



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

**Case Reference** : **LON/00AP/LAC/2020/0006**

**HMCTS code (paper, video, audio)** : **V: FVHREMOTE**

**Property** : **Flat 6.21 Northwood Hall, Hornsey Lane, London N6 5PN**

**Applicant** : **Ms Eve Dewhurst**

**Representative** : **Mr David Wismayer (lay advocate)**

**Respondent** : **Triplark Limited**

**Representative** : **Mr Cameron Stocks of Counsel**

**Type of Application** : **Liability to pay and/or reasonableness of administration charges**

**Tribunal Members** : **Judge P Korn  
Mr P Roberts DipArch RIBA**

**Date of hearing** : **14<sup>th</sup> December 2020**

**Date of Decision** : **6<sup>th</sup> January 2021**

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**DECISION**

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## **Description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: FVHREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing. The documents to which we were referred to were contained in one composite electronic document bundle, the contents of which we have noted. The decisions made are described immediately below under the heading “Decisions of the tribunal”.

## **Decisions of the tribunal**

- (A) In relation to the solicitors’ fees of £1,800, the tribunal does not have jurisdiction to make a determination for the reasons set out in this decision.
- (B) In relation to the managing agents’ fees of £294, these fees are reasonable and fully payable.
- (C) The Applicant’s application for a cost order under section 20C of the Landlord and Tenant Act 1985 is refused.

## **Introduction**

1. The Applicant seeks a determination pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“**the 2002 Act**”) as to the payability of certain administration charges.
2. The Applicant is the leaseholder of the Property, which is a one-bedroom flat in a purpose-built block. The Respondent is her landlord and is the freehold owner of the building. A copy of the Applicant’s lease forms part of the document bundle.
3. The items challenged by the Applicant are as follows:-
  - Solicitors’ fees of £1,800 (inclusive of VAT) payable in advance for a licence to assign.
  - Managing agents’ fees of £294 (inclusive of VAT) payable in advance for providing replies to leasehold property enquiries.

## **Applicant’s case**

4. The Applicant is no longer mentally competent and acts by her daughter, Faith Dewhurst (“**the Attorney**”), under an enduring Power of Attorney. The Applicant no longer lives in the Property and instead

resides in a residential care home. The cost of the Applicant's residential care is substantial and the Attorney decided that the Property needed to be sold in order to provide sufficient resources. The Property was therefore placed on the market in February 2020. This being a sale of a leasehold property, the sale would be by way of assignment of the Applicant's lease for which landlord's consent (traditionally called 'licence to assign') would be needed. Notice of assignment would also need to be given to the landlord once completion had taken place (this notice procedure being referred to as 'registration' under the Applicant's lease and being subject to a registration fee).

5. Responding to an enquiry from the Applicant's solicitors, the Respondent's managing agents, KMP Solutions Limited ("KMP"), stated that their fee for providing standard replies to Leasehold Property Enquiries in connection with the assignment of a lease was normally £345 plus VAT (£414 in total). However, KMP also explained that they had only recently been appointed and therefore anticipated that they would not be able to answer some of the questions. In the circumstances they offered a reduced fee of £245 plus VAT (£294 in total). The Attorney duly paid the reduced figure of £294 and KMP provided their replies to the Leasehold Property Enquiries.
6. The Attorney also wrote to the Respondent's solicitors, Hamlins, seeking details of the Respondent's requirements in connection with the proposed assignment/sale and also requesting draft documentation. Hamlins replied by email requesting (a) a bank reference for the assignee, (b) payment of all arrears, (c) the full name and address of the assignee including an address for service in the UK, (d) confirmation of who the intended legal and beneficial owners will be if licence to assign is granted, (e) a solicitor's undertaking for their costs whether or not the matter proceeds to completion in the sum of £1,500 plus VAT and (f) two personal references stating that the assignee is a responsible and respectable person. They also reserved the right to ask follow-up questions. Dependent on the nature and quality of the replies received they also reserved the right to request further information. They added that the registration fee would be £75 plus VAT.
7. As regards the registration fee of £75 plus VAT referred to above, Mr Wismayer for the Applicant comments that this exceeds the amount contractually payable under clause 3(9) of the lease but adds that the Applicant is happy to rely on that contractual provision and is not seeking to challenge the registration fee itself as part of this application.
8. In response to Hamlins' email the Attorney requested sight of a draft copy of the licence to assign but her request was refused. Hamlins continued to refuse to provide a draft licence to assign unless the Attorney first provided an undertaking for costs plus the information requested by Hamlins. In due course the Respondent then refused

