



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

Case Reference : **LON/00BK/LSC/2021/0198**

HMCTS code : **VIDEO VHS**

Property : **69, 70 and 78 Raynham, Norfolk
Crescent, W2 2PQ**

Applicants : **Raynham Freehold Company
Limited**

Representative : **Mr D Peachey of counsel**

Respondent : **(1) Mr Abdul Razak Dhamba
(2) Mrs Hajira Dhamba-Miller**

Representative : **Ms L Hicks of counsel**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Judge Prof R Percival
Mr S Johnson MRICS**

**Date and venue of
Hearing** : **10 and 24 January 2022
Remote**

Date of Decision : **16 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was VHS. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents are in a bundle of 90 pages, the contents of which have been noted.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount payable as interim service charges in September and December of the 2018/19 service charge year and the balancing charge at the end of that year for flats 69 and 70, and the interim service charge and year end balancing payment for the 2019/20 service charge year in respect of all three flats. The Applicant also seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of administration charges payable by the first Respondent in respect of legal costs incurred in 2019 in relation to flats 69 and 70.
2. Proceedings were originally issued in the County Court Money Claims Centre under claim number G32YJ809. The claim was transferred to the County Court at Central London on 18 June 2020. On 30 September 2020, the question as to the amount of service charges due was transferred by order of District Judge Worthington to the Tribunal.
3. The relevant legal provisions are set out in the Appendix to this decision.

The property

4. The flats are located in the building known as Raynham, Norfolk Crescent, a large block consisting of about 70 flats.
5. The block had been part of a larger estate, comprising two other, smaller blocks called Castleacre and Southacre, and eight houses. All of the blocks were enfranchised in 2014.

The lease

6. The leases of all three flats are for terms of 999 years, at a peppercorn rent. Those for flats 69 and 70 are dated September 2005, and that for flat 78 is dated June 2004.
7. The first Respondent owns the leasehold interest of flats 69 and 70. The leasehold interest in flat 78 is owned by both Respondents.
8. The leases of the flats are, relevantly, in the same terms (there are small differences to paragraph headings). The percentage contributions to the service charge differ, being 0.992% for flat 69, 1.491% for flat 70 and 0.266% for flat 78.
9. Paragraph 3 of the third schedule in the leases provides ((b)) that
“Section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962) shall apply to all notices required to be served under this Lease and shall be extended as follows:- ...

(b) any notice required or authorised by the said Act or any other Act or this Lease to be served shall be correctly served if it is sent by post in a stamped envelope addressed to the Lessee (or any one of them as aforesaid as the case may be) at the last known place of abode or business or registered office in the United Kingdom of such Lessee or at the address of the Demised Premises

AND proof of posting shall be proof of service”
10. Provision is made in the second schedule, paragraph 2 for the lessee to pay an estimated advance service charge by instalments on the usual quarter days, constituting the percentage given above of the lessor’s “outgoings” and “additional matters”, terms defined in the sixth schedule. There is provision for reconciliation. Specifically, according to subparagraph (a),
“if the actual cost (as determined in accordance with the provisions hereof and as certified by the Auditor (as defined in the Third Schedule to this Lease)) to the Lessor of the Outgoings shall for any period ending on the Service Charge Period Date in any year be in excess of the Surveyor's estimate thereof then the Lessee will immediately following service of a written demand from the Surveyor in that behalf pay to the Lessor an amount equal to the difference between the proportion as aforesaid of such actual cost and the further or additional rent already paid by the Lessee in respect of that period.”

11. The fifth schedule is headed “Further covenants by the Lessee” in all three leases. Paragraph 6 provides for the lessee to pay interest on arrears of four percent above the National Westminster Bank’s base rate on a day to day basis from the due date.
12. Paragraph 8 provides for an administration charge in respect of the costs
“in connection with or incidental to ... any notice served under Section 146 of the Law of Property Act 1925 or proceedings commenced thereunder notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the Court ...”.
13. Paragraph 9 makes provision for the lessees to take up one share in a management company, if called upon to do so by the lessor.
14. By paragraph 12 of the fifth schedule, the lessee covenants to
“Keep the Lessor fully indemnified from and against all damage damages losses costs expenses actions proceedings claims demands and liabilities suffered incurred by or made against the Lessor arising directly or indirectly out of
 - (a) any act omission or negligence of the Lessee or anyone on the Lessors' Property with the express or implied permission of the Lessee or
 - (b) any breach non-observance or non-performance by the Lessee of any of the covenants agreements or provisions on the part of the Lessee in this Lease.AND IT IS HEREBY AGREED that all sums due from the Lessee under or by virtue of this Clause or otherwise under the terms of this Lease shall be payable on demand and if not so paid shall be forthwith recoverable as a debt due to the Lessors.”

