FIRST -TIER TRIB UNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AD/LSC/2019/0241**
Property	**:**	**59 & 149 Frobisher Road, Erith, Kent, DA8 2PU**
Applicants	**:**	**The Executors of Ms Y Robson (Decd)(Re No. 59) (1), Sawgrass Investments Limited (Re No. 149)(2)**
Representative	**:**	**Mr R Robson BSc FRICS MAE MIoD; An Executor of the First Applicant,and a Director of the Second Applicant**
Respondent	:	**Admiralty Park Management Co Limited**
Representative	**:**	**Ms Kleopa of Counsel**
Type of application	**:**	**Liability to pay service charges - Section 27A, Section 20C Landlord and Tenant Act 1985, Schedule 11 CLARA 2002**
Tribunal members	**:**	**Judge Lancelot Robson Mr N Martindale FRICS Mr O N Miller BSc**
Venue and date of Hearing	**:**	**10 Alfred Place London WC1E 7LR 21st and 22nd November 2019**
Decision Date	**:**	**12th January 2020**

DECISION

Decision Summary

The Tribunal decided that:

(1) On a correct interpretation, the Lease provisions (notably Clause 1) defined "the Building" in respect of 59 Frobisher Road to include the two "semi-detached" blocks originally known as Plots 501 - 528, now known as Block 57 - 79, and Hardy Court. The Respondents' agent was thus incorrect in treating these two blocks as two Buildings, for the purposes of calculating the service charge in the period 2016 - 2019

(2) On a correct interpretation, the Lease provisions (notably Clause 1) defined "the Building" in respect of 149 Frobisher Road to include the two "semi-detached" blocks originally known as Plots 473 - 500, now known as Blocks 113 - 143 and 145 - 167. The Respondents' agent was thus incorrect in treating these two blocks as two Buildings, for the purposes of calculating the service charge in the period 2016 -2019.

(3) On a correct interpretation of the Lease, the Respondents' agent was also incorrect in using the total number of Flats on the estate (104) for the purposes of calculating the service charge for the period from 2012 - 2015. However the Tribunal followed the Upper Tribunal decision in Admiralty Park Court Co Limited v Ojo [2016] UKUT 0421 (LC); LRX/121/2015 (relating to the same estate) which decided that although the Respondent's agent had used the incorrect basis noted above, an estoppel existed, thus preventing the Applicant in that case, (and also the Applicants in this case) from successfully asserting that the service charges for the period 2012 - 2015 should be recalculated on a building by building basis. The question of the correct definition of "Building" was not raised in that case, and it now falls to this Tribunal to decide that question (see above).

(4) While an estoppel was not found to exist relating to the period 2016 - 2019 as between the Applicants and the Respondent, the Tribunal decided that the relative costs, inconvenience, and confusion to other lessees in the Buildings and on the wider estate in recalculating the Service Charges on the correct basis was likely to be disproportionate to the benefits which might accrue to some lessees at the expense of others. It was not even clear from the evidence before the Tribunal that the Applicants would benefit. The Tribunal thus decided that the Respondents should apply the correct basis of calculation (above) with effectfrom the service charge year 2020 onwards.

(5) It declined to make an order in favour of the Applicants pursuant to Section 20C of the Landlord and Tenant Act 1985 The Tribunal decided to make an order in favour of the Applicants pursuant to para. 5 to Schedule 11 of the Commonhold and Leasehold Reform Act 2002, so that the costs of this application cannot be charged to the Applicants

alone as an administration charge. The Rule 13 application for an order for the Respondents to reimburse the Applicants' fees paid to the Tribunal was also refused.

(6) The Tribunal also made the detailed decisions noted below.

Preliminary Matters

1. By an Application dated 3rd July 2019, the Applicants seek a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to their liability to pay, and the reasonableness in amount of certain items in service charge demands issued pursuant to the terms of a (specimen) lease (the Lease) dated 29th June 2012 relating to No.59, (and No. 149 in the same application). The disputed items related to the service charge years 2012 - 2018 inclusive, and estimated service charges for the year 2019.