consent to the proposed sale/assignment on the basis that Hamlins had not been provided with even the identity of the proposed assignee and that, therefore, the Respondent was unable to take a decision regarding the proposed assignee's suitability as the new leaseholder of the Property. At that point, in the light of what the Attorney considered to be obstruction by the Respondent taking the form of an express refusal of consent to assign, it was decided that an application should be made to the First-tier Tribunal.

9. Mr Wismayer submits that the solicitors' fee in connection with the licence to assign and the managing agents' fee for replying to enquiries are both variable administration charges for the purposes of Schedule 11 to the 2002 Act. He goes on to state that a variable administration charge is payable only to the extent that the amount of the charge is reasonable. He notes that in *Proxima GR Properties Ltd v Dr Thomas D McGhee*, the Deputy President stated: "*While it is reasonable for a landlord to grant consent to an underletting on condition that the tenant reimburse its reasonable expenses of considering whether to grant consent, including administrative expenses, it is not reasonable to treat the requirement to obtain consent as an opportunity to charge a fee unrelated to the costs of routine enquiries or administrative costs which are appropriate in most cases.*"
10. Mr Wismayer submits in relation to the fee demanded by Hamlins that this cannot represent the Respondent's reasonable expenses of considering whether to grant consent, a consent which may not be unreasonably withheld. Notwithstanding the express refusal of consent set out in the letter from Hamlins, itself considered to be unreasonable, he argues that a grossly excessive fee for providing a licence to assign itself constitutes a further unreasonable withholding of consent. He also submits that before being required either to pay an administration charge or giving a solicitor's undertaking to pay, where the charge relates to the grant of a licence to assign, the Applicant must surely have been entitled to see a draft of the document. Were this not so, irrespective of whether the lease was in fact assigned, the Applicant would be committed to paying an exorbitant fee in circumstances where the form of licence was itself the reason, or a reason, that the lease was not assigned. He goes on to suggest that a reasonable fee for the licence to assign would be no more than £600 inclusive of VAT and that the Applicant must be entitled to see a draft licence before either agreeing to pay for it or being asked to provide a solicitor's undertaking. He concludes by stating that the Applicant seeks (a) a determination that the cost should be no more than £600 inclusive of VAT and (b) a direction that the Respondent provide a draft licence to assign for the Applicant's consideration.
11. In relation to the fee demanded by KMP in the amount of £294 for the provision of what Mr Wismayer describes as inadequate replies to Leasehold Property Enquiries, he submits that this fee too is grossly excessive. He comments that when appointing Bruce Maunder Taylor

as Manager of Northwood Hall in September 2016 the then tribunal fixed the Manager's fee for providing such replies as follows: "An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £150 plus VAT payable by the outgoing Lessee. Such enquiries to be as to service charges and other matters relating to the management of the Premises and not, for the avoidance of doubt, to be concerned with the consents to assign, which shall be dealt with exclusively by Triplark Limited." He submits that £150 plus VAT would constitute a reasonable charge.

