FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	CAM/00KF/LSC/2019/0008
Property	:	49A Hainault Avenue, Westcliff-on-Sea, Essex SS0 9HA
Applicant	:	Sandra O'Connor
Representative	:	In person
Respondents	:	Unipro Projects Limited
Representatives	:	Mr Matthew Feldman, of counsel, instructed by Messrs JB Leitch, solicitors
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	Mr Max Thorowgood, Mr Steve Moll and Mr John Francis
Venue	:	Southend Magistrates Court
Date of Decision	:	29 April 2019

DECISION

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The application

The Applicant seeks to challenge the reasonableness of the service charge which the Respondent has demanded in advance in respect of the period 2018/19.

Specifically, she challenges the following items identified by the Respondent in its budget:

- The insurance premium - £720.00.
- The proposed charge for enclosing the newly installed electricity meter within a fireproof cabinet - £410.00.
- The proposed charge in respect of a Health & Safety and Fire risk assessment - £186.00.
- The proposed charge in respect of an Asbestos survey - £234.00.
- The Managing Agent's charges in the total sum of £1,016.00 comprising: an Out of Hours service - £20.00; a management charge - £636.00; and accountancy fees - £360.00.

All of the above figures are inclusive of VAT.

The Applicant also seeks an order pursuant to s. 20C Landlord and Tenant Act 1985 that the Landlord should not be permitted to add its costs of this application to the service charge.

The subject premises

The Applicant is the lessee of the first floor flat in an end-terrace 2 storey house. The common parts, in addition to the main structures and the roof, are very limited: a small bin store forecourt area to the front and a small entrance porch beyond a double front door in which the electricity meter is located.

The Applicant's garden and the alleyway to the side of the building are demised to her. The garden of the ground floor flat is not demised but the landlord has recently agreed with the Applicant and her fellow lessee that they should assume responsibility for the maintenance of the garden and cleaning of the porch.

The Tribunal inspected the property on the morning of the hearing and this decision is informed by our observations on that occasion.

Procedural Background

Although not strictly part of the procedural background as such, the Tribunal read with considerable concern the correspondence passing between the Applicant and the Landlord's managing agent in the months leading up to the making of the application.

On 8th December 2018 Miss O'Connor wrote to introduce herself and asked for a breakdown of the service charge costs claimed and a summary of the relevant costs and receipts for the previous 12 months. She was told that in order to receive those documents she was obliged to complete a formal request pursuant to s. 21 Landlord & Tenant Act 1985. Despite the fact that Miss O'Connor was entitled to inspect those documents pursuant to paragraph 4.3 of Schedule 6 to her lease, she duly completed the s. 21 form as requested only then to be told that she had not completed the form correctly. No particulars of her alleged failures to complete the form correctly were given.

Miss O'Connor tried again saying that the agent was legally obliged to provide her with the information she had requested. Again, the agent's response was adamantine: the data was the landlord's and it would only be supplied if the requisite form was properly completed. Again the further information required was not identified. After then addressing Miss O'Connor's various points, Ms Baker then appeared to threaten[1] Miss O'Connor that if she did not desist in her enquiries she would be charged for dealing with her correspondence at the agent's hourly rate which was said to be £150.00 per hour plus VAT.

In her email to the agents of 28th January 2019 Miss O'Connor set out a coherent, detailed account of her attempts to achieve a satisfactory resolution of her queries and the agent's unhelpful responses which she said had driven her to the conclusion that the agent's only purpose had been to obstruct her attempts to make reasonable the service charge demand. That, she said, had driven her to make an application for the determination of the reasonableness of the charges.

The application was received by the Tribunal on 7th February 2019 and sent to the parties together with the Tribunal's directions on 7th February 2019. The directions called for the Respondent to file a statement justifying the disputed sums. Amongst other things, the Respondent was also ordered, when dealing with the question of the insurance premium, to set out the claims history, how the premiums are obtained and what commissions are paid and to whom.

The Respondents failed to comply with that order. The Applicant then proceeded to file and serve a short statement and bundle setting out her position clearly and succinctly and providing such supporting documentation as she was able.