2. Originally, in the Directions dated 25th July 2019, the disputed items were stated to be; whether service costs payable by the Applicants by way of service charge had been correctly apportioned to the properties the subject of the application; whether service charge accounts had been correctly prepared in accordance with the provisions of the leases; whether items had been incorrectly included in the service costs; and whether an order under Section 20C should be made. By the date of the hearing these items had been detailed more specifically to be: that the service charges should be charged on a "block by block" basis; that a sum of £19, 497 should be removed from the service charge account (being the legal costs incurred by the Respondent in defeating a previous Tribunal application made by Mr Ojo in 2015 (see summary above); £852 being the cost of repairs to windows (allegedly) at 310 Frobisher Road; legal fees (allegedly) charged for certain arrears relating to 310 Frobisher Road, but not appearing in the accounts; and recovery of service charges paid from Reserve funds, relating to a Ms Dooley. Section 20C and Schedule 11 applications were also made by the Applicants, and also a Rule 13 application for the Respondent to reimburse the Applicants' application and hearing fees.

3. Additionally the Applicants in their skeleton argument applied to the Tribunal to have the Respondent removed as manager. This was refused by the Tribunal, as no Section 22 notice had been served, and the Respondents had had insufficient notice.

4. Extracts from the relevant legislation are attached as Appendix 1 below.

Background

5. The Tribunal's understanding of the factual background is based upon the documents in the hearing bundle, and the parties' respective statements of case. The Tribunal was urged by the Respondents not to refer to specific items in the background, but not to do so would give a misleading impression of the issues discussed at the hearing. The Respondents are a lessee-owned management company, charged by the Lease to carry out the repairs, maintenance and services for the Admiralty Park Estate and many, but

not all, of the blocks on it. At all material times (2012 - 2019) the Respondents have employed AMAX Estates as the managing agent to carry out its responsibilities. A complex dispute arose about the veracity of the service charge accounts, beginning in about 2015. Very quickly it became very personal, with cross-allegations of fraud, a police arrest and investigation, complaints to the regulatory bodies of professionally qualified people involved, and a defamation action which was settled on terms. In the Tribunal's view, these events seemed to create more heat than light for the case in hand.. The Applicants' avowed intention in making this application was to expose what they considered to be fraudulent activity in the office of the Respondent's managing agent. Despite warnings that issues of fraud were not matters within the Tribunal's jurisdiction, a very large part of the Applicants' 38 page statement of case was taken up with rehearsing the history of these issues.

6. Regrettably, neither party proposed nor offered a Scott Schedule which might have saved much time on all sides, by concentrating minds on the issues which fall within the Tribunal's jurisdiction under Section 27A, although Ms Kleopa helpfully produced a summary of the issues (essentially noted above) for the Respondents' Reply, which considerably assisted in illuminating the issues capable of being decided by this Tribunal.

Hearing

7. The Applicants were both represented by Mr R. Robson. The Respondents were represented by Ms Byroni Kleopa of Counsel. Prior to the start of the hearing, one of the Applicants' witnesses raised an issue about the presence in the room of an observer connected with the Respondents. While technically this was not a matter for the Respondent, as it related to the exclusion of a member of the public, the Tribunal first of all interviewed the parties' representatives and the witness alone, and separately, the observer concerned, before considering the issues raised. The Tribunal then invited the observer to return and explained the issues to him. The observer offered to withdraw voluntarily, and the matter was settled.

