FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AF/LSC/2021/0384**
HMCTS code	**:**	**Video**
Property	**:**	**1, Sanctuary Court, 65, Croydon Road, Penge, London. SE20 7TE**
Applicants	**:**	**Mr. Brian Chanter**
Representative	**:**	**In person**
Respondent	**:**	**Mrs. Judith Hannah Lawson**
Representative	**:**	**No appearance**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Prof R Percival** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	**:**	**14 September 2022** **Remote**
Date of Decision	**:**	**21 September 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2018/19 to 2020/21.

2. The relevant legal provisions are set out in the Appendix to this decision.

The property

3. Sanctuary Court is a brick built, purpose built three storey block of six flats.

The lease

4. The lease was granted in 1968, for a term of 125 years. Clause 2 contains the main lessee covenants, including that to pay a service charge in clause 2(3). That subclause sets out the expenditure which may be charged to the service charge, as well as the service charge mechanism. There is no provision for an interim or advance service charge in general (save for a fixed charge of £10, which, for obvious reasons, has fallen into desuetude). Clause 2(3)(II)(e), which relates to charges in relation to recurring expenditure, is quoted below (paragraph 21).

5. Clause 2(17) creates an administration charge in relation to the preparation and service of a notice under section 146 of the Law of Property Act 1925, and is quoted in paragraph 65 below.

The issues and the hearing

Procedural background

6. The application has a somewhat convoluted procedural history. Originally, directions were given by Judge Shepherd on 16 December 2021, and again by Judge Walker on 21 April 2022.

7. The matter first came before the Tribunal as currently constituted on 26 May 2022. The Tribunal had been listed to hear the application on that date. The Applicant failed, however, to produce a bundle in a state that would have allowed the hearing to proceed. We made further directions for the disposal of the application. Those including detailed directions as to the preparation of a paper bundle by the Applicant, and for a separate Respondent's bundle in response. Mr Davidoff of ABC Estates is identified in the directions as representing the Respondent.

8. The Applicant dutifully and fully complied with those directions. However, he delivered the Respondent's bundle to ABC Estates. By that time, the Respondent (who had previously declined to take part in the proceedings) had instructed Brady Solicitors, and, we were told, was now in dispute with ABC Estates. The latter, surprisingly, declined to pass the bundle on to Brady. In the absence of a bundle, the Respondent was unable to respond. This state of affairs only came to the attention of the Tribunal as currently constituted in the week beginning 5 September, when arrangements were made for the Respondent to receive the bundle. It was, however, too late for the Respondents to respond in time for the hearing date of 14 September, and accordingly we changed the listing to that for a case management hearing with a view to issuing further directions.

9. However, on 12 September, Brady emailed the Tribunal office to say that the Respondent intended to take no further part in proceedings and Brady were no longer instructed. This email was brought to the attention of the Tribunal minutes before the start of the hearing.

10. Given this communication, we asked Mr Chanter if he would agree to us hearing the substantive case on 14 September. He agreed, and we did.

11. Accordingly, Mr Chanter represented himself and the Respondent did not appear.

The hearing

12. In accordance with the directions, Mr Chanter had filled in the tenant's column of a Scott schedule. In the event, it was convenient to consider the application issue by issue, rather than year by year. The issues initially identified from the Scott schedule were:

    (i) The fee from the managing agents in 2018 for set up charges;

    (ii) Whether the lease provided for the building up of a reserve fund in the service charge;

    (iii) Electricity charges;

(iv) Insurance costs;

(v) Management charges for a period before notice was given to leaseholders in 2018;

(vi) Double charging of management fees;

(vii) Management charges and VAT

(viii) Whether the management contract(s) was a qualifying long term agreement;

(ix) Legal fees paid by the Applicant;

(x) Compensation for the Applicant; and

(xi) Applications under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2002 Act, and for reimbursement of fees.

13. However, when we came to the issues in relation to electricity charges, insurance costs and double charging of management fees, the costs involved were such that the Applicant withdrew his objections. We accordingly say no more about these issues.