Mr Feldman said on instructions that the application and directions had not been received by his client but our clerk confirmed that the papers had been sent. The Respondent's solicitor, Messrs JB Leitch, did file a Statement of Case

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but the only substantial point apparently made by it was the following startling proposition:

> "The Respondent will aver that the effect of the Set-Off Clause is to debar the Applicant from challenging the reasonableness of the sums to which this application relates."

We are glad to say that Mr Feldman did not attempt to advance this proposition before us in defence of his client's position. It should go without saying that this assertion involves a significant misapprehension as to the combined effects of ss. 21 and 27A Landlord & Tenant Act 1985.

It also served significant further documentation on 25th April 2019, including in particular: a letter from the Respondent's insurance broker setting out the differences between the policy obtained by the Respondent and that suggested by the Applicant, the Health and Safety survey which identified the need to box in the electricity meter and the two quotes obtained by the Respondent for that work. All highly material documents.

The final relevant procedural matter upon which we comment is the fact that the Respondent engaged Liverpool solicitors to deal with this matter and they engaged counsel of 1995 call to attend the hearing at which the issues were of the utmost simplicity. Neither of those decisions seems to us to be proportionate in any way to the nature of the matters in issue. It is also of a piece with the Respondent's agent's obstructive, unlawful approach to the handling of the Applicant's reasonable and lawful requests for documents and information pertaining to her service charge liability.

The challenged items

We remind ourselves that there is an evidential burden upon the Applicant as the challenger of the reasonableness of the service charges to show: Either, a) that the works/expenses incurred were not appropriate or properly incurred under the lease; Or, b) that they were not reasonable in amount.

The insurance premium – The premium claimed by the Respondent is £720.00, £16.00 more than the previous year. The quote obtained by Miss O'Connor is £483.89. However, the Respondent makes the points that it does not include public liability cover or the cost of alternative and/or loss of rent in the event of a claim requiring the property to be vacated. In addition, the policy is a personal rather than a commercial one which also does not cite the correct rebuild cost. In short, the Applicant's proposed alternative cover is not comparable and the Respondent is reasonably entitled to opt for more comprehensive cover albeit at a relatively significant additional cost.

It is worth, however, that the Respondent's refusal to provide Miss O'Connor with a copy of the detailed insurance schedule, to which she was entitled, deprived her of the opportunity to get a like for like quote.

The meter cupboard – The Health and Safety report commissioned by the Respondent in 2017 recommended that the electricity meters in the common hall/porch area be boxed into a 30 minute fire-rated cupboard as a matter of priority. That was not explained to Miss O'Connor by the agents and only emerged from the documents filed by the Respondent on 25th April 2019. Nevertheless, the report does cast doubt upon the view expressed in the letter provided to Miss O'Connor by EDF, the electricity supplier and the installer of the meter, that the supply did not need to be boxed in. It seems to us that the Respondent is reasonably entitled to act on the report of the Health and Safety expert it retained, indeed it could be exposed to a significant risk of liability if it did not. It obtained two quotes for the work and opted for the lower which seems to us to be reasonable in view of the fact that the cupboard will need to be custom built to fit the space.

Health & Safety and Fire Risk and Asbestos reports – The Applicant obtained a quote from NSUK for an Asbestos Survey and a Fire Risk Assessment in the total sum of £180.00 including VAT. The quote appeared to say that the asbestos survey would cost £180.00 and that the fire risk assessment would be thrown in for free. A Health & Safety risk assessment, however, was not included. The Respondent's costs were £186.00 for the Health and Safety Risk assessment and £234.00 for the asbestos survey. The Respondent's agent's representative, Mr Bunny, agreed that given the almost vanishingly small compass of the common parts exposed to the public it seems disproportionate to require a Health and Safety Risk Assessment to be performed every year and that every other year should suffice. However, since no inspection was done last year, one is required this year. We therefore allow £186.00 including VAT on this account.

So far as the Asbestos Survey is concerned, there did not seem to be any good reason not to accept the Applicant's proposed quote from NSUK and we therefore hold that the reasonable sum is £180.00 including VAT.

Management and accountancy fees - Management fees for 2017/18 were £816.00 including bookkeeping. The proposed charges for this year total £1,016.00, £636.00 management fee and £360.00 for accountancy services plus a £20.00 fee for an out of hours service. The increase is explained by the fact that Urban Life is now registered for VAT and a 3% increase in the fee itself which was provided for by what sounded like a QLTA between the Respondent and its agent but was said to be for a 364 day term renewable annually. The status of that agreement was not a matter before us for decision.