8. At the delayed start of the hearing, There was then a discussion as to the time required to examine the witnesses, and the likely time required for the parties to present their cases. There was a particular problem for the Applicant's main witness who had care issues requiring her to leave at by 1.15pm on the first day. It was agreed that there appeared to be five issues within the Tribunal's jurisdiction;

i) The correct method of charging on a block by block basis, the Applicant submitted that correctly there were 6 blocks, while the Respondent submitted that there were 9 blocks for the purposes of calculating a major part of the service charge;

ii) that work done on the windows of Flat 310 had been incorrectly charged to the service charge instead of being charged to the lessee of the flat;

iii) Certain legal fees which had been charged in connection with collecting arrears from Flat 310 (and thus the responsibility of the lessee) had been withdrawn and improperly recharged as part of other charges falling upon the service charge;

iv) two amounts of service charge owed by a Ms Dooley, which was incorrectly paid from the Reserve fund;

v) A sum of £19,497 relating to the Respondent's costs in a previous case in 2015 relating to Mr Ojo where the Upper Tribunal made a Section 20C order in favour of Mr Ojo [Tribunal's note: Admiralty Park Management Company Limited v Ojo [2016] UKUT 0421 (LC); LRX/121/2015], which the Applicants claimed should be paid by the Respondent itself, and not fall on the service charge.

It was further agreed that the parties should make their cases relating to Item i) above on the first afternoon, as this was a matter of legal argument rather than evidence. The witnesses could then be examined during the second day of the hearing. Both parties voiced concerns that the hearing might need a third day.

9. Ms Kleopa applied to have the Applicants' case struck out as a preliminary issue, on the grounds that it did not come up to proof for lack of evidence, and lack of precision in pleading. Mr Robson objected. The Tribunal adjourned to consider its decision. The Tribunal then reconvened. It refused the application. It decided that while other matters might be problematic, they were matters for evidence, and it was clear from the pleadings and the papers that there was at least a case to be answered on the interpretation of the Lease as to the correct "Building" for the purposes of calculating the service charge.

10. The Tribunal noted the absence of reliable plans for the Lease and the Estate, and a copy of the latest interim service charge accounts which it was suggested would illuminate the Respondents' current method of apportioning the service charge. It asked for copies.

Applicants' Case

11. Mr Robson submitted that there was no recognised way of splitting the charges, but there was not complete chargeability. There should be an audit of the management accounts. When asking what had been demanded, the Tribunal understood that the demands for each flat were in the region of £1,200 - £1,500 per year during the period in dispute. Until 2015 Mr Robson's manager had just paid it. Mr Robson submitted that the proportions did not seem right. No. 59 was larger than no. 149. He had never been given any information on this point between 2012 and 2018.

12. Ms Kleopa intervened to state that until 2015 the proportions had been calculated on the number of flats on the estate under management, i.e 104. The Respondents accepted this was wrong following the decision in Ojo (see above). Since 2016 they had been using a block by block basis. When asked if there was a schedule of the split, the Tribunal was informed that one would be provided. Ms Smalley, (the AMAX Accounts Manager) stated that the proportion was worked out by reference to the number of flats in the block.

13. Mr Robson stated that he agreed that method was reasonable. The Applicants' were not arguing for any particular method although they would prefer a floor area basis. However he considered that the Lease for No. 59 defined the Building as "flats" (he accepted this should have read "plots") numbered 501 - 528 (as shown on the Lease plan). These plots were now No. 57 - 79 Frobisher Road and Hardy Court, which had been let on

a Headlease as a social housing block to London & Quadrant, a housing association. He did not accept that Hardy Court should be excluded from the definition of "the Building" as the two blocks were "semi-detached", and might share maintenance or repairs, either now or in the future. The costs relating to Hardy Court had not been revealed and accounted for as, he submitted, they should have been under the terms of the Lease.

14. Mr Robson advanced a similar argument relating to the definition of "the Building" relating to No.149. In his view, the Lease (which was before the Tribunal) specified plots 473 - 500, which now related to Blocks 113 - 143 and 145 - 167), which again were semi-detached, but both were leased to private long lessees and managed by the Respondents.

15. The Tribunal notes that at the hearing the parties agreed that the original intention of the developers of Admiralty Park was to sell all flats privately on long leases. However, due to market conditions at the time of completion, it proved difficult to sell properties in some blocks, and three blocks were purchased on tenant's full repairing leases by housing associations. The Respondents had nothing to do with these blocks, only with the common parts of the estate as a whole.