12. At the hearing, Mr Wismayer referred the tribunal to an example draft licence to assign produced by the Respondent that he had managed to obtain. He said that it was a very simple document to produce, that it would be on the Respondent's solicitors' system and therefore that it would take very little time to adapt to the assignment of this Lease. Equally, as regards the Respondent's solicitors' summary of what they needed to do in response to an application for licence to assign, the list of tasks did not look very time-consuming and therefore a charge of £1,500 plus VAT was manifestly excessive.
13. Mr Wismayer also made more detailed comments at the hearing regarding KMP's replies to enquiries, describing some replies as sketchy, unhelpful and/or vague and suggesting that the unhelpful nature of the replies was not mere incompetence but was deliberate. In his view the replies did not merit a fee at all or that – at most – they were only worth a much smaller fee.

### **Respondent's case**

14. In its own written submissions the Respondent also sets out a chronology of events, but it is unnecessary to set out this chronology in full as the differences between the parties focus not on what happened but as to how to interpret what happened. Reference will, though, be made to certain events/correspondence on which the Respondent places greater emphasis.
15. The Respondent states that it is trite law that that section 19(1) of the Landlord and Tenant Act 1927 provides an ability for a landlord to charge reasonable fees as a condition of granting its consent to an assignment of a lease: see e.g. *Holding and Management (Solitaire) Ltd v Norton [2012] UKUT 1 (LC)* and *Proxima GR Properties Ltd v McGhee [2014] UKUT 59 (LC)*.
16. The Respondent's primary position is that this application to the tribunal is premature and misconceived. To date, the Respondent has not received an application for consent to assign, and the Attorney has made it clear in correspondence that she has not made such an application on behalf of the Applicant. The Respondent's solicitors have stated that in order for such an application to be considered

information is needed as to the proposed assignee and an undertaking for their fees will need to be provided. The Respondent has raised no invoice and made no demand for payment from the Applicant and therefore no administration charge has been levied against her. The Respondent, through its solicitors, has repeatedly sought information from the Attorney as to this purported intended assignment, including basic details relating to the identity of the assignee, but this information has not been provided. The Attorney now contends that the application is urgent due to the risk that a sale of the Property may be lost, but she has failed to provide any evidence of such a sale or the identity of the proposed purchaser.

17. In the event that the tribunal decides that it has jurisdiction to deal with this application, the Respondent's secondary position is that the sums sought are entirely reasonable.
18. As regards KMP's fee, KMP initially requested the sum of £345 plus VAT but offered a reduction to £245 plus VAT for the reasons already stated above. The fee is a standard fee for dealing with replies to Leasehold Property Enquiries and is the only fee that is charged by KMP during a sale/assignment process. No fee is charged by KMP for the time involved in vetting the proposed assignee. The fee covers KMP's response to the 8-page Leasehold Property Enquiries form and also any subsequent enquiries raised of it during the remainder of the sale process, no matter how numerous. The Respondent notes that Mr Wismayer refers to a management order made by the then tribunal in 2016 when appointing Bruce Maunder Taylor as manager of the building and suggests that the fee of £150 plus VAT fixed by the tribunal in that case ought to be used as a guide here. However, the Respondent does not accept that the tribunal is bound by a management order made 4 years ago which was specific to an appointed manager and to the management plan submitted on his behalf.
19. As regards the solicitors' fees, the Respondent's solicitors sought an undertaking for their legal fees in the sum of £1,500 plus VAT (in addition to a £75 plus VAT registration fee). When contacted by a leaseholder seeking consent to assign a lease, the Respondent's solicitors carry out the following work: (a) corresponding with the Respondent and KMP to advise of the application, (b) corresponding with the leaseholder or their legal representative to ask for the items mentioned in the Applicant's statement of case, (c) reviewing references provided before passing them to the Respondent and KMP, (d) drafting and issuing the intended licence to assign, (e) if necessary, negotiating the terms of the licence to assign with the leaseholder/legal representative, (f) once the licence is agreed, arranging for engrossments and sending the documents to the leaseholder/legal representative to arrange for execution, (g) corresponding with KMP to establish the arrears position and, if arrears are present, corresponding with the leaseholder/legal representative to arrange clearance of those

arrears and (h) once the executed licence, costs and arrears are obtained, completing the licence and sending it out to the parties. An undertaking in costs is sought from the leaseholder at the stage at which the various documents and references are sought as the Respondent's solicitors are already incurring costs in dealing with the application, whether or not it is ultimately successful.