The issues and the hearing

15. Mr Peachey appeared for the Applicant. Ms Hicks appeared for both Respondents. The first Respondent is the father of the second. They live in flat 70. Where we refer hereunder to “the Respondent” in the singular, we mean the first Respondent.

Preliminary matters

16. We dealt with three preliminary matters.
17. First, we declined to receive a short email exchange that Mr Peachey argued was relevant to the interpretation of the ambit of a consent order (for which see below). The emails had been submitted to the

Tribunal and to the Respondent very late – the Friday before the hearing on a Monday – a delay which Mr Peachey was unable to justify, and Ms Hicks had not had the opportunity to consider whether she would seek to put in other elements of the correspondence, or indeed any other material relevant to the same issues.

18. Secondly, the terms of the transfer order from the County Court only referred to the transfer of issues relating to the service charge. Many of the matters in issue, however, related to administration charges. These had been fully argued in the papers before us. Both parties urged us to consider both service charge and administration matters. Mr Peachey argued that that must have been what the County Court judge had intended, and the narrower way in which it was drafted was a mere oversight.
19. We agreed that we should hear and determine the issues in respect of administration charges. We do so primarily in reliance on the approach to transfers indicated in *Cain v Islington Borough Council* [2015] UKUT 0117 (LC), [17], in which the Deputy President indicated that the Tribunal should take a practical, un-pedantic approach to the ambit of a transfer.
20. If, however, we are wrong to consider that the *Cain v Islington* approach is sufficiently broad to allow us to consider the administration charge issues, we would alternatively exercise our case management powers under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, Rule 6 to waive the requirement for a written application and all other formal requirements, and consider the administration charges as an application under Commonhold and Leasehold Reform Act, schedule 11, paragraph 5. Insofar as comity, or indeed abuse of process, would otherwise be an obstacle to us doing so, given the proceedings before the County Court, we consider such an objection would be cured by the point Mr Peachey makes as to the failure to transfer being merely a slip.
21. Finally, the principal Applicants' witness, Mr Unsdorfer, was unavoidably and at short notice unable to attend the hearing on 10 January 2022.
22. Mr Peachey urged that we should continue with the hearing, take account of Mr Unsdorfer's witness statement, and Ms Hicks could effectively redepoly such questions as she would have asked of Mr Unsdorfer to the Applicant's other witnesses, Mr Smith and Mr Moradoff.
23. Ms Hicks argued that Mr Unsdorfer's evidence was central and that she had prepared an extensive cross examination. It was open to the Applicant to apply for an adjournment, given Mr Unsdorfer's absence,

but if they did not, then we should disregard all of Mr Unsdorfer's witness statement.

24. We concluded that we should go ahead with the hearing, that Ms Hicks should, to the extent possible, redeploy her cross examination to the other witnesses, and that, following that, we would revisit the extent to which it had proved acceptable. In the event, we were unable to complete the hearing on 10 January. We reconvened on 24 January, when Mr Unsdorfer attended and was cross examined by Ms Hicks.

The issues

25. With the assistance of counsel, we determined that the issues before the Tribunal for determination were as follows:

- (i) Whether the relevant service charge demands had been properly served on the Respondents (flats 69 and 70);
- (ii) The status and coverage of a consent order between the parties dated 23 January 2020;
- (iii) The reasonableness of the service charges and administration charges;
- (iv) Whether credit had been given in the service charge account for previous payments; and
- (v) Whether orders should be made under section 20C of the 1985 Act paragraph 5A of schedule 11 to the 2002 Act.