In view of the very limited scope of the common parts and consequently the agent's responsibilities as well as the fact that the agent has only to deal with two reasonable lessees, it is our view that the amount of the management charge is significantly too high. In our view, drawing in this respect upon the expertise of Mr Moll and Mr Francis, the reasonable amount is £450.00 plus VAT.

Similarly, we find it difficult to understand how the preparation of y/e accounts consisting of less than 10 items including the accountant's own fee could possibly justify a fee of £360.00. In our view, the work is readily capable of being performed by a junior bookkeeper. In our view, drawing again upon the experience of the surveyor members, the reasonable amount is £150.00 plus VAT.

S. 20C application

We understand and accept entirely that managing agents' time is not unlimited and that a point can be reached beyond which no further exposition or discussion is either useful or possible. Nevertheless, we take the view, for the reasons which we have expressed above in the section devoted to the Procedural History, that the Respondent's agent's response to the Applicant's reasonable requests for information for the purpose of challenging the reasonableness of the Respondent's proposed service charges is to be strongly deprecated.

In our view, the Respondent, by the manner of its agent's response to the Applicant's requests for information and documents to which she was fully entitled under the terms of her lease, never mind s. 21, is largely, if not entirely, the author of its own misfortune. Had it engaged constructively with the Applicant, who has acted reasonably, conscientiously and proportionately throughout, we believe these proceedings would have been avoided.

What is more, the manner in which the Respondent and its solicitors conducted themselves in their defence of the application was of a piece with and compounded their agent's initial errors. It further contributed to the need for a hearing; no doubt at considerable (probably disproportionate) cost to the Respondent.

For these reasons we grant the Applicant's application for an order that the Respondent's costs of these proceedings may not be included within any subsequent service charge payable by either the Applicant or her fellow lessee, James Wilkinson.

We have, in any event, been provided since the hearing with a complete copy of the Applicant's lease. The lease provides at clause 7 that the Applicant lessee is required to indemnify the Respondent against the costs and expenses of a number of operations none of which apparently applies to the circumstances of the current application. It therefore seems to us that the Respondent would not be entitled to recover the costs of these proceedings from the Applicant pursuant to her lease in any event.

APPENDIX 1- RIGHTS OF APPEAL

1. 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 Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such 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 such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Landlord and Tenant Act 1985 (as amended)

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.

20ZA. Consultation requirements: supplementary

(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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4. (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

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The Applicant's garden and the alleyway to the side of the building are demised to her. The garden of the ground floor flat is not demised but the landlord has recently agreed with the Applicant and her fellow lessee that they should assume responsibility for the maintenance of the garden and cleaning of the porch.

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In our view, the Respondent, by the manner of its agent's response to the Applicant's requests for information and documents to which she was fully entitled under the terms of her lease, never mind s. 21, is largely, if not entirely, the author of its own misfortune. Had it engaged constructively with the Applicant, who has acted reasonably, conscientiously and proportionately throughout, we believe these proceedings would have been avoided.

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For these reasons we grant the Applicant's application for an order that the Respondent's costs of these proceedings may not be included within any subsequent service charge payable by either the Applicant or her fellow lessee, James Wilkinson.

We have, in any event, been provided since the hearing with a complete copy of the Applicant's lease. The lease provides at clause 7 that the Applicant lessee is required to indemnify the Respondent against the costs and expenses of a number of operations none of which apparently applies to the circumstances of the current application. It therefore seems to us that the Respondent would not be entitled to recover the costs of these proceedings from the Applicant pursuant to her lease in any event.

APPENDIX 1- RIGHTS OF APPEAL

1. 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 Regional office which has been dealing with the case.

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

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4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Landlord and Tenant Act 1985 (as amended)

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

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(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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

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1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4. (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

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(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	CAM/00KF/LSC/2019/0008
Property	:	49A Hainault Avenue, Westcliff-on-Sea, Essex SS0 9HA
Applicant	:	Sandra O'Connor
Representative	:	In person
Respondents	:	Unipro Projects Limited
Representatives	:	Mr Matthew Feldman, of counsel, instructed by Messrs JB Leitch, solicitors
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	Mr Max Thorowgood, Mr Steve Moll and Mr John Francis
Venue	:	Southend Magistrates Court
Date of Decision	:	29 April 2019

DECISION

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The application

The Applicant seeks to challenge the reasonableness of the service charge which the Respondent has demanded in advance in respect of the period 2018/19.

