



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00MW/LSC/2019/0047

Property : The Cottage (Flat 4), 46 Fitzroy Street, Sandown,
Isle of Wight PO36 8HW

Applicant : Mr Edmund Gair Nilsen

Representative : Mr Edgar Piper

Respondent : Mr Paul Novell

Representative : EMS (Hants) Limited – Managing Agents

Type of Application: Section 27A Landlord and Tenant Act 1985 (“the
1985 Act”) service charge determination

Tribunal Members : Judge P.J. Barber
Mr P D Turner-Powell FRICS

Isle of Wight Court, 1 Quay Street, Newport,
Isle of Wight PO30 5YT

Venue & Hearing Date: 11th October 2019

Date of decision: 23rd October 2019

DECISION

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Decision

- (1) The Tribunal determines that unless and until properly demanded, none of the service charges in any of the years are payable. However, should the Respondent landlord re-serve each of the demands properly in accordance with the law, including in each case the required form of summary of rights and obligations, the following sums would then become due and payable by the Applicant tenant to the Respondent landlord in regard to service charges for the Property in the respective service charge years as referred to below:

2014 £ 485.61

2015 £ 544.31

2016 £ 573.91

2017 £ 551.45

2018 £ 561.82

2019 £ 657.57

- (2) The Tribunal orders pursuant to Section 20C of the 1985 Act that none of the costs incurred by the landlord in connection with these tribunal proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant tenant.
- (3) In regard to Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, the Tribunal orders that the liability (if any) of the Applicant tenant to pay administration charges in respect of the landlord`s litigation costs relating to these tribunal proceedings, is extinguished.

Reasons

INTRODUCTION

1. The application made by Mr Nilsen a long leaseholder, and dated 2nd April 2019, is for determination of service charges in the years 2012-2019, and for which the total value of dispute was stated to be £12,154.04. The Applicant also seeks orders in respect of the Respondent landlord`s costs under Section 20C of the 1985 Act, and under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The application also made reference to other proceedings involving the same parties and property, namely proceedings brought by the landlord in Isle of Wight County Court under Claim No. E45YJ764.
2. A telephone case management hearing (“CMH”) was held on 19th June 2019, attended by the Applicant, Mr Nilsen, his father / representative, Mr Piper, and Mr Edward Younghusband of EMS, representative on behalf of the Respondent landlord. Directions were subsequently issued, also dated 19th June 2019. Reference was made in the directions to other, earlier County Court proceedings under Claim No. A02YQ849; it is noted from the county court file, that District Judge Grand had dismissed both this claim and also the counter-claim, on 13th October 2015. The directions issued pursuant to the CMH, made it clear that there was a preliminary issue to be determined, namely the Applicant tenant`s liability to pay service charges in accordance with the lease; in broad terms, the subject building forms three flats and a cottage, with the Applicant being the tenant of the

cottage. The preliminary issue concerns the correct proportion of service charges for the building, to be borne by the Applicant.

3. The directions also referred to current proceedings in the County Court under Claim No. E45YJ764; by Order dated 24th June 2019, Judge Tildesley ordered that the claim in such proceedings be stayed until after publication of the Tribunal's determination in these proceedings under Case Reference CHI/00MW/LSC/2019/0047.
4. The evidential bundle includes statements by the parties making reference to the preliminary issue of the correct service charge proportions payable under the lease. The Applicant's statement dated 21st July 2019, broadly stated that the Applicant's property being The Cottage, Flat 4, 46 Fitzroy Street, Sandown, Isle of Wight ("the Cottage") is divided vertically and not horizontally from the block containing Flats 1-3 ("the Flats"), that the lease of the Cottage failed to make proper distinction between the Cottage and the Flats, that apart from ground rent, no service charges are due and payable by the tenant to the landlord, that the landlord had acted disgracefully towards the tenants, and that the Applicant ultimately intends to acquire the severed freehold to the Cottage. The Applicant complained that the lease failed to treat the Cottage as a separate dwelling, although it is a maisonette, and requested the Tribunal to use discretion to "re-write" the covenants in the lease and make a declaration severing the title of the Cottage, thereby enabling the Applicant to enfranchise. The Applicant further complained that the Respondent landlord has an address in Malta, but never responds to correspondence and that the Respondent is a "fiction" or "nom de plume", further alleging that the landlord's agents "Citywide" have acted unprofessionally by:
 - (a) Failing to insure
 - (b) Failing to manage
 - (c) Failing to comply with repair covenants re the roof of the Flats
 - (d) Failing to refer the earlier disputes to arbitration, rather than the County Court
 - (e) Breaching the landlord's covenant for quiet enjoyment
 - (f) Failing to repair the party wall between the Cottage and the Flats
5. The bundle further includes a statement, undated, made by Mr Younghusband of EMS Hants Ltd, for the Respondent, and in which he broadly submits that the lease plan for the Cottage shows that the Cottage is not divided vertically from the Flats, rather it is divided horizontally, and referring to the lease of the Cottage, being a lease dated 7th July 1989 made between James Edward Lewis (1) Shaun Williamson and Catherine Brady (2) ("the Lease"), and stating that the Applicant would have known of the obligations therein when he acquired the Lease, contesting that the landlord and its' agents had acted disgracefully towards the tenants, maintaining that the arrears claimed are due, and denying that the Respondent landlord had refused to sell the freehold of the Cottage, but desired the arrears issue to be first finalised. The statement further averred that the building is insured, that repair obligations have been complied with, that external redecoration work is pending, but on hold until the Applicant pays the claimed arrears, that they were unaware of any repairs needed to the party wall and