Start-up management fees

14. Mr Chanter submitted that a start-up fee paid to the then new managing agents, ABC Estates, of £500 charged to the service charge was not reasonable. In the first place, the managing agent did not properly undertake a set up process. Secondly, the charge in any event was too high in amount.

15. In particular, Mr Chanter's evidence was that the managing agent had not been provided with a copy of his lease. The managing agents had asked Mr Chanter to provide one. He explained that doing so was difficult because the lease, being old, was on larger paper than was now standard. In response, the managing agent threatened to charge him Land Registry fees for securing a copy of the lease.

16. Further, Mr Chanter argued that £500 was evidently excessive for a block of the size and nature of Sanctuary Court.

17. We reject Mr Chanter's submissions. It was, no doubt, ill-advised and inappropriate of the managing agent to threaten the Applicant with the Land Registry fees (and far from obvious that the lease made provision for them to do so). But no charge was, in fact, made. Simply not being

in possession of a copy of the lease alone does not constitute inadequate performance of a start-up.

18. In terms of the sum required, applying the Tribunal's general knowledge of the market for leasehold management services in London (knowledge of a general nature not amenable to the disclosure of specific pieces of evidence), we do not consider that, without more, a start up fee of £500 can be said to be on its face excessive. It is in general acceptable for a start-up fee to be made of a freeholder, and for that fee to be passed on through the service charge, and there is a certain minimum cost of doing so. While the block is of moderate size, and without complicated plant such as lifts or boilers, £500 is not outside the reasonable range of charges.

19. *Decision*: The start-up fee charged by the managing agents and referable to the service charge was payable and reasonably incurred.

The reserve fund

20. Mr Chanter first submits that the words "reserve fund" do not occur anywhere in the lease. This is clearly correct. It is, however, not the end of the matter. The correspondence indicates (and Mr Chanter agrees) that the key question is whether clause 2(3)(II)(e) allows a reserve fund to be accumulated through the service charge.

21. That clause reads as follows:

> "the expression 'the expenses and outgoings incurred by the Lessor' as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and relates pro rate to the Flat"

22. Mr Chanter interpreted this clause to mean that the lessor could charge anticipated expenditure of a recurring nature *arising within* a year (the "year in question"), but not in respect of future years. He told us that he had been so advised by solicitors acting for him after he received a form of letter before action in respect of service charge arrears (see paragraph 52 below).

23. We do not consider this to be the proper interpretation of this clause (noting that it is a long single sentence which adopts a rather old fashioned and obscure drafting style).

24. The first part identifies a particular form of expenditure which is to be included within the term "the expenses and outgoings incurred by the Lessor", which means that it can be included in the service charge. The particular form of expenditure identified is "periodically recurring expenditure" (with the additional qualification in brackets). The timing of when such expenditure can be incurred is "whenever disbursed" and further includes "a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof". The "thereof" refers back to "periodically recurring expenditure". That particular description of expenditure is what the lessor (or managing agents) may "*allocate* to the year in question" (as being fair etc). By "allocate", the clause means that the lessor or managing agent can charge it to a particular year, but the expenditure itself is "recurring", and "disbursed whenever" – which includes in the future ("anticipated expenditure").

25. Accordingly, we conclude that this clause allows the Respondent to build up a fund for future expenditure which is within the description of the kinds of expenditure chargeable to the service charge, but which is of a recurring nature and which is anticipated to be needed in the future. It is reasonable to describe this fund as a "reserve fund", but there is no magic in such a title.

26. We conclude therefore that contributions to a reserve fund are payable in principle.

27. However, Mr Chanter before us also said that the amount collected was excessive. It seems clear from the documents provided by Mr Chanter that there have been no major works of the kind for which the reserve fund would have been built up during the currency of this dispute.

28. The sums collected for the block as a whole were £8,500 in 2018/19 and 2019/20, and £10,000 in 2020/21. Mr Chanter's contributions were £1,416 and £1,666 respectively.