Specifically, she challenges the following items identified by the Respondent in its budget:

- The insurance premium - £720.00.
- The proposed charge for enclosing the newly installed electricity meter within a fireproof cabinet - £410.00.
- The proposed charge in respect of a Health & Safety and Fire risk assessment - £186.00.
- The proposed charge in respect of an Asbestos survey - £234.00.
- The Managing Agent's charges in the total sum of £1,016.00 comprising: an Out of Hours service - £20.00; a management charge - £636.00; and accountancy fees - £360.00.

All of the above figures are inclusive of VAT.

The Applicant also seeks an order pursuant to s. 20C Landlord and Tenant Act 1985 that the Landlord should not be permitted to add its costs of this application to the service charge.

The subject premises

The Applicant is the lessee of the first floor flat in an end-terrace 2 storey house. The common parts, in addition to the main structures and the roof, are very limited: a small bin store forecourt area to the front and a small entrance porch beyond a double front door in which the electricity meter is located.

The Applicant's garden and the alleyway to the side of the building are demised to her. The garden of the ground floor flat is not demised but the landlord has recently agreed with the Applicant and her fellow lessee that they should assume responsibility for the maintenance of the garden and cleaning of the porch.

The Tribunal inspected the property on the morning of the hearing and this decision is informed by our observations on that occasion.

Procedural Background

Although not strictly part of the procedural background as such, the Tribunal read with considerable concern the correspondence passing between the Applicant and the Landlord's managing agent in the months leading up to the making of the application.

On 8th December 2018 Miss O'Connor wrote to introduce herself and asked for a breakdown of the service charge costs claimed and a summary of the relevant costs and receipts for the previous 12 months. She was told that in order to receive those documents she was obliged to complete a formal request pursuant to s. 21 Landlord & Tenant Act 1985. Despite the fact that Miss O'Connor was entitled to inspect those documents pursuant to paragraph 4.3 of Schedule 6 to her lease, she duly completed the s. 21 form as requested only then to be told that she had not completed the form correctly. No particulars of her alleged failures to complete the form correctly were given.

Miss O'Connor tried again saying that the agent was legally obliged to provide her with the information she had requested. Again, the agent's response was adamantine: the data was the landlord's and it would only be supplied if the requisite form was properly completed. Again the further information required was not identified. After then addressing Miss O'Connor's various points, Ms Baker then appeared to threaten[1] Miss O'Connor that if she did not desist in her enquiries she would be charged for dealing with her correspondence at the agent's hourly rate which was said to be £150.00 per hour plus VAT.

In her email to the agents of 28th January 2019 Miss O'Connor set out a coherent, detailed account of her attempts to achieve a satisfactory resolution of her queries and the agent's unhelpful responses which she said had driven her to the conclusion that the agent's only purpose had been to obstruct her attempts to make reasonable the service charge demand. That, she said, had driven her to make an application for the determination of the reasonableness of the charges.

The application was received by the Tribunal on 7th February 2019 and sent to the parties together with the Tribunal's directions on 7th February 2019. The directions called for the Respondent to file a statement justifying the disputed sums. Amongst other things, the Respondent was also ordered, when dealing with the question of the insurance premium, to set out the claims history, how the premiums are obtained and what commissions are paid and to whom.

The Respondents failed to comply with that order. The Applicant then proceeded to file and serve a short statement and bundle setting out her position clearly and succinctly and providing such supporting documentation as she was able.

Mr Feldman said on instructions that the application and directions had not been received by his client but our clerk confirmed that the papers had been sent. The Respondent's solicitor, Messrs JB Leitch, did file a Statement of Case

[1] The word which Mr Hellman, in our view correctly, used to describe the import of the particular sentence in Ms Baker's email

but the only substantial point apparently made by it was the following startling proposition:

> "The Respondent will aver that the effect of the Set-Off Clause is to debar the Applicant from challenging the reasonableness of the sums to which this application relates."

We are glad to say that Mr Feldman did not attempt to advance this proposition before us in defence of his client's position. It should go without saying that this assertion involves a significant misapprehension as to the combined effects of ss. 21 and 27A Landlord & Tenant Act 1985.