26. We heard live evidence from Mr Smith, the finance manager of Parkgate Aspen ("PA"), the Applicant's managing agent; Mr Moradoff, PA's property manager responsible for the block; Mr Comport, of the Applicant's solicitors (Dale and Dale); and (on January 24) Mr Unsdorfer, a director of PA.

27. We heard a considerable body of factual evidence over the two days of the hearing. Rather than summarise the evidence of each witness in turn, it is more convenient and efficient to deal with our conclusions in relation to each of the issues identified above. Even where we have not expressly adverted to material in the bundles or to oral evidence, we have nonetheless taken account of all the evidence before us.

Whether the service charge demands were served (flats 69 and 70)

28. The Respondent's evidence was that he had not received any of the contested demands before copies were sent to his solicitors by Dale and Dale in June 2020, at the request of his solicitors, both in his witness statement and in his oral evidence in cross-examination.

29. It was agreed that the demands in respect of flat 78 were sent to flat 70 and received by the Respondents.
30. Both Mr Smith's and Mr Moradorff's evidence was that, initially, there was an instruction not to send flat 69 and 70 demands to the Respondent as a result of a dispute which resulted in a County Court claim, subsequently transferred to the Tribunal (see below). Where such a dispute was active, an account would be flagged as a "breach", so that further demands were not sent.
31. The evidence of both witnesses was that Mr Smith printed the demands and passed them to Mr Moradoff, who checked and posted them. In each case, the demands were not sent as part of the block demands to the other leaseholders, but received separate treatment because of the removal of the "breach" flags.
32. Following advice from the Dale and Dale, the flag on flats 69 was removed in September 2019, and as a result, on 10 September 2019, Mr Smith printed two demand, which Mr Moradoff checked and sent to the Respondent, which were exhibited to Mr Moradoff's witness statement. One related to advance service charges and contributions to the reserve fund in respect of flat 69 with due dates of 29 October 2019 and 25 December 2028, and the second to advance service charge and reserve fund contribution due on 29 October 2019.
33. In respect of flat 70, the flag was removed in early October, but the demand (and further demands in respect of flat 69) were delayed, as Dale and Dale had said that the next demands could include charges in relation to legal fees arising from the earlier dispute (ie – and this was in Mr Comport's evidence – by when the applications in respect of section 20C and paragraph 5A of schedule 11 to the 2004 Act were heard).
34. On 17 December 2019, therefore, four demands were sent in respect of flat 69, also exhibited to Mr Moradoff's witness statement. These covered legal, and in some cases "professional fees", due on various dates between July 2018 and 24 September 2019 (one of which was stated as relating to both flats), balancing charges in in respect the periods from 25 March 2017 to 24 March 2018 and 25 March 2018 to 24 March 2019, and interest on late payment due on 20 August 2019 and advance service charge and reserve fund contribution due on 25 December 2019.
35. On the same day, six demands were issued in respect of flat 70. These covered advance services charges and reserve fund contributions from 29 September 2018 to 25 December 2019, balancing charges in respect of the periods 25 March 2017 to 24 March 2018 and 25 March 2018 to 24 March 2019, legal and court fees with due dates from 2 July 2018 to

25 November 2019, and interest on late payment due on 4 October 2019.

36. In all cases, the demands were accompanied by the statutory statement of rights and obligations, according to the witnesses. The statements were exhibited.
37. The exhibited demands showed that, in each case, they were sent to the flat to which they related. Mr Smith said in cross-examination that that represented his instructions. Both Mr Smith and Mr Moradoff confirmed that they were aware that the Respondent lived in flat 70.
38. We do not understand the Respondent to be arguing that demands were, in fact, received, but the statutory statements of rights and obligations were omitted. Rather, Mr Dhamba's case was that nothing was received, until the demands (and statements) were sent to his then solicitors.
39. Paragraph 3(b) of the third schedule to the lease adopts the means of service in section 196 of the Law of Property Act 1925, and then expressly extends that to include not only service by way of recorded delivery, but also first class post. Further, it gives the lessee a choice of a number of addresses to use. These include the address of the demised property. As Mr Peachey submitted, therefore, if the demands were, in fact, sent by first class post to flats 69 and 70, service is thereby accomplished, even if it is the case that Mr Dharma did not receive the notices.
40. It is true that both Mr Smith and Mr Moradoff agreed that they personally knew that Mr Dhamba lived at flat 70. It is therefore reasonably arguable that flat 70 was his last address known to the Applicant, and so one of the other options for service in paragraph 3(b). However, Ms Hicks did not argue that there was a hierarchy in the alternative addresses provided by paragraph 3(b), and we do not read the extension in that way.
41. Both Mr Smith (indirectly) and Mr Moradorff (directly) gave evidence that the demands were posted. They both had a reason to specifically recall these demands, as they were served outwith the general bulk sending of the other demands. We accept their evidence as true.
42. The demands were therefore served in accordance with the lease, and we do not need to consider whether Mr Dhamba, as a matter of fact, received them, and we do not do so.
43. The Respondent also argued that the name of the Applicant was not properly set out in the documents. At times, the name was rendered as "Raynham Freehold Management Company Limited", "Raynham