29. We have not inspected the building, but have looked at the outside using Google street view. It is a simple brick building, probably built in the 1950s, with a pitched roof. Mr Chanter's evidence was there were no lifts or other large installations, such as communal boilers.

30. In assessing the reasonableness of the reserve fund demands, we have only the evidence given to us by Mr Chanter. On its face, applying the Tribunals general knowledge of the scale of service charges and reserve funds in London (knowledge of a general nature not amenable to the

disclosure of specific pieces of evidence), these are high sums for a property of this size, description and type.

31. The Respondent has made a decision not to take any part in these proceedings. We therefore do not have the benefit of any evidence from the Respondent as to whether there is a planned maintenance schedule in place, or specific major works have been planned, which might explain the sums claimed. Further, there is, in the papers provided by Mr Chanter, no explanation from the Respondent in the demands or final accounts, as to why these sums have been demanded. The Respondent is entitled to decide not to provide any assistance to the Tribunal in making such assessments, but if it does so, it is not for the Tribunal to speculate to fill the gap. The evidence before us is that provided by the Applicant.

32. We conclude that the reserve fund demands are beyond the reasonable range that can be justified on the basis of the evidence before us. A sum of £5,000 at most would have been reasonable in substitution for the first two years. We accept that some uplift may be justified in the third year in recognition of building cost inflation, and so substitute for that year £5,500. Mr Chanter's contribution is £833 in the first two years and £917 in the third.

33. *Decision:* (1) contributions towards a reserve fund are justified under clause 2(3)(II)(e) of the lease, and are in principle payable.

(2) the demands in respect of contributions to the reserve funds are not reasonable in amount. Reasonable demands of the Applicant would have been £833 in 2018/19 and 2019/20 and £917 in 2020/21.

Management charges before notice to leaseholders

34. Mr Chanter said that the managing agents' fees were charged from 4 May 2018, but ABC Estates only informed leaseholders that they were managing agents on 31 May 2018. He submitted that, as a result, the fees for the managing agent between those two dates could not be charged to the service charge.

35. We see no reason why the fees of the managing agent before they informed the leaseholders of their appointment should not, in principle, be charged to the service charge, and Mr Changer did not provide one. There was no challenge to the reasonableness of the charge on its own merits.

36. *Decision*: The service charge relating to the fee for the managing agents between 4 and 31 May 2018 is payable and reasonable in amount.

Management charges and VAT

37. Mr Chanter submitted that the element of the service charge representing VAT charged on the managing agent's fee was not payable. He produced (part of) HMRC VAT Notice 742, entitled Land and Property. This document states the following, under the heading "the basic position":

> "Service charges payable by a holder of a residential lease or tenancy are further payment for an exempt supply of an interest in land by the landlord to the leaseholder or tenant. …
>
> Landlords usually contract out the supply of goods and services they are contractually obliged to provide to an occupant. They will also allow a property management company, or someone similar to collect the periodic charges from the occupant on their behalf. This supply by the property management company or similar is a taxable supply to the landlord, not to the leaseholder or tenant.
>
> A property management company cannot treat supplies made direct to an occupant of a building (whether a leaseholder, tenant or freeholder) as exempt supplies"

38. Mr Chanter explained that he had been alerted to the issue when he consulted solicitors (see paragraph 52 below), and subsequently wrote the HMRC, who supplied him with the VAT Notice.

39. Mr Chanter submitted that the result of this approach was that the VAT charged by the managing agent to the Respondent could not be passed on to the leaseholder.

40. In the words of Martin Rodger QC, Deputy President of the Property Chamber, "[t]he VAT treatment of service charges is not straightforward and is not well understood". Judge Rodger so stated granting permission to appeal from the First-tier Tribunal to the Upper Tribunal in the case of *Ingram v Church Commissioners for England* [2015] UKUT 495, [2015] L&TR 6 (see paragraph [4] of the UT judgment).