pointing out that the Applicant`s representative had accepted at the CMH, that the Lease did provide for service charges to be charged.

6. The bundle includes in addition to the Applicant and Respondent statements, copies of the directions, the Lease, photographs, invoices, information relating to insurance, and certain other correspondence.

INSPECTION

7. The Tribunal inspected the Property in the presence of Mr Nilsen, Mr Piper and Mr Younghusband.
8. 46 Fitzroy Street, Sandown comprises of a late Victorian or Edwardian house fronting on to Fitzroy Street and the original or front part of which comprises three flats, with the Cottage forming an addition at the rear; the property is partly brick faced and partly rendered and colour painted white under a slated roof. The property is located in a residential area, close by the town centre of Sandown.
9. The Cottage is approached from a shared access, leading to a small rear courtyard, with its own ground floor entrance; the Tribunal briefly inspected the ground floor interior of the Cottage, the front door of which leads to a small hall, and then to a kitchen and beyond that a living room. Mr Piper drew attention to the fact that the living room extends slightly forward, apparently under part of the staircase within the main front part of the property comprising the flats.
10. The Tribunal noted that the property was generally in a fairly poor decorative condition externally.

THE LAW

11. Section 21B Landlord and Tenant Act 1985 provides that:-

(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) & (6)

Section 27A Landlord and Tenant Act 1985 provides that:-

- (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, the date at or by which it is payable, and*
- (d) 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)-(7)....*

REPRESENTATIONS

11. At the outset of the hearing, Judge Barber mentioned that the Tribunal case clerk had previously met Mr Younghusband who is a friend of her cousin; Judge Barber asked if there were any objections arising and both parties confirmed they had no such objections. Upon request from the Tribunal, the parties both confirmed that they each have full copies of the bundle including all documents relied upon, save that Mr Younghusband handed to Mr Piper and to the Tribunal, a copy of a single page statement by Mr Lovell which he said had inadvertently been omitted. Mr Piper objected to this document being admitted, pointing out that it has no signed statement of truth included. The Tribunal considered the statement which was brief and merely explained Mr Novell`s residence, his appointment of EMS Hants Limited as managing agent and other points in regard to service and addresses; the Tribunal concluded that the statement merely provides certain clarification and that it would not be unreasonable in the circumstances to admit it. The Tribunal noted the explanation in the statement, that Citywide Investments which appears from the bundle, to have issued most of the “invoices” in relation to service charges, is an unincorporated entity, of which Mr Novell is the sole proprietor.

12. Judge Barber then indicated to the parties that the Tribunal has no jurisdiction arising under an application pursuant to Section 27A of the 1985 Act, either to vary the covenants in the Lease, to sever the freehold interest of the Property or to enforce landlord repairing covenants or other obligations, allegedly not complied with by the landlord. Similarly, Section 27A does not give rise to any jurisdiction in relation to ground rent. Accordingly Judge Barber indicated that it would be expedient to deal with the matter, year by year, with submissions from each party in regard to the service charges claimed in each year; the Respondent to refer the Tribunal in respect of each item, to the supporting invoice in the bundle.
13. Judge Barber invited the parties to make their submissions in regard to the effect of the decision in the earlier County Court proceedings in 2015, under Claim Ref AO2YQ849, regarding jurisdiction in the present proceedings. Mr Younghusband said that potentially not all the evidence was heard at the oral hearing in those proceedings, that Mr Piper had always said that the Lease does not allow for service charges; Mr Younghusband added that he was not sure what went on in those hearings and that the matter was not dealt with correctly. Mr Piper said he disagreed that those proceedings were not dealt with correctly, adding that the landlord had been represented by counsel who made strenuous submissions to the judge who shot them down, including their repeated claims for costs, and that he Mr Piper, relies on the effect of Section 27A(4) of the 1985 Act. The Tribunal considered the matter and decided that as a result of Section 27A(4), it does not have jurisdiction in respect of the service charges which were the subject of the claim in AO2YQ849, being from 2012 to 24th May 2014, given that the claim and counterclaim had been dismissed, with no order for costs, as a result of the Order of District Judge Grand on 13th October 2015. Accordingly, the parties were asked to make their submissions in respect of service charges claimed in these proceedings, for the period 25th May 2014 to 2019.
14. The Tribunal then asked the parties for submissions in regard to the question of how legal costs were payable under the Lease, with specific reference to any relevant clause numbers in the Lease. Mr Younghusband said that the Respondent relies on Clause 9, Part 1, 4th Schedule of the Lease:-
- “9. All other expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of the Building”*
- Mr Younghusband submitted that legal costs would form part of such “other expenses”. Mr Piper said that it would not be just and equitable to impose the large costs of the 2014/15 County Court proceedings upon the tenant and in any event, submitted that legal costs are not within clause 9. The Tribunal indicated that it will decide on this issue when carrying out its deliberations and accordingly, invited the parties firstly to make their submissions, one year at a time, on the heads of service charge being claimed, secondly to make submissions upon the legal costs being claimed throughout the relevant period, thirdly to make submissions on the Section 20C and Paragraph 5A applications in respect of the landlord`s costs and finally to make any closing statements.
15. 2014 – The amounts claimed for the relevant part of this year were:-
- | | |
|-----------------|---------|
| Insurance | £285.61 |
| Accountancy Fee | £30.00 |