It also served significant further documentation on 25th April 2019, including in particular: a letter from the Respondent's insurance broker setting out the differences between the policy obtained by the Respondent and that suggested by the Applicant, the Health and Safety survey which identified the need to box in the electricity meter and the two quotes obtained by the Respondent for that work. All highly material documents.

The final relevant procedural matter upon which we comment is the fact that the Respondent engaged Liverpool solicitors to deal with this matter and they engaged counsel of 1995 call to attend the hearing at which the issues were of the utmost simplicity. Neither of those decisions seems to us to be proportionate in any way to the nature of the matters in issue. It is also of a piece with the Respondent's agent's obstructive, unlawful approach to the handling of the Applicant's reasonable and lawful requests for documents and information pertaining to her service charge liability.

The challenged items

We remind ourselves that there is an evidential burden upon the Applicant as the challenger of the reasonableness of the service charges to show: Either, a) that the works/expenses incurred were not appropriate or properly incurred under the lease; Or, b) that they were not reasonable in amount.

The insurance premium – The premium claimed by the Respondent is £720.00, £16.00 more than the previous year. The quote obtained by Miss O'Connor is £483.89. However, the Respondent makes the points that it does not include public liability cover or the cost of alternative and/or loss of rent in the event of a claim requiring the property to be vacated. In addition, the policy is a personal rather than a commercial one which also does not cite the correct rebuild cost. In short, the Applicant's proposed alternative cover is not comparable and the Respondent is reasonably entitled to opt for more comprehensive cover albeit at a relatively significant additional cost.

It is worth, however, that the Respondent's refusal to provide Miss O'Connor with a copy of the detailed insurance schedule, to which she was entitled, deprived her of the opportunity to get a like for like quote.

The meter cupboard – The Health and Safety report commissioned by the Respondent in 2017 recommended that the electricity meters in the common hall/porch area be boxed into a 30 minute fire-rated cupboard as a matter of priority. That was not explained to Miss O'Connor by the agents and only emerged from the documents filed by the Respondent on 25th April 2019. Nevertheless, the report does cast doubt upon the view expressed in the letter provided to Miss O'Connor by EDF, the electricity supplier and the installer of the meter, that the supply did not need to be boxed in. It seems to us that the Respondent is reasonably entitled to act on the report of the Health and Safety expert it retained, indeed it could be exposed to a significant risk of liability if it did not. It obtained two quotes for the work and opted for the lower which seems to us to be reasonable in view of the fact that the cupboard will need to be custom built to fit the space.

Health & Safety and Fire Risk and Asbestos reports – The Applicant obtained a quote from NSUK for an Asbestos Survey and a Fire Risk Assessment in the total sum of £180.00 including VAT. The quote appeared to say that the asbestos survey would cost £180.00 and that the fire risk assessment would be thrown in for free. A Health & Safety risk assessment, however, was not included. The Respondent's costs were £186.00 for the Health and Safety Risk assessment and £234.00 for the asbestos survey. The Respondent's agent's representative, Mr Bunny, agreed that given the almost vanishingly small compass of the common parts exposed to the public it seems disproportionate to require a Health and Safety Risk Assessment to be performed every year and that every other year should suffice. However, since no inspection was done last year, one is required this year. We therefore allow £186.00 including VAT on this account.

So far as the Asbestos Survey is concerned, there did not seem to be any good reason not to accept the Applicant's proposed quote from NSUK and we therefore hold that the reasonable sum is £180.00 including VAT.

Management and accountancy fees - Management fees for 2017/18 were £816.00 including bookkeeping. The proposed charges for this year total £1,016.00, £636.00 management fee and £360.00 for accountancy services plus a £20.00 fee for an out of hours service. The increase is explained by the fact that Urban Life is now registered for VAT and a 3% increase in the fee itself which was provided for by what sounded like a QLTA between the Respondent and its agent but was said to be for a 364 day term renewable annually. The status of that agreement was not a matter before us for decision.

In view of the very limited scope of the common parts and consequently the agent's responsibilities as well as the fact that the agent has only to deal with two reasonable lessees, it is our view that the amount of the management charge is significantly too high. In our view, drawing in this respect upon the expertise of Mr Moll and Mr Francis, the reasonable amount is £450.00 plus VAT.