41. The specific service provided in that case was the provision of staff (porters and others) to a development by a managing agent, and the charging of the cost of those staff, and certain on-costs, to the service charge. The principle, however, applies to any mandatory payment of a service charge in respect of a service provided by a lessor. The basic position is clearly stated in the headnote provided in the Landlord and Tenant Review report:

> "Where a lessor employs staff directly and passes the cost on to the lessees through the service charge, no VAT is payable on those costs but, where the same staff are employed by a managing agent who invoices the lessor for those services,

> VAT is payable on the costs that are passed on to the lessees through the service charge."

42. The VAT position in respect of the managing agent's own fees (as in this case) must be the same.

43. We note that another part of VAT Notice 742 was criticised as misleading by the Upper Tribunal in that case (see paragraph [43]). It seems to us that, even if less clearly misleading than the passage referred to by the Upper Tribunal, the text provided by the Applicant is also capable of being misleading, which is unfortunate.

44. *Decision*: The element of the service charge relating to VAT on the managing agent's fees is payable (and reasonable in amount).

Were the management contract(s) a qualifying long term agreement?

45. Mr Chanter argued that the contract of the managing agent had, in effect, been rolled over for a period for longer than 12 months, and was, accordingly, a qualifying long term agreement within the meaning of section 20ZA of the 1985 Act. The contract was therefore subject to the relevant consultation requirements of section 20, and the regulations made thereunder. No consultation had taken place, and, Mr Chanter submitted, therefore the statutory maximum contribution applied.

46. Mr Chanter cited *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102, [2018] HLR 36, and produced a brief analysis of the case found on a solicitor's website.

47. We did not have a copy of the contract or contracts between ABC Estates and the Respondent. Mr Chanter had corresponded with the managing agent about the nature of its contractual relationship. We did not, however, have the managing agent's side of the correspondence. What we did have was an email dated 5 November 2021 from Mr Chanter to the managing agent, which, Mr Chanter said, provided a summary of the content of the correspondence. Given the state of the evidence, it is this passage, addressed to the managing agent in an email from Mr Chanter, which provides all of the evidence available to us as the nature of the contractual relationship between the managing agent and the Respondent. We set it out in full here:

> "After much correspondence regarding the date of which your contract to manage the building related, including receiving information containing conflicting dates, finally on 14 August 2019 I received confirmation that the contract commenced 7 June 2018 and ended on 10 August 2018 … That a new contract commenced on 11 August 2018 and ran to 9 August 2019 and the contract was extended from 11 August 2019 to 9 August 2020."

48. In *Corvan Properties*, the relevant clause in the contract read "The contract period will be for a period of one year … and will continue thereafter until terminated upon three months' notice by either party". The Court of Appeal (upholding the Upper Tribunal and First-tier Tribunal) found that a contract in these terms was a contract for more than 12 months, and accordingly constituted a qualifying long term agreement.

49. The contract in *Corvan Properties* was a single contract which, the Court found, continued for a year *and then* for a further indefinite period (subject to a three month notice period for termination). There were no gaps in the contractual relationship, which lasted for more than 12 months.

50. By contrast, the account given in the passage from Mr Chanter's email above is clearly more consistent with a discontinuous series of contracts, deliberately designed to be (just) less than 12 months, no doubt to avoid the definition of a qualifying long term agreement in section 20ZA. In our judgement, it was successful in so doing.

51. *Decision*: the contractual relationship between the managing agent and the Respondent was a series of non-continuous contracts lasting less than 12 months, rather than a continuous, rolled-over contract, and was accordingly not a qualifying long term agreement.

Legal fees paid by the Applicant

52. On 16 April 2021, Brady Solicitors, on behalf of the Respondent, wrote a form of letter before action to the Applicant. It stated that Brady had been engaged to pursue a claim for breach of covenant in respect of service charge arrears. The letter said that, unless the breach was remedied, county court proceedings would be issued to obtain a final determination under section 81 of the Housing Act 1996, and thereafter, failing remedy, for forfeiture. The letter stated that the Applicant would be advised to seek independent legal advice.