20. In the case of this building, the Respondent's solicitors' responsibilities are greater than usual. This is due to: (a) the heavy volume of litigation that has been instigated in relation to the building, especially by Mr Wismayer, (b) the Respondent's requirement that no individual should become a leaseholder of the building either legally or beneficially who they do not consider appropriate due to the long history of issues with the building and (c) the Respondent's desire to ensure that substantial arrears of service charge are discharged. In this case the Respondent's solicitors have had to correspond extensively with the Attorney in relation to this matter in an attempt to obtain the most basic of facts in relation to the purported intention to assign the lease such as the identity of the proposed assignee. The Attorney has been evasive and has refused to provide this information despite multiple requests to do so and has subsequently sought to claim that she has not made a formal application for consent to assign the lease. The Respondent's position is that the sums sought are entirely reasonable in the circumstances of dealing with the Applicant, through her representatives.
21. The Respondent notes that the Applicant's statement of case alleges that the Respondent has unreasonably withheld consent to an application to assign the lease. The Respondent comments that, firstly, this is not a matter which falls within the jurisdiction of the tribunal when determining whether an administration charge is payable and, secondly, as set out by the Attorney in correspondence, no application for consent to assign has been submitted and the Respondent cannot withhold consent to an application which does not exist.
22. At the hearing, Mr Stocks for the Respondent reiterated that, in his submission, for there to be a challengeable administration charge there first has to be a demand, and there has been no such demand. Initially the Respondent had thought that the Applicant was making an application for licence to assign, and it requested an undertaking for costs in the belief that such an application had been made. However, to the extent that an application was ever made, it was expressly withdrawn by the Attorney in correspondence.
23. As regards the other conclusions to be drawn from the correspondence between the parties, in response to the Respondent's solicitors' request for some standard information the Attorney provided no information and then later simply asserted (in her email of 9<sup>th</sup> March 2020) that the maximum that it would be reasonable for the Respondent's solicitors to charge was £300 inclusive of VAT. The Respondent's later refusal of

consent to the proposed assignment (to the extent that it was even being sought) was due to the Attorney's refusal to provide the information sought.

24. The letter from the Attorney stating that the Applicant was not seeking a licence to assign was dated 10<sup>th</sup> March 2020. A subsequent letter dated 16<sup>th</sup> March 2020 expressed a possible intention to seek a licence to assign, but then the Respondent's solicitors replied on 24<sup>th</sup> March 2020 emphasising the need to make a proper application if licence to assign was being sought.
25. As regards the Respondent's secondary position, namely that both sets of charges are reasonable, KMP's charge of £245 plus VAT was the only fee charged or intended to be charged by KMP and therefore any subsequent steps or work would have been included for free. Specifically as regards KMP's allegedly sketchy replies, there would have been no additional fee for clarification of those replies. There is also no evidence to support the Applicant's claim that KMP were trying to be – or had instructions to be – unhelpful. Furthermore, it is the case that KMP had only recently been appointed and that the building is a complicated one, and therefore it is not surprising that KMP may have had difficulty at the time with providing comprehensive answers. As regards the then tribunal's comments in relation to the appointment of Mr Maunder Taylor as manager in 2016, the First-tier Tribunal is not bound by previous decisions, that case is 4 years old, and there is no evidence as to what was said or agreed at that hearing.
26. Regarding the Respondent's solicitors' charges, Counsel for the Respondent emphasised the number of steps required and the amount of time potentially involved in considering an application for licence to assign and then dealing with it. He also suggested that Mr Wismayer had a vendetta against the Respondent and that – coupled with the amount of litigation that had already taken place in relation to the building – the Respondent had a legitimate concern as to the amount of time that would be needed to deal with this matter. In addition, he referred the tribunal to a previous decision involving this building and Mr Wismayer (Ref: LON/00AP/LAM/2016/0016) in which the then tribunal strongly criticised Mr Wismayer's manner, to the case in the Court of Appeal in *Charlotte Reiner, David Wismayer v Triplark Limited (2018) EWCA Civ 2151* which he submits shows how litigious Mr Wismayer is, and another decision involving this building and Mr Wismayer (Ref: LON/00AP/LVM/2019/0004) in which the then tribunal described Mr Wismayer as not being open-minded and as standing at one extreme of the polarised factions and in which it expressed itself to be very concerned about his attitude to other professionals.