Similarly, we find it difficult to understand how the preparation of y/e accounts consisting of less than 10 items including the accountant's own fee could possibly justify a fee of £360.00. In our view, the work is readily capable of being performed by a junior bookkeeper. In our view, drawing again upon the experience of the surveyor members, the reasonable amount is £150.00 plus VAT.

S. 20C application

We understand and accept entirely that managing agents' time is not unlimited and that a point can be reached beyond which no further exposition or discussion is either useful or possible. Nevertheless, we take the view, for the reasons which we have expressed above in the section devoted to the Procedural History, that the Respondent's agent's response to the Applicant's reasonable requests for information for the purpose of challenging the reasonableness of the Respondent's proposed service charges is to be strongly deprecated.

In our view, the Respondent, by the manner of its agent's response to the Applicant's requests for information and documents to which she was fully entitled under the terms of her lease, never mind s. 21, is largely, if not entirely, the author of its own misfortune. Had it engaged constructively with the Applicant, who has acted reasonably, conscientiously and proportionately throughout, we believe these proceedings would have been avoided.

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For these reasons we grant the Applicant's application for an order that the Respondent's costs of these proceedings may not be included within any subsequent service charge payable by either the Applicant or her fellow lessee, James Wilkinson.

We have, in any event, been provided since the hearing with a complete copy of the Applicant's lease. The lease provides at clause 7 that the Applicant lessee is required to indemnify the Respondent against the costs and expenses of a number of operations none of which apparently applies to the circumstances of the current application. It therefore seems to us that the Respondent would not be entitled to recover the costs of these proceedings from the Applicant pursuant to her lease in any event.

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(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

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(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

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(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

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PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	CAM/00KF/LSC/2019/0008
Property	:	49A Hainault Avenue, Westcliff-on-Sea, Essex SS0 9HA
Applicant	:	Sandra O'Connor
Representative	:	In person
Respondents	:	Unipro Projects Limited
Representatives	:	Mr Matthew Feldman, of counsel, instructed by Messrs JB Leitch, solicitors
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	Mr Max Thorowgood, Mr Steve Moll and Mr John Francis
Venue	:	Southend Magistrates Court
Date of Decision	:	29 April 2019

DECISION

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The application

The Applicant seeks to challenge the reasonableness of the service charge which the Respondent has demanded in advance in respect of the period 2018/19.

Specifically, she challenges the following items identified by the Respondent in its budget:

- The insurance premium - £720.00.
- The proposed charge for enclosing the newly installed electricity meter within a fireproof cabinet - £410.00.
- The proposed charge in respect of a Health & Safety and Fire risk assessment - £186.00.
- The proposed charge in respect of an Asbestos survey - £234.00.
- The Managing Agent's charges in the total sum of £1,016.00 comprising: an Out of Hours service - £20.00; a management charge - £636.00; and accountancy fees - £360.00.

All of the above figures are inclusive of VAT.

The Applicant also seeks an order pursuant to s. 20C Landlord and Tenant Act 1985 that the Landlord should not be permitted to add its costs of this application to the service charge.

The subject premises

The Applicant is the lessee of the first floor flat in an end-terrace 2 storey house. The common parts, in addition to the main structures and the roof, are very limited: a small bin store forecourt area to the front and a small entrance porch beyond a double front door in which the electricity meter is located.

The Applicant's garden and the alleyway to the side of the building are demised to her. The garden of the ground floor flat is not demised but the landlord has recently agreed with the Applicant and her fellow lessee that they should assume responsibility for the maintenance of the garden and cleaning of the porch.

The Tribunal inspected the property on the morning of the hearing and this decision is informed by our observations on that occasion.

Procedural Background

Although not strictly part of the procedural background as such, the Tribunal read with considerable concern the correspondence passing between the Applicant and the Landlord's managing agent in the months leading up to the making of the application.

On 8th December 2018 Miss O'Connor wrote to introduce herself and asked for a breakdown of the service charge costs claimed and a summary of the relevant costs and receipts for the previous 12 months. She was told that in order to receive those documents she was obliged to complete a formal request pursuant to s. 21 Landlord & Tenant Act 1985. Despite the fact that Miss O'Connor was entitled to inspect those documents pursuant to paragraph 4.3 of Schedule 6 to her lease, she duly completed the s. 21 form as requested only then to be told that she had not completed the form correctly. No particulars of her alleged failures to complete the form correctly were given.