53. The Applicant did so, engaging Thackray Williams solicitors, who provided some advice on his lease, as well as apparently dealing with the immediate dispute. In the result, Mr Chanter paid the arrears under protest, and (on Thackray Williams' advise) initiated this application.

54. Mr Chanter sought an order from us that Thackray Williams' fees of £1,142 should be paid by the Respondent.

55. We explained to Mr Chanter that we had no jurisdiction in respect of his liability to Thackray Williams for fees. Such fees were not a service charge or administration charge (section 27A of the 1985 Act, paragraph 5 of schedule 11 to the 2002 Act), and nor would they be legal costs "in bringing, defending or conducing proceedings" in this

Tribunal, and therefore amenable to an order for costs under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2).

Compensation for the Applicant

56. The Applicant sought compensation (in a moderate sum) for "stress/worry/strain and time" involved in the litigation.

57. We explained to the Applicant that we had no jurisdiction to order compensation.

Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A; and application for reimbursement of fees

58. The Applicant applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings. He also applied for an order that the Respondent reimburse his application and hearing fees under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13(2).

59. As a preliminary to considering whether to make the orders, Mr Chanter invited the Tribunal to consider whether legal costs were, in any event, recoverable either through the service charge or as an administration charge. We do so.

60. The matters chargeable to the service charge (except in respect of the reserve fund – see above) are set out in clause 2(3)(I)(a) to (f). Heads (a) to (d) deal with repairing etc obligations, cleaning and decoration, gardening and other physical issues. Head (e) is the insurance obligation.

61. Head (f) provides that the service charge covers "the costs and expenses incurred by the lessors in employing managing agents to manage the building and a firm of chartered accountants to prepare management accounts."

62. Head (f) is a narrow provision, relating specifically to the costs of only two categories of professionals – building managers and accountants. It does not include a catch-all phrase such as "professional advisors". On its face, it is difficult to see how it could possibly justify the employment of lawyers.

63. We do not accept that the concept of "managing" a building includes litigation to recover arrears. The most recent case on the recovery of legal costs through the service charge is *Kensquare Ltd v Boakye* [2021] EWCA Civ 1725; [2022] H.L.R. 26, in which the Court of Appeal reviewed a large number of authorities on the issue. In that case, the Court of Appeal was considering a significantly broader clause than here. That clause allowed recover of "the cost of employing such professional advisers and agents as shall be reasonably required in connection with the management of the building". The Court found that "the focus [of the clause] is on management services rather than litigation." To find otherwise would involve "'bringing within the general words of a service charge clause' something 'which does not clearly belong there'" (quoting another case, *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619).

64. As we note above, the covenant in this case is significantly narrower still than that in *Kensquare*. Accordingly, Mr Chanter's lease does not make provision for the recovery of legal costs through the service charge. It is therefore unnecessary for us to consider making an order under section 20C of the 1985 Act.

65. We turn to the question of whether legal costs can be recovered as an administration charge. The relevant covenant in the lease is the lessee's covenant in clause 2(17):

> "To pay the lessor all expenses (including solicitors' costs and surveyor's fees) incurred by the lessor incidental to the preparation and serving of a Notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court"

66. This is an example of a family of clauses relating to section 146 notices and/or proceedings which regularly appear in residential leases, and which have been the subject of a number of authorities. More recent even than *Kensquare* is the latest of these, *London Borough of Tower Hamlets v Khan* [2022] EWCA Civ 831. In that case, Newey LJ (who also gave the leading judgment in *Kensquare*), in reviewing previous cases, considered a number of different formulations of similar clauses and emphasised that "[r]egard must be had to the specific language which the parties have chosen to include in the particular lease". Some clauses refer to "proceedings" in relation to, or "the purposes of", a section 146 notice, and some include the "contemplation" of service of a notice, or proceedings, as well as costs "incidental" to preparation and service etc.

67. The clause in Mr Chanter's lease is at the narrowest end of the spectrum of section 146 clauses. It is limited to costs which are "incidental" to "the preparation and service" of the notice under section 146 itself. As such, it is not apt to include anything other than expenditure associated with drawing up and serving a notice. It does

not include broader proceedings, or the purposes of service, or the contemplation of service.

