs in the applicants' favour.

Contractual Costs

39. As stated in paragraph 31 above Mr Brown for the First Respondent landlord maintains that there is provision in paragraph 7(a) of Schedule 4 to the lease for the Landlord potentially to recover its costs of these proceedings from the individual lessees. He accepts that this entitlement to costs is a variable administration charge under paragraph 5 of Schedule 11 of the 2002 Act. He says that the Landlord should be entitled to recover its legal costs of these proceedings in full but he also accepts that such a variable administration charge is payable only insofar as it is reasonable (Paragraph 2 of Schedule 11 to the 2002 Act). If the Tribunal reduces the amount recoverable from the lessees he maintains that the Landlord's recoverable costs should be reduced only in proportion to the reduction in service charges payable.

40. Ms Bennett argues that none of the situations where the Landlord can recover its costs under Paragraph 7(a) of Schedule 4 to the Act apply in this case. In fact, Mr Brown only relied on sub-paragraph (a).

41. The Tribunal accepts that it is arguable that by merely responding to these proceedings this did not constitute "enforcing any of the Tenant's covenants" so as to bring it within the ambit of Paragraph 7(a). Certainly, action by the Landlord to sue for the service charges would be within that paragraph. Responding to the Tenants' application is less clearly within the ambit of Paragraph 7(a) but the prospect of suing the

lessees was in the contemplation of the Landlord as this had been included in correspondence from the Landlord's solicitors to the lessees Furthermore, it would assist the landlord in suing for a sum if that sum had already been determined by the Tribunal as reasonable and payable by the lessees even though it was the Respondent rather than the Applicant in those Tribunal proceedings. On balance therefore the Tribunal determines that the Tribunal proceedings were such as to come within the ambit of paragraph 7(a) of the lease.

42. If the legal costs were to be charged to the lessees they would become an administration charge payable by the lessee only insofar as it is reasonable (paragraph 2 of the 2002 Act). Where it has not yet been charged as an administration charge, as in this case, paragraph 5A of Schedule 11 to the 2002 Act gives the Tribunal power to reduce or extinguish the lessee's liability to pay such costs where the Tribunal considers it just and equitable to do so.

43. Thus, even if the Tribunal is correct in finding that the costs of the Tribunal proceedings come within the ambit of paragraph 7(a) it may still exercise its discretion under paragraph 5A of Schedule 11 to the 2002 Act to extinguish the ability of the Respondents to recover their legal costs of these proceedings under the contractual provisions of the lease. The Tribunal considers that the Applicants were wholly justified in bringing these proceedings which have resulted in a significant reduction in the amount of the service charges for which the Tribunal has found them liable to pay. In those circumstances it would be highly inequitable for them to have to pay any of the landlords' costs in defending those proceedings. Consequently, the Tribunal does find it just and equitable to extinguish the ability of the Respondents or either of them to recover their legal costs of these proceedings, and so orders.

Conclusion on costs

44. a) The Tribunal makes an order under section 20C of the Act preventing the Respondent from adding the costs to any future service charges

b) The Tribunal makes an order under Paragraph 5A of Schedule 11 to the 2002 Act extinguishing any legal costs that may be demanded by the Respondents from the Applicants in respect of the legal costs of these proceedings

c) The Tribunal does not make an order for the Respondents or either of them to pay the legal costs of the Applicants in these proceedings.

Dated the February 2020

Judge D. Agnew (Chairman).

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.