16. At this point the Tribunal asked the parties how a lessee receiving a service charge demand could decide how their proportion was calculated, also the relative sizes of the flats. The parties agreed that there were three types of flats, basically 1 bedroom, 2 bedroom and three bedroom flats. Blocks (however calculated) appeared to contain a mixture of sizes. Ms Kleopa then objected that her client had not prepared to explain the service charge percentages, as they had not been put in question by the Applicants until the Tribunal raised the matter at the hearing. She considered that the Tribunal should grant an adjournment, particularly if it was introducing a matter itself, as she believed it was. The Tribunal expressed surprise as, if it was being asked to decide if a service charge was reasonable, it would of necessity need to know how it was calculated. Since the managing agent's accounts manager was present as a witness, the information must be available. It was a factual matter. The Tribunal then spent some time questioning Ms Smalley.

17. The Tribunal understood that the service charge was split into three parts. The scheme of the Lease made the Respondents responsible for maintaining and repairing the grounds and other items on the estate, up to the front doors of the blocks, (as it was described). The costs for that part were divided by 145, being the total number of flats on the Estate (including the social housing blocks). London & Quadrant were sent a bill for their proportion (41/145ths) and this amount was deducted from the costs of the private blocks before apportionment. Relating to the block charge elements, the "common costs", eg cleaning, insurance, etc, were calculated by expressing the number of flats in a block as a percentage of 104 (12/104 x 100 = 11.5% (rounded to one decimal place)). There was an admitted problem with this method, as all the rounded percentages added up to only 99%. The final part of the charge related to items specifically charged to individual blocks, e.g. repairs. These were divided by the number of flats in the block, to find an individual lessee's proportion. A document showing screen shots of the apportionment percentages on the managing agents' computer was produced to the Tribunal very late on the first day. Both parties again expressed the view that a third day would be necessary to hear the case.

18. Overnight the Tribunal made some approximate calculations of the amounts actually in issue based on its understanding of the service charge calculations outlined above, which neither of the parties had apparently addressed. The Tribunal considered these were extremely modest amounts totalling only about £250 per flat per year, and put its calculations to the parties at the start of the second day. It asked them to withdraw and consider if; a) the Tribunal's figures were substantially correct, and if so; b) whether they wished to discuss matters between themselves before returning. The Tribunal stated that if its figures were substantially correct, it would have difficulty in agreeing to a third day, on the basis of the proportionality of the cost and expense to the figures in question (See Rule 3(1)(a) relating to the Overriding Objective of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). The parties returned and stated that Mr Robson had agreed that he would drop items ii) - v), and proceed only on item i). The parties then made further submissions on that item.

19. The Tribunal notes that immediately before the Tribunal's observations on the amounts involved, Ms Kleopa gave notice that she wished to make a formal application to adjourn the hearing to allow her clients to prepare further evidence on the matters raised the previous day. However, she agreed to withdraw this application after the result of the adjournment.

20. Mr Robson continued to make his submissions. Relating to No.59 he considered that in the Lease "the Building" included Block 57 - 79 and Hardy Court. He accepted this might be difficult to calculate, but there should be co-operation between the two head leaseholders. He did not know how the two buildings were constructed, but there might be things which were shared. He also submitted that he could not see where the L&Q gardening works were accounted for. They should appear in the service charge accounts.

21. Relating to No. 149, "the Building" was actually a double block. The Respondents had treated it as two buildings, but that was not what the Lease said. The terms of the Lease should be observed. The Respondent's case was described as a lot of pedantics. The Respondents' agent took over in May 2008, and knew as early as then that it was not doing the calculation correctly. The Applicants had evidence. The Applicants submitted that it should be recalculated, and at AMAX's expense. The Tribunal in the Ojo case was not aware of the accounting issues. If it had known, it would have made a different decision. Answering a Tribunal question, Mr Robson stated that he had started raising issues of financial irregularities in 2014, although he agreed that he had probably raised the "block" problem after the Ojo case. Asked if it was easier for lessees to be aware of works done in their own block, he stated that he did not think it mattered, as it was possible to keep an eye on it.