68. In *Tower Hamlets v Khan*, the Court said

> "the words 'incidental to' tend to suggest something subordinate. One of the meanings given to 'incidental' in the Oxford English Dictionary is '[s]uch as is incurred (in the execution of some plan or purpose) apart from the primary disbursements'. In the same vein, Arden LJ observed in *Contractreal* [*Contractreal Ltd v Davies* [2001] EWCA Civ 928] that 'the natural meaning of the word "incidental" is to denote a lesser or subordinate sum' and that, in the context of costs, the expression 'of and incidental to' 'has received a limited meaning'."

69. The clause under consideration in *Tower Hamlets v Khan* was a broader one than that in Mr Chanter's lease, but considering this element of the clause, the Court went on to say

> "In the present case … no section 146 notice has been served, and it is, I think, very much open to question whether costs of proceedings can be deemed 'incidental' to 'the preparation and service of' a section 146 notice when no such 'preparation' or 'service' has ever taken place. While costs can be incurred 'in contemplation of' the service of a section 146 notice without any such notice being prepared or served in the event, the extent to which costs can be considered 'incidental' to 'the preparation and service' of a notice which is never undertaken strikes me as much more doubtful."

70. It is evident from this that the legal costs of these proceedings are far too remote from the preparation and service of a section 146 notice to be charged against Mr Chanter as an administration charge under clause 2(17). Indeed, the legal costs of, for instance, the letter before action referred to in paragraph 52, or any proceedings that could have eventuated against Mr Chanter thereafter, up to the point of drafting and service of a section 146 notice, could not be charged under the clause.

71. We come to this conclusion for the reasons given above, without considering the impact of the fact that it is Mr Chanter, not Mrs Lawson, who is the applicant in these proceedings.

72. As a consequence, it is also unnecessary for us to consider making an order under paragraph 5A of schedule 11 to the 2002 Act, as there is no power in the lease for the Respondent to make an administration charge against Mr Chanter in relation to the legal costs of these proceedings.

73. Finally, we turn to the application for the reimbursement of the application and hearing costs.

74. It is common for a reimbursement application to follow the substance of the section 20C and paragraph 5A applications. For the reasons we give above, there is no need to determine those applications in this case. We approach the reimbursement application on a broadly similar basis, however – that the question for us is whether it is just and equitable in all the circumstances to make an order.

75. We note that Mr Chanter has not, for the most part, been successful before us. He has, however, had some success. In particular, we have reduced the reserve fund payments (while nonetheless finding them payable), and our conclusions in relation to the recovery of legal costs are in Mr Chanter's favour.

76. While the procedural history of the application has been unfortunate, we are persuaded that Mr Chanter has done his best under often difficult circumstances, and as an inexperienced litigant in person. He was realistic before us in abandoning some of his claims. The decision of the Respondent to refuse to take part in the proceedings is one open to her, but nonetheless is one that weighs in the balance when considering whether it is just and equitable to make an order.

77. Balancing these considerations, we consider that the just and equitable outcome is to order that the Respondent reimburse the Applicant half of the combined sum of the application and hearing fees.

78. *Decisions*:

(1) There is no provision in the lease for the Respondent to recover legal costs through the service charge. The Tribunal declines to consider whether an order under section 20C of the 1985 Act should be made on that basis.

(2) The Applicant is not liable to pay an administration charge in respect of litigation costs in respect of this application. The Tribunal declines to consider whether an order under paragraph 5A of schedule 11 to the 2002 Act should be made on that basis.

(3) under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2), the Tribunal orders that the Respondent reimburse half of the Applicant's application and hearing fees.

Rights of appeal

79. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.

80. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

81. If the application is not made within the 28 day time limit, the application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

82. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 21 September 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance , improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the 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.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in

determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court , residential property tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

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

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on [the appropriate tribunal]1 in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).