### Follow-up comments by Mr Wismayer

27. Mr Wismayer denied having a vendetta against the Respondent and said that the Respondent perceived him as a troublemaker and on that basis felt that it was appropriate to charge a high fee.
28. In relation to the request for a solicitor's undertaking, Mr Wismayer said that it was not reasonable to expect the Applicant to provide the undertaking whilst believing the amount to be unreasonable on the basis that it could later challenge the cost at the First-tier Tribunal.

### Tribunal's analysis

29. The solicitors' fee and the managing agents' fee have both been challenged by the Applicant on the assumption that they are "variable administration charges" for the purposes of Schedule 11 to the 2002 Act.
30. Paragraph 1(1) of Schedule 11 to the 2002 Act defines an administration charge as follows:-

*In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—*

*(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,*

*(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,*

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

*(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

31. Paragraph 1(3) of Schedule 11 defines a **variable** administration charge as follows:-

*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.*

32. Paragraph 2 of Schedule 11 states that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

33. Paragraph 5(1) of Schedule 11 provides as follows:-

*An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—*

*(a) the person by whom it is payable,*

*(b) the person to whom it is payable,*

*(c) the amount which is payable,*

*(d) the date at or by which it is payable, and*

*(e) the manner in which it is payable.*

Paragraph 5(2) provides that *Sub-paragraph (1) [i.e. Paragraph 5(1) above] applies whether or not any payment has been made* and Paragraph 5(5) provides that *... the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

34. The Applicant argues that both of the charges which are the subject of this application are variable administration charges. We infer from the Applicant's written submissions that the Applicant considers the solicitors' fee to constitute an administration charge on the basis that it falls within Paragraph 1(1)(a) of Schedule 11, being "*an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly ... for or in connection with the grant of approvals under his lease, or applications for such approvals*". We also infer from the Applicant's written submissions that the Applicant considers the managing agents' fee to constitute an administration charge on the basis that it falls within Paragraph 1(1)(b) of Schedule 11, being "*an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly ... for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant*".

35. The Applicant submits that both charges are also **variable** administration charges because they fit the definition of variable

administration charge, each one being “an administration charge payable by a tenant which is neither— (a) specified in his [or her] lease, nor (b) calculated in accordance with a formula specified in his [or her] lease”.