Miss O'Connor tried again saying that the agent was legally obliged to provide her with the information she had requested. Again, the agent's response was adamantine: the data was the landlord's and it would only be supplied if the requisite form was properly completed. Again the further information required was not identified. After then addressing Miss O'Connor's various points, Ms Baker then appeared to threaten[1] Miss O'Connor that if she did not desist in her enquiries she would be charged for dealing with her correspondence at the agent's hourly rate which was said to be £150.00 per hour plus VAT.

In her email to the agents of 28th January 2019 Miss O'Connor set out a coherent, detailed account of her attempts to achieve a satisfactory resolution of her queries and the agent's unhelpful responses which she said had driven her to the conclusion that the agent's only purpose had been to obstruct her attempts to make reasonable the service charge demand. That, she said, had driven her to make an application for the determination of the reasonableness of the charges.

The application was received by the Tribunal on 7th February 2019 and sent to the parties together with the Tribunal's directions on 7th February 2019. The directions called for the Respondent to file a statement justifying the disputed sums. Amongst other things, the Respondent was also ordered, when dealing with the question of the insurance premium, to set out the claims history, how the premiums are obtained and what commissions are paid and to whom.

The Respondents failed to comply with that order. The Applicant then proceeded to file and serve a short statement and bundle setting out her position clearly and succinctly and providing such supporting documentation as she was able.

Mr Feldman said on instructions that the application and directions had not been received by his client but our clerk confirmed that the papers had been sent. The Respondent's solicitor, Messrs JB Leitch, did file a Statement of Case

[1] The word which Mr Hellman, in our view correctly, used to describe the import of the particular sentence in Ms Baker's email

but the only substantial point apparently made by it was the following startling proposition:

> "The Respondent will aver that the effect of the Set-Off Clause is to debar the Applicant from challenging the reasonableness of the sums to which this application relates."

We are glad to say that Mr Feldman did not attempt to advance this proposition before us in defence of his client's position. It should go without saying that this assertion involves a significant misapprehension as to the combined effects of ss. 21 and 27A Landlord & Tenant Act 1985.

It also served significant further documentation on 25th April 2019, including in particular: a letter from the Respondent's insurance broker setting out the differences between the policy obtained by the Respondent and that suggested by the Applicant, the Health and Safety survey which identified the need to box in the electricity meter and the two quotes obtained by the Respondent for that work. All highly material documents.

The final relevant procedural matter upon which we comment is the fact that the Respondent engaged Liverpool solicitors to deal with this matter and they engaged counsel of 1995 call to attend the hearing at which the issues were of the utmost simplicity. Neither of those decisions seems to us to be proportionate in any way to the nature of the matters in issue. It is also of a piece with the Respondent's agent's obstructive, unlawful approach to the handling of the Applicant's reasonable and lawful requests for documents and information pertaining to her service charge liability.

The challenged items

We remind ourselves that there is an evidential burden upon the Applicant as the challenger of the reasonableness of the service charges to show: Either, a) that the works/expenses incurred were not appropriate or properly incurred under the lease; Or, b) that they were not reasonable in amount.

The insurance premium – The premium claimed by the Respondent is £720.00, £16.00 more than the previous year. The quote obtained by Miss O'Connor is £483.89. However, the Respondent makes the points that it does not include public liability cover or the cost of alternative and/or loss of rent in the event of a claim requiring the property to be vacated. In addition, the policy is a personal rather than a commercial one which also does not cite the correct rebuild cost. In short, the Applicant's proposed alternative cover is not comparable and the Respondent is reasonably entitled to opt for more comprehensive cover albeit at a relatively significant additional cost.

It is worth, however, that the Respondent's refusal to provide Miss O'Connor with a copy of the detailed insurance schedule, to which she was entitled, deprived her of the opportunity to get a like for like quote.