Management Company Limited”, and just “Raynham”, rather than its proper name (Raynham Freehold Company Limited).

44. We had understood Ms Hicks to be relying on the use of these various names as a general, background point to illustrate what she claimed was a lack of transparency and clarity from the Respondent, and/or the unreliability of Mr Unschorfer. However, in her final submissions she made it clear that she submitted that this was an independent reason for us to find that the demands were not properly served.
45. Mr Smith agreed, in cross-examination, that a reference to “Raynham Management Company Limited” on the demands was an error. Mr Smith said that the title should have been “Raynham Freehold Management Company Limited”. It appeared as follows. At the top of each demand are three boxes across the page, the third box subdivided horizontally. The first box has the name and address of the leaseholder to whom it is directed. The second box specifically referred to the Landlord and Tenant Act 1987, sections 47 and 48, and states, correctly, that “your landlord is” the Applicant. The Third box is divided in two, horizontally. The top sub-box gives the address of the Applicant as the address for service. The lower sub-box states “Acting as agent for: Raynham Management Company Limited”. The body of the document provides the details of what we take to be PA’s client account for Raynham for payment.
46. As to the names, Mr Unschorfer’s evidence was that the Respondent (correctly identified as Raynham Freehold Company Limited) was composed of most of the leaseholders (including the Respondent), only excepting those who were not directly involved when the block was enfranchised. He said that while there were strictly speaking two companies involved with the block, the second, Raynham Freehold Management Company Limited, was in fact dormant.
47. In cross-examination, Mr Dhamba said he did not think that the demands came from someone other than the Respondent, but that he thought these documents should be perfect.
48. We reject this submission. In the first place, most of the incorrect or abbreviated names appear on invoices. This occasions no uncertainty. The very form of the Respondent’s objection is self-defeating – he clearly understood that each of the names that he identified related to the Applicant.
49. Secondly, as to the demands, the name and address of the landlord are correctly stated, and an address for service given. The fact that the third box includes a slightly inaccurate reference to a dormant company (as to which we accept Mr Unschorfer’s evidence) cannot possibly negative the correct details preceding it on the page.

50. In any event, even if there were a minor error in the name of the landlord, Mr Dhamba was quite clear that he did understand the demands to be from the Respondent, as a matter of fact. It was at all times clear to Mr Dhamba who he should pay, and how, and we do not need to consider the objective reasonable recipient test in respect of defects in contractual notices (*Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] A.C. 749).
51. *Decision:* The service charge and administration charges demands as exhibited to Mr Moradoff's witness statement were sent to the Respondent at flats 69 and 70, in respect of those flats, on 10 September and 17 December 2019.
52. During submissions at the conclusion of the evidence, the Tribunal mentioned section 20B of the 1985 Act in connection with the service of the demands. Ms Hick's appeared to the Tribunal to seek to adopt an argument in relation to section 20B at that point. Mr Peachey submitted that no argument in relation to section 20B had been adverted to in any of the papers, nor put in cross-examination of the Applicant's witnesses, and it was too late to raise such an argument at the end of the hearing.
53. We accept Mr Peachey's submissions as to whether it was possible to raise the issue at that time. If the issue had been raised timeously, it would have been necessary to hear evidence and/or submissions on when the relevant costs were incurred, whether there had been notices under section 20B(2), and the application of section 20B to advance service charge demands. We have therefore confined ourselves to a finding as to when the demands were made.