Respondents' Case

22. Ms Kleopa submitted that the Respondents agreed that the Lease of No 59 referred to plots 501 - 528 on the plan attached. The three blocks sold to London and Quadrant were sold in 1992, after the leases of the subject properties were granted. The sale to London & Quadrant (by the Landlord, not the Respondent) made the Lease unworkable.

The real question was how this might be dealt with in practice. The Respondents had no right or obligation to ask to manage those properties, or even to request information. Relating to the estate element of the service charge, the Respondents' agent managed "everything up to the doors of the L&Q blocks". The Applicants had not explained how the Respondents could manage this situation. Mr Robson had suggested that there could be co-operation, but at the doors of their blocks, L&Q was legally in charge. He did not say how else the Respondent could have managed the matter, legally or practically.

23. The situation at No. 149 was different. Both blocks were managed by AMAX for the Respondents. Again the Respondents agreed that the plot numbers in fact referred to 2 "double blocks". In effect the Applicants were asking the Respondents to run two different accounting systems. That alone would increase the costs.

24. Ms Smalley gave evidence from her personal knowledge of the blocks that the back-dating of recalculated service charges (prior to 2020) would cause confusion and problems amongst the general body of lessees. She considered that each of the nine blocks had their own "ecology", and different personalities. It seemed unlikely that many of the lessees generally would get any financial benefit, and they would be very unhappy and confused if they had to pay more for those years.

25. Ms Kleopa referred the Tribunal to the specific matters decided in the Ojo case. The flat concerned was 125 Frobisher Road, within the block including No.149. Neither party had raised the Estate/Block basis prior to that case. The judgement in the Upper Tribunal did not deal with what was covered by the term "Building". Prior to the service charge year 2016, the apportionments had been made by reference to the whole estate (104 flats). Thus the estate charge had been 0.69444%. The Upper Tribunal accepted that prior to 2016 an "estoppel by convention" applied to the lessee's claim that the service charge calculation was incorrect for that period, thus Mr Ojo was unable to challenge the calculation during that period. However the Upper Tribunal confirmed that a block by block basis should be used going forward, from 2016 onwards. Ms Kleopa submitted that three points followed from that decision;

a) It would be wrong for this Tribunal to reopen the situation prior to 2016. The present Applicants had not raised this point themselves until after the Ojo case.

b) The estoppel by convention found by the Upper Tribunal should affect all lessees. In this case the basis of Mr Robson's application was to uncover the fraud he alleged existed. It was not based on complaints about the service charge or the reasonableness of it.

c) In the Ojo case it appeared that the Tribunal had decided Mr Ojo's liability based on nine blocks, not upon six blocks.

Thus the Respondents argued that the calculation should be based on nine blocks rather than six blocks.

26. However if the Tribunal did not agree with the Respondents on that point, it should consider the effect of Ms Smalley's evidence that it would be difficult to backdate the calculations, for the reasons she mentioned. If the Tribunal was minded to decide that the

correct view was that there were 6 blocks, then the Respondents asked that that calculation should only apply from the next following service charge year, 2020.

Decision

27. The Tribunal considered the submissions and evidence. Regrettably the Applicants' statements of case were extensive, unfocused, and difficult to follow. They were mainly directed at the fraud alleged to exist in the accounts. With difficulty the Tribunal extracted those issues over which it had jurisdiction. The five items noted above were agreed by the parties at the hearing. As is often the case, the most contentious issues involved the smallest amounts of money, and there can come a point when the time and expense to all parties and the Tribunal is disproportionate to the amounts being pursued. The Tribunal recognised in this case that there was a potentially serious issue over the accuracy of the accounts, (which had been the subject of professional accounting scrutiny and certified), but its powers in a Section 27A application were limited to those matters set out in that section. The Applicants were explicitly asking it to make findings of criminal conduct. However the Tribunal's function is limited by Section 27A to deciding if certain charges were reasonable on the balance of probabilities, after considering the evidence. A finding of unreasonableness relating to a specific charge, or group of charges might, or might not, suggest a lack of credibility relating to other matters, but the Tribunal should be vigilant not to allow its procedure and resources to be used for extensive and time-consuming examinations of matters best dealt with in other jurisdictions, e.g. the Criminal and Company Courts. The use of a Scott Schedule to identify the issues in this case would have been very useful. In the end, the Tribunal was only asked in this case to rule on the proper method of calculating the service charge as set out by the Lease.