The meter cupboard – The Health and Safety report commissioned by the Respondent in 2017 recommended that the electricity meters in the common hall/porch area be boxed into a 30 minute fire-rated cupboard as a matter of priority. That was not explained to Miss O'Connor by the agents and only emerged from the documents filed by the Respondent on 25th April 2019. Nevertheless, the report does cast doubt upon the view expressed in the letter provided to Miss O'Connor by EDF, the electricity supplier and the installer of the meter, that the supply did not need to be boxed in. It seems to us that the Respondent is reasonably entitled to act on the report of the Health and Safety expert it retained, indeed it could be exposed to a significant risk of liability if it did not. It obtained two quotes for the work and opted for the lower which seems to us to be reasonable in view of the fact that the cupboard will need to be custom built to fit the space.

Health & Safety and Fire Risk and Asbestos reports – The Applicant obtained a quote from NSUK for an Asbestos Survey and a Fire Risk Assessment in the total sum of £180.00 including VAT. The quote appeared to say that the asbestos survey would cost £180.00 and that the fire risk assessment would be thrown in for free. A Health & Safety risk assessment, however, was not included. The Respondent's costs were £186.00 for the Health and Safety Risk assessment and £234.00 for the asbestos survey. The Respondent's agent's representative, Mr Bunny, agreed that given the almost vanishingly small compass of the common parts exposed to the public it seems disproportionate to require a Health and Safety Risk Assessment to be performed every year and that every other year should suffice. However, since no inspection was done last year, one is required this year. We therefore allow £186.00 including VAT on this account.

So far as the Asbestos Survey is concerned, there did not seem to be any good reason not to accept the Applicant's proposed quote from NSUK and we therefore hold that the reasonable sum is £180.00 including VAT.

Management and accountancy fees - Management fees for 2017/18 were £816.00 including bookkeeping. The proposed charges for this year total £1,016.00, £636.00 management fee and £360.00 for accountancy services plus a £20.00 fee for an out of hours service. The increase is explained by the fact that Urban Life is now registered for VAT and a 3% increase in the fee itself which was provided for by what sounded like a QLTA between the Respondent and its agent but was said to be for a 364 day term renewable annually. The status of that agreement was not a matter before us for decision.

In view of the very limited scope of the common parts and consequently the agent's responsibilities as well as the fact that the agent has only to deal with two reasonable lessees, it is our view that the amount of the management charge is significantly too high. In our view, drawing in this respect upon the expertise of Mr Moll and Mr Francis, the reasonable amount is £450.00 plus VAT.

Similarly, we find it difficult to understand how the preparation of y/e accounts consisting of less than 10 items including the accountant's own fee could possibly justify a fee of £360.00. In our view, the work is readily capable of being performed by a junior bookkeeper. In our view, drawing again upon the experience of the surveyor members, the reasonable amount is £150.00 plus VAT.

S. 20C application

We understand and accept entirely that managing agents' time is not unlimited and that a point can be reached beyond which no further exposition or discussion is either useful or possible. Nevertheless, we take the view, for the reasons which we have expressed above in the section devoted to the Procedural History, that the Respondent's agent's response to the Applicant's reasonable requests for information for the purpose of challenging the reasonableness of the Respondent's proposed service charges is to be strongly deprecated.

In our view, the Respondent, by the manner of its agent's response to the Applicant's requests for information and documents to which she was fully entitled under the terms of her lease, never mind s. 21, is largely, if not entirely, the author of its own misfortune. Had it engaged constructively with the Applicant, who has acted reasonably, conscientiously and proportionately throughout, we believe these proceedings would have been avoided.

What is more, the manner in which the Respondent and its solicitors conducted themselves in their defence of the application was of a piece with and compounded their agent's initial errors. It further contributed to the need for a hearing; no doubt at considerable (probably disproportionate) cost to the Respondent.

For these reasons we grant the Applicant's application for an order that the Respondent's costs of these proceedings may not be included within any subsequent service charge payable by either the Applicant or her fellow lessee, James Wilkinson.

We have, in any event, been provided since the hearing with a complete copy of the Applicant's lease. The lease provides at clause 7 that the Applicant lessee is required to indemnify the Respondent against the costs and expenses of a number of operations none of which apparently applies to the circumstances of the current application. It therefore seems to us that the Respondent would not be entitled to recover the costs of these proceedings from the Applicant pursuant to her lease in any event.

APPENDIX 1- RIGHTS OF APPEAL

1. 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 Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such 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 such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Landlord and Tenant Act 1985 (as amended)

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.

20ZA. Consultation requirements: supplementary

(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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4. (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.