The status and coverage of the consent order (flats 69 and 70)

54. On 8 July 2019, the First-tier Tribunal (Judge Andrews and Mr Lewicki) published a decision relating to the service charge demands for flats 69 and 70 in respect of the service charge years 2012/13 to 2018/19. For the purposes of that decision, rather than relying on the Applicant's running accounts, the Tribunal ordered the Applicant to produce a schedule showing (inter alia) the service and administration charges for each year claimed (see paragraphs [11] and [12]). The Applicant was wholly successful. The action had been commenced by the Applicant in the County Court and referred to the Tribunal, and a County Court judgment followed (dated 22 October 2019). The same constitution of the Tribunal made a separate decision on the Respondent's applications for orders under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2004 Act, dated 3 December 2019, and declined the applications.
55. By a consent order dated 23 January 2020, the County Court judgment was set aside, and a sum to be paid by the Respondent to the Applicant (£12,941.42) was agreed. Paragraph 4 of the consent order reads "The

Defendant to pay the Claimant's costs agreed in the sum of £960.00 inclusive of VAT ...”.

56. The Respondent argues that the consent order amounts to a settlement or compromise of the earlier dispute, that it covered all advance service charges due during 2018/19, and that the provision as to legal costs included a settlement of the Applicant's contractual right to charge legal costs under the lease relating to the whole of the costs of that dispute.
57. The Applicant's response is that the consent order only covered the first two advance service charge demands of 2018/19, and the statement as to legal costs relates only to the costs of negotiating and drawing up the consent order itself.
58. There was some argument as to what the proper ambit of the submissions in relation to the consent argument were, Mr Peachey arguing that Ms Hicks' submissions at the hearing went further than previously. In particular, the proposition that the consent order was a compromise agreement had not been pleaded. In the event, we do not consider that we need to come to a general conclusion on the issue to come to our conclusions.
59. We consider that the argument that the consent order covered the second two advance service charge demands for the year 2018/19 to be misconceived, and can be dealt with briefly.
60. Ms Hicks claimed that the schedule prepared for the Tribunal's decision of 8 July 2019 indicated a figure for the service charges for the year 2018/19, and so, on its face, included the whole of that year. The information was set out in a table in that decision. We take the contrary conclusion from the table. It is evident from the figures themselves that those for each flat are very close to half that for the previous year (and the years before that had gone up in relatively stable and moderate increments). So the evidence from the schedule was clearly that the Tribunal considered that it was dealing only with the first two advance service charges. The schedule is particularly helpful in that the referral before the Tribunal was (as here) based on the Applicant's rolling accounts, which tended to disguise the exact periods under consideration.
61. That this is the correct conclusion is reinforced by the chronology of the previous dispute. The County Court claim was served on 30 July 2018, prior to the dates (in September and December) for the second two advance demands for the 2018/19 service charge year, so they could not possibly have been properly included. The Tribunal's decision, of course, relates to that which was claimed in the County Court proceedings.

62. It is true that each of the advance service charge demands in any year must be equal (second schedule, paragraph 2), so in finding that the first two charges for 2018/19 were reasonably incurred, the Tribunal was implicitly also finding that the second two would likewise be reasonably incurred. But that does not amount to a determination made by the Tribunal on that occasion, for the purposes of the process as to quantum that eventually led, via the County Court judgment, to the consent order.
63. As to the legal costs, for the Respondent, Ms Hicks submitted that the terms of the consent order itself was sufficient to satisfy us that it covered all legal costs incurred in respect of those proceedings.
64. Mr Peachey argued that there was no evidence that the Applicant had, indeed, compromised its contractual claim to legal costs.
65. We heard evidence from Mr Comport, the Applicant's solicitor, who practices as Dale and Dale. Mr Comport made it clear that it was his practice to always rely on collecting legal costs in respect of proceedings against leaseholders after the proceedings had concluded under the lease, rather than by way of the Court or Tribunal's costs jurisdictions. That was true of the earlier proceedings against the Respondent.
66. The sum included in the consent order was limited to that which had been expended on his services immediately preceding the consent order. He produced with his witness statement an invoice dated 25 November 2019, and said to relate to the period from 3 October to that date, amounting to £960.00, the amount featuring in the consent order for legal fees. The narrative explanation of the work undertaken supported Mr Comport's evidence that the consent order (excluding the this bill for legal fees) represented the outstanding arrears on the Respondent's service charge account, after various sums had been paid.
67. We accept Mr Comport's evidence, which accords with the available documents, in particular as to the sum included in the consent order and his explanation in the invoice. It is evident that the sum in the consent order for legal fees is much less than the full cost of legal fees that would have been incurred over the entirety of the proceedings, and there is nothing to suggest that it represents anything other than this particular invoice.
68. *Decision:* The consent order did not cover either of the second two advance payments for 2018/19, or legal fees chargeable to the Respondent under the terms of the lease except for the fees charged in the Dale and Dale invoice dated 25 November 2019 exhibited to Mr Comport's witness statement.