#### The solicitors’ fees

36. In order to qualify as an administration charge for the purposes of Schedule 11 to the 2002 Act, the amount in question needs to be (amongst other things) “payable”: see the opening words of Paragraph 1(1) of Schedule 11.
37. In the present case, the Attorney wrote to the Respondent’s solicitors on 26<sup>th</sup> February 2020 asking for confirmation of the Respondent’s requirements in relation to the assignment of the Applicant’s lease. On 3<sup>rd</sup> March 2020 the Respondent’s solicitors replied with details of the information and the cost undertaking that would be required. The Attorney replied that same day requesting a draft of the licence to assign but not at that stage querying the amount of the cost undertaking (nor providing such undertaking).
38. On 4<sup>th</sup> March 2020 the Respondent’s solicitors replied stating that they first needed to receive the information and the cost undertaking requested but that once these were provided – and subject to the proposed assignee being approved – they anticipated being able to provide a draft licence at that stage. There then followed further correspondence in which the Attorney first objected to the Respondent’s solicitors’ refusal to provide a draft licence before receiving the cost undertaking and then challenged the level of the cost undertaking being sought. In response, the Respondent’s solicitors stood firm on both points.
39. In her email of 9<sup>th</sup> March 2020, the Attorney stated that if the Respondent was unwilling to alter its position she would make an application to the First-tier Tribunal. In response to that email, the Respondent’s solicitors wrote to the Attorney on the same day refusing consent to the proposed assignment on behalf of the Respondent on the basis that it had not been provided with even the identity of the proposed assignee.
40. The Attorney then wrote back to the Respondent’s solicitors on 10<sup>th</sup> March 2020 stating (amongst other things) as follows:-

*“I am mystified by your assertion that I have made what you describe as ‘an application for consent to assign the lease of the Premises’. I have done no such thing. I have instead sought your client’s replies to the form LPE1. Since I have not made any application, it follows that*

*your client's posturing is of no effect. To state the obvious, your client cannot refuse consent to a non-existent 'application'.*

Later in that same letter she added the following:-

*"I suggest to you that no reasonable person could construe this request as equivalent to making any form of application. I just want to see a draft copy of the Licence which I need in order to progress my mother's sale."*

41. The Attorney therefore expressly states in writing not merely that no application for a licence to assign is being made but also that no reasonable person could construe it as such. In addition, no invoice has been issued by the Respondent or its solicitors and no demand for payment has been made. All that has happened is that the Attorney has made some form of initial enquiry – albeit emphatically not an application – and that in response the Respondent's solicitors have said that if the Applicant through her Attorney wishes to proceed she will need to supply the information requested and to provide a solicitor's cost undertaking.
42. In the circumstances, we do not accept that the amount being challenged is actually "payable" for the purposes of Paragraph 1(1)(a) of Schedule 11 to the 2002 Act. The Applicant through her Attorney emphatically stated that she was not making an application, i.e. an "application for approval" within the meaning of Paragraph 1(1)(a), and the Applicant has failed to demonstrate any other basis on which the amount in question is payable in the absence of any invoice or demand.
43. Furthermore, unlike with service charges where an application can in certain circumstances be made in respect of a charge which is merely anticipated to become payable, there is no equivalent provision in Schedule 11 to the 2002 Act in relation to administration charges. In any event, it is hard to see on what basis the tribunal would be able to determine at this stage whether a charge of £1,500 plus VAT would be reasonable. The tribunal is not in a position to know whether the process would be quick and simple or slow and time-consuming, as the process has not even begun in any meaningful way with the Attorney having refused even to disclose identity of the proposed assignee. There could be genuine issues regarding the suitability of the proposed assignee, the quality of the information, non-payment of arrears, the negotiation of the form of licence or any other relevant matter.
44. We note Mr Wismayer's comments about the potential practical or tactical difficulties in deciding what to do when faced with a request for a cost undertaking. Whilst there are observations that could be made on those comments, the key point is that for the reasons given above we do not accept that the Applicant's challenge on this issue constitutes a

challenge to an administration charge for the purposes of Schedule 11 to the 2002 Act.

45. Accordingly, the tribunal does not have jurisdiction to make a determination on this issue.
46. For the sake of completeness, we would also add that it is not within the tribunal's jurisdiction to direct a landlord to provide a draft licence to assign to a leaseholder.