28. The Tribunal decided that although the tribunal in Ojo might have used nine blocks in its calculation, this Tribunal was not bound by that matter, because it was not raised as an issue in Ojo. The Tribunal decided that the Lease provisions should be followed. They were not defective, and on a careful reading were not impossible to implement. Thus the blocks as they were described in the Leases should be used to calculate the "Block" charge. Relating to No 149, this should not pose a major problem, as both blocks were managed by AMAX. The Tribunal further decided that incorporating Hardy Court into the definition of the block containing No. 59 was not an insurmountable problem. If the Respondent spent no money on that block, then no charge could be made through the service charge in respect of it. While it was not impossible that in the future the Respondent might be required to spend money relating to Hardy Court, to date it had not been required to do so. If and when a charge relating to Hardy Court arose, the Respondent would be entitled to apply for a lease variation. As matters stood at present, however, the scheme set out in the Lease seemed adequate.

29. The Tribunal decided that estoppel by convention did not apply in this case, as it was clear that the Applicants had been disputing the charges since 2015. However the Tribunal accepted the Respondent's submissions relating to the trouble and expense caused to third parties, as well as the parties in this application. It decided that the basis for charging set out in the Leases, and noted above, should commence only from 1st January 2020.

Section 20C Landlord and Tenant Act 1985; Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

30. For the Applicants, Mr Robson submitted that it was totally unfair that AMAX had ignored the scheme set out in the Lease, and AMAX or its insurers should pay the costs lost to the Respondents. If a proper reply had been received to his Section 116 request and his emails in 2018, the parties would not be here. He considered that the proper witness of fact was Ms Hayley Warnes (the Director of AMAX), and she had not been examined.

31. For the Respondents, Ms Kleopa submitted that the Applicants had served a statement of case and exhibits running to 566 pages, with the statement dealing solely with the alleged fraud, and none of which was relevant to the service charge case. The Respondents had to go through it all, and provide extensive documentation. There were no leases attached to the Applicants' initial bundle, and no lease plans were received until the hearing. The application did not set out which items of service charge it was challenging, the costs of those items, and the years in which such items were charged. The Respondent did not know to what it was responding. Effectively the Respondents had to make the Applicants' case for them, to which the Applicants then responded. The Applicants had not complied in time with Directions, and then parts of their documents bundle were served even later. The full bundle thus only arrived 18 days after the date set out in the Directions. This gave the Respondents only 12 days to Reply, which was an arduous task. Signed statements arrived from three witnesses, not two, as allowed in the Directions. When challenged, Mr Robson suggested they ignore his statement.

32. The Respondents also submitted that Mr Robson's case was in fact a back door way of airing other grievances. In their view, Mr Robson had failed to apply his mind to the real issues in this case, and only abandoned items ii) to v) on the second morning of the hearing.

33. In closing, Mr Robson submitted he was arguing that there were financial irregularities and that the accounts were "fictitious", but the Tribunal had decided that the accounts could not be challenged. He considered that legal technicalities were getting in the way of natural justice. He submitted that he had not dropped Items ii) - v), he thought the Applicants were going to get £250. He now wanted to call his witnesses.

34. At this point the Tribunal queried his understanding of the earlier events in the hearing. Ms Kleopa confirmed that she believed that he had agreed to drop items ii) - v) when addressing the Tribunal earlier. The Tribunal decided to adjourn for a few moments to check its collective understanding from their notes of that part of the hearing. It then reconvened to inform the parties that every member had written the word "drop", and that there was no doubt in their minds that such an agreement had been reached, particularly in view of the subsequent course of the hearing. Mr Robson then stated that he must have made a mistake. To elaborate, the Tribunal's recollection was that Ms Kleopa had used that word when advising the Tribunal of the agreement which had been reached during the relevant adjournment. Ms Kleopa then turned to Mr Robson, asking him to confirm what she had said, which he duly did. The Chairman had also asked him

independently to confirm the agreement, which he did. No suggestion that items (ii) - (v) had been dropped in return for a repayment of £250 per flat had been made prior to the end of Mr Robson's closing statement.