The reasonableness of the service charges and administration charges

69. The Respondents raised a number of issues in relation to the reasonableness of service charges, in the sense, at least purportedly, of a challenge to whether the *amount* of an expense referable to the service charge was reasonable. We set out those matters below, but we were aware of some indeterminacy, despite the volume of the bundles, as to what was still in issue at the end of the proceedings. It was also noteworthy that at no point did the Respondents suggest alternative figures that they considered reasonable.
70. First, Mr Peachey conceded a charge of £69 for telephone charges, for all three flats.
71. Secondly, in 2018, two flats previously used as porter's flats were let, with the result that the total of all service charges was (a little) more than 100%. Although initially it appeared that the Respondent wished to argue that this could have an effect on the amount chargeable to the Respondents, our understanding was that Ms Hicks accepted that the lease proportions in the Respondents' leases were determinative of their contributions. She did again refer to the issue in her closing submissions, but we understood that to be by way of a commentary on what she said was unclear evidence from the Applicant's witnesses.
72. Had Ms Hicks not conceded this point, we would have found for the Applicant. If the total service charge collected *were* in excess of 100%, there may be other remedies available, but the Respondents' liability would still be determined by what was stated in their leases. In fact, the evidence was that the over-provision was accommodated in the way in which the total service charge was calculated. In any event, the amounts concerned were so small that sustained consideration of them (even to the extent that we undertook) would be disproportionate. We calculated that, at most, the theoretical over-collection, if it occurred, would amount to 101.5214% for the block as a whole.
73. Thirdly, the Respondent argued that the costs for gardening were excessive. For the year ending in March 2020, the total cost to Raynham was £29,199. In his witness statement, the Respondent had complained that the houses on the wider estate were not contributing to the gardening costs, and that that was unfair.
74. Mr Unsdorfer had given evidence that, at the time of enfranchisement in 2014, responsibility for gardening costs had been split so that the two associated blocks paid 20.77% each, and the houses, together, paid 10.4%. Mr Unsdorfer mentioned that there had been a major refurbishment of the gardens during this period.
75. In the final form of Ms Hicks submissions in relation to gardening costs, she accepted the evidence of Mr Unsdorfer, and said that, as a result, the total cost of gardening must therefore have amounted to about £60,000. That, she argued, was a very high sum.