#### The managing agents' fees

47. The Respondent submits that the Applicant's application is premature in respect of both issues, and it appears that the Respondent's reasoning is the same in each case. However, in the case of the managing agent's fees the evidence indicates that payment of the sum of £294 was both sought and paid. In their email of 19<sup>th</sup> February 2020, KMP specified the amount payable and provided their bank details for the purpose of payment. In her statement of case the Applicant states that she duly paid this sum, and the Respondent has not challenged this factual point.
48. As the sum in question was both requested and paid it falls within the definition of an administration charge in Paragraph 1(1)(b) of Schedule 11 to the 2002 Act, being "*an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly ... for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant*". The question of whether the Applicant was applying for a licence to assign does not in our view affect this analysis.
49. Under Paragraph 1(3) of Schedule 11 the administration charge is a variable administration charge because it "*is neither— (a) specified in [the Applicant's] lease, nor (b) calculated in accordance with a formula specified in [the Applicant's] lease*". Under Paragraph 2 "*A variable administration charge is payable only to the extent that the amount of the charge is reasonable*" and under Paragraph 5(1) an application can be made to the tribunal (amongst other things) for a determination whether the charge is payable and, if so, the amount which is payable. Paragraph 5(2) provides that an application can be made "*whether or not any payment has been made*" and Paragraph 5(5) provides that "*... the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment*".
50. We do therefore have jurisdiction to make a determination in respect of the managing agents' fees. Mr Wismer submits that the charge of £245 plus VAT (£294 in total) is grossly excessive for what he

characterises as inadequate replies to Leasehold Property Enquiries. At the hearing he also described some of the replies as sketchy, unhelpful and/or vague and suggested that the unhelpful nature of the replies was not mere incompetence but was deliberate. He also commented that when appointing Bruce Maunder Taylor as Manager of Northwood Hall in September 2016 the then tribunal fixed the Manager's fee for providing such replies as no more than £150 plus VAT and submitted that this amount would constitute a reasonable charge in the present case.

51. The Respondent argues, as its secondary position, that the charges are reasonable in large part because KMP's charge of £245 plus VAT was the only fee charged by them and therefore any subsequent steps or work would have been included for free. It also argues that there is no evidence to support the Applicant's claim that KMP were trying to be unhelpful.
52. Looking at the replies to enquiries, we accept that a number of the replies are brief and/or quite general. The Applicant has, though, provided no evidence to support her contention that KMP was deliberately unhelpful or misleading or had instructions to be so. It is not uncommon for replies to enquiries to be quite cautious, particularly in a case such as this where new managing agents have recently taken over in relation to a building with a complex history, and it was open to the Applicant through her Attorney to press for more details and/or for further clarification. In addition, we note that the reduced fee of £245 plus VAT was the only fee intended to be charged in relation to this process and that therefore it was intended to include any other work such as the time involved in assessing the suitability of the proposed assignee if and when their identity became known.
53. As regards the previous tribunal's comments back in 2016 on the level of this sort of fee, first of all that case is 4 years old and normal inflationary pressures mean that it is not properly comparable. Secondly and perhaps more importantly, the context of that decision was a completely different one and there is no evidence before us as to the factors which formed the basis of the then tribunal's decision on that point.
54. In our view, on the evidence before us, £245 plus VAT is a reasonable charge for the replies to enquiries. It was open to the Applicant to seek further details or further clarification at no extra cost if she found any of the replies unhelpful, and there is no evidence that she sought to obtain clarification but was rebuffed by KMP.
55. Accordingly, the charge is payable in full by the Applicant.

## **Costs**

56. The Applicant has applied for an order under section 20C of the Landlord and Tenant Act 1985 *“that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable ...”*. In other words, they have applied for an order that the Respondent is not entitled to recover through the service charge any costs incurred in connection with these proceedings. The cost application is expressed to be in the event that the Applicant is successful in her main application.
57. The Applicant has been unsuccessful on both aspects of her main application and we do not consider that there is any proper basis for making a section 20C order. According the application for a section 20C order is refused.

**Name:** Judge P Korn

**Date:** 6<sup>th</sup> January 2021

## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.