35. The Tribunal also considers it necessary to correct one further submission made by Mr Robson, noted above. The Tribunal at no time stated that the service charge accounts could not be challenged. Service charge accounts are quite frequently challenged under Section 27A, and often with some success. However the challenging party must prepare its case properly, and be prepared to prove on the balance of probabilities that a charge, or group of charges are unreasonably incurred, unreasonable in amount, or otherwise unlawfully demanded. Assertions, however strongly made, are unsatisfactory as evidence.

Decision on Section 20C

36. The Tribunal notes that only the Respondent's costs are in issue in this part of the application. The Tribunal decided that it would deal with these matters summarily. The Applicants submitted that the Respondent's costs of this application should not be considered relevant costs and added to the general service charge, or to any administration charge charged to any individual lessee. The Tribunal is therefore asked to exercise its discretion (acting reasonably) when deciding if it should make such orders. The Tribunal noted that (despite the claim by Mr Robson at the end of the hearing noted above) the sole matter left to be decided in this application was decided substantially (but not entirely) in favour of the Applicants. The Respondent is entitled under the Lease to charge its costs to the lessees collectively. Also, the Respondent is owned by the lessees collectively, and any shortfall in the service charges or administration charges would have to be made up by the shareholders. The Tribunal decided that while the Respondent's case on the interpretation of the Lease was unsuccessful, the Tribunal's decision is likely to benefit the lessees collectively.

37. The Tribunal also took into account that the Applicants pleadings were largely directed to issues outside the Tribunal's jurisdiction, which considerably added to the length of the pleadings. The Tribunal decided that it would make no order under Section 20C.

38. The Tribunal noted that there appeared to be no provision in the Lease to charge administration charges to individual lessees. However in case the Tribunal's view was erroneous, and for the avoidance of doubt, it decided to make an order under Schedule 11 to ensure that the Applicants were not charged the entirety of the Respondents costs, to the intent that such costs should fall upon the Estate element of the service charge.

39. The Tribunal further decided that the Rule 13 application for the Respondents to reimburse to the Applicants the fees paid to the Tribunal for the application and the hearing, be refused. The Applicants' pleadings and case were lengthy and contained much avoidable irrelevance. While they were successful in the one matter finally left to the Tribunal for decision, this probably owed as much to the professionalism of the Respondent's counsel, as to their own efforts.

40. The Tribunal understands that several other applications from other lessees on this and other related estates, have been made and await Directions once the decision in this case is published. The parties in those cases should consider whether to apply to the Tribunal for their cases to be heard at the same time, or consolidated. This may assist all parties and the Tribunal to deal with the issues more effectively, both in terms of time and cost. In any event, the parties in those cases should apply for Directions to be made within one month of the date of this decision.

Tribunal Judge: Lancelot Robson Dated 12th January 2020

Appendix 1

Landlord & Tenant Act 1985

.**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 provisions 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 20B

Limitation of service charges: time limit on making demands

(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 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) and (6)….

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

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

(3) An application may also be made to a Leasehold valuation 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.

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 tribunal or leasehold valuation tribunal, or the Upper Tribunal, 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 a 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;
(c) in the case of proceedings before the Upper Tribunal, 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 a 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

"Meaning of "administration charge"

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 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) .....
(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).....

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

3. .....

Notice in connection with demands for administration charges

4.- (1) a demand for the payment of an administration charge must be accompanied by a summary of rights and obligations of tenants of dwellings in relation to administration charges.

(2) (3) and (4).....

Liability to pay administration charges

5.- (1) An application may be made to a leasehold valuation 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) (4) (5) and (6).....”