76. We do not accept the Respondents' arguments. In its initial form, we doubt whether, if it is the case that some other party has use of a facility but is not legally obliged to pay for it, that that alone is capable making an otherwise properly demanded service charge unreasonable in amount. As for its final form, the Respondents' submission was not backed up by any alternative quotations, or any evidence of what would have been an appropriate level of expenditure, or even any analysis of what had in fact been done. In those circumstances, we cannot find a wholly un-grounded plea that a sum is just too large sufficient, at least in context as large, complex and high status as this, to establish that a charge is unreasonable.
77. Fourthly, at least initially, the Respondents appeared to argue that the practice of the Applicant in respect of employing porters and using an employment agency was unreasonable. In the Respondent's witness statement, this objection really amounted to no more than a complaint that he had been given an inadequate information, and/or too much information, and a bare statement that the costs were excessive. My Unsдорfer in his witness statement explained that the Applicant employed seven porters directly, and only used an employment agency to cover holidays and sickness. In cross examination, he said that there were a small number of specialist employment agencies for porters in London, one of which was used by the Applicant. Porters in general earned about the London level of the national living wage.
78. We are not clear to what extent the Respondent persisted with this argument. It was not mentioned in Ms Hicks final submissions. In any event, in the light of Mr Unsдорfer's evidence, to which no effective challenge was made, the challenge is unsupportable. Mr Unsдорfer's explanation was clear and on its face reasonable, and no alternatives were provided.
79. Finally, the Respondent objected to not having been sent a copy of the final invoice for roof works which were the subject of a major works consultation under section 20 of the 1985 Act. In respect of that, Mr Unsдорfer's evidence was that, following the serving of the defence in the County Court proceedings which preceded these, the Respondent was sent a number of relevant invoices and surveyor's certificates. He was asked in cross-examination about a request for "a roof repairs section 20 notice", which he said he had not seen. There was no challenge to the section 20 procedure.
80. It is difficult for us to see these exchanges as possibly amounting to a challenge to the reasonableness of a service charge. There is, in substance, no challenge, except as to the provision of information, and it appears that that has been satisfied in any event. There is no possible basis for a finding of unreasonableness.

81. *Decision:* Save in respect of the concession in respect of the telephone charges, all relevant costs for service charge purposes were reasonably incurred.

Whether credit had been given in the service charge account for previous payments

82. The Respondent had made claims that certain historic payments were not credited to his accounts in respect of flats 69 and 70, and Mr Peachey cross examined him on some of them. We did not understand Ms Hicks to be persisting with these arguments in her final submissions. Had she done so, it was clear (as Mr Peachey put in his cross examination) that these matters had been determined in the 2019 Tribunal decision, and are no longer open to dispute (see [17] to [26]).
83. Ms Hicks did, however, argue that there had been failures to credit payments in respect of flat 78. The previous proceedings (including earlier proceeding in 2013 (19 December 2013 (LON/00BK/LSC/2013/0296; Miss Seifert sitting with Mrs Maloney and Packer) were only concerned with flats 69 and 70.
84. In the defence, the Respondents claimed failures to credit on two bases. The first was that there had been two payments made in respect of flat 78 in April 2008 (£213.58) and on 10 May 2010 (£1,122.36). Ms Hicks did not persist with this contention before us.
85. Ms Hicks did, however, press the second basis, relating to overpayments of service charge between 2004 and 2008. This came about because in 2014, the Applicant became aware that flat 78 had, in the previous period, been charged too much in service charges on the basis of an erroneous understanding of the contractual percentage (it appears the flat was charged at 0.4959% rather than 0.266%). As a result, the Applicant credited the second Respondent with the amount overcharged in the previous six years, to 2008, it appears on the basis that that represented what the Applicant considered to be the appropriate limitation period.
86. In his skeleton argument, Mr Peachey argued that the issue was res judicata as a result of being determined in the previous two Tribunal applications, but did not distinguish between the flat 69 and 70 issues and those in relation to flat 78. We accept the argument in respect of the former, but it does not apply in a direct sense to flat 78 (but see below).
87. Ms Hicks argued that the sums overcharged between 2004 and 2008 should also be credited. The figure given by the Respondent for the value of the overpayments was £5,459.16. She did not directly engage with the limitation issue.

88. In respect of limitation, as it applies to applications under section 27A, we respectfully agree with the statement of the law in Woodfall's Landlord and Tenant, that "[t]he Limitation Act 1980 does not apply to applications under s.27A" (paragraph 7.192.1). Woodfall cites *Cain v London Borough of Islington* [2015] UKUT 542, [2016] L & T R 13 for that proposition. We are aware that a contrary position has been argued (see for instance Tanfield Chambers, *Service Charges and Management*, 4th edition, paragraphs 32-02 to 32-04).
89. In *Cain*, HHJ Gerald (referring to both sections 8 and 19 of the Limitation Act 1980), said, at paragraph [34]:
- "The application to the F-tT is a claim for determination as to the reasonableness of the service charge made under s.27A of the 1985 Act. It is not a claim to recover rent or arrears or service charge (both brought by the landlord) or damages in respect thereof (brought by the tenant). If successful, it would result in a determination as to the reasonableness of the amounts claimed and nothing more."
90. This view expressed by the Upper Tribunal is general in its application, applying to both applications by a landlord and a tenant, and in our view clearly supports the proposition attributed to the case in Woodfall.
91. However, Mr Peachey argued that this was not a case in which there had simply been a running account since 2008, and the Respondent was making a case that he did not owe service charges demanded later because of an early overpayment. The Respondent agreed in cross examination that as a matter of fact, all payments in relation to flat 78 were made by him. In 2013 he had been pursued in bankruptcy. As a result, he made a payment of what he agreed he owed the Applicant. But on the Respondent's argument, he did not owe the element of that payment that represented the sum of the overpayment, and so paid that proportion without being under an obligation to do so. This, Mr Peachey argued, gave rise to a claim in restitution, which must have been evident by at least 2014, when the discovery as to the error in the percentage charged was made. So at this point he had a right to reclaim that sum. As a result, Mr Peachey concluded, it was an issue of restitution, not a determination under section 27A of the payability or reasonableness of a service charge, and as a result limitation runs.
92. Mr Peachey also submitted, in the alternative, that even though the two previous sets of proceedings, in 2013 and 2019 only dealt with flats 69 and 70, the Respondent could, and should, have raised the overpayment by way of set off. The fact that the proceedings themselves only related to those two flats did not mean he could not seek to set off the flat 78 overpayment. It might be argued (although Ms Hicks did not argue) that the Tribunal has a somewhat attenuated jurisdiction, or at least practice, in relation to set-off, such that a well advised litigant might be wary of relying on a set off claim that was not directly related

to the properties the subject of an application under section 27A. However, in both of these cases, the proceedings were started in the County Court and transferred to the Tribunal. It might well have been that such a set off would have been a good argument for the County Court not to transfer.

93. The Respondents claim that overpayments between 14 and 18 years ago should be taken into account now, in circumstances where overpayments of the same category were repaid in respect of 2008 to 2014. We conclude that they should not be permitted to do so. We do so in reliance on Mr Peachey's second submission. Whether or not the Respondents are strictly estopped from raising the issue when they failed to do so, at least in the 2019 proceedings, by way of set-off, we consider that, to do so now, would amount to an abuse of the process of the Tribunal.
94. Having so decided, we do not come to a conclusion on Mr Peachey's first argument.
95. *Decision:* The respondents are not entitled to claim overpayments of service charge from 2004 to 2008 against the service charges now owing.

Administration charges

96. For the avoidance of doubt, other than appear above, there were no independent challenges to the administration charges made by the Applicant against the respondent, in the light of which we find them reasonably incurred in amount. Despite the lack of any challenge to the recoverability of legal fees as administration charges under the leases, we did consider whether they were. We concluded that, in the light of *Kensquare Ltd v Boakye* [2021] EWCA Civ 1725, [2022] 1 P. & C.R. DG21, they were.
97. There was one adjustment to be made in respect of the administration charges, which Mr Peachey brought to our attention. The consent order included an issue fee of £3,845.05 for those proceedings, which had now been paid. That figure had also been included, in error, in the administration charges with which we were concerned, and now fell to be excluded. As a result, the fees to be charged for flats 69 and 70 were now both £5433.27. The issue fee had been divided unequally between the two flats according to their contribution to the service charge, but the other legal fees were divided equally (hence the same figure now for both flats). The amount to be taken off the claim in respect of flat 69 was £1,638.51, and in respect of flat 70, £2,206.54, corresponding to the double-charged service fee.

Applications for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A

98. The Respondent 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.
99. The 2019 decision found that legal costs were recoverable under the leases as service charges. In this case, all of the legal costs are sought to be recovered as administration charges. As noted above, there was no challenge on the basis that legal fees could not be recovered as administration charges under the lease, and we found above that they were payable and reasonably incurred.
100. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000)). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.
101. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.
102. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.
103. In this case, the Applicant has been wholly successful. We see no reason why it could be said that it was just and equitable to make the orders.
104. *Decision:* We refuse the applications to make orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Rights of appeal

105. 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.
106. 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.

107. 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.
108. 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.

The next steps

109. This matter should now be returned to the County Court.

Name: Tribunal Judge Professor Richard Percival **Date:** 16 May 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).