Management Fee £200.00

Mr Younghusband referred to Page L11 of the bundle and the Invoice from Citywide Investments to the tenant, detailing these amounts, adding that the further sum of £125.00 for maintenance is not part of the claim. The Tribunal asked Mr Younghusband, to make any submissions regarding the apparent absence from any of the service charge demands or “invoices”, as contained in the bundle, of the summary of rights and obligations, as required by Section 21B of the 1985 Act. Mr Younghusband said that summaries of tenant rights and obligations would have been sent out with all the invoices over the entire period of the claim, although none are in the bundle, save for a document which he referred to at Page T73, apparently being a page appended to a Section 20 Notice of Intention to carry out works, issued in March 2018. Mr Younghusband referred to a software problem which led to subsequent print-outs not including all the attachments for each of the various invoices. Mr Piper said that none of the invoices in the bundle included any of the required summaries when they were actually issued.

In regard to insurance, Mr Piper said that either the policies were ineffective or the landlord had failed to make proper claims. No copy of the insurance premium receipt or voucher was provided, other than a Noyce Insurance “summary of cover” at Page L42. In regard to the accountancy fee, Mr Younghusband referred to the Citywide Investments invoice at Page L11 in the bundle, adding that the £30.00 fee is the accountant’s charge for preparing the annual certificate, although the actual invoice from the accountant is not included in the bundle. Mr Piper submitted that this indicated that the Respondent landlord’s company accounts were in chaos.

In regard to the £200.00 management fee, this sum was again referred to in the Citywide Investments invoice on Page L11. Mr Piper said that no management had been carried out and that accordingly no management fees were due. Mr Younghusband responded to the effect that works had been carried out which had been managed, including internal common parts decorations in 2015, guttering replacement in 2017/18, fire wall work in the roof void and roof work in 2019; he added that external decoration is due but had not been carried out mainly due to failure by the Applicant to pay any service charges. Mr Piper said that the storm damage to the roof should have been covered by insurance.

16. 2015 – the amounts claimed for this year were:-

Insurance £ 289.31

Accountancy fee £ 30.00

Management fee £225.00

Mr Younghusband referred to the Citywide Investments invoice at Page L18 of the bundle, although again none of the individual invoices were in the bundle. Mr Piper said his concerns for these amounts were the same as he had already raised for 2014.

17. 2016 – the amounts claimed for this year were:-

Insurance £288.91

Accountancy fee £30.00

Management fee £225.00

Accountancy fee £30.00 (in advance for 2017)

Mr Younghusband referred to the Citywide Investments invoice at Page L23 of the bundle, adding that for this year there was a second accountancy fee of £30.00, given that the Respondent had wanted to start collecting for that element of the service charge, in advance. Mr Younghusband also confirmed that two health and safety charges each for 360.00 are not part of the claim. Mr Piper`s concerns were the same as for 2014.

18. 2017 – the amounts claimed for this year were:-

Insurance £296.45

Management fee £225.00

Accountancy fee £30.00

Mr Younghusband referred to the Citywide Investments invoice at Page L26 of the bundle, adding that a health and safety risk assessment charge of £60.00 on that page is no longer being claimed. Mr Piper`s concerns were the same as for 2014.

19. 2018 – the amounts claimed for this year were:-

Accountancy fee £30.00

Management fee £225.00

Insurance £306.82

Mr Younghusband referred to the Citywide Investments invoice at Page L27 of the bundle, adding that again, the health and safety charge of £60.00 is no longer being claimed. Mr Piper`s comments were the same as for 2014.

20. 2019 – the amounts claimed for this year were:-

Insurance £307.57

Health & Safety £45.00 (health & safety inspection)

Health & Safety £45.00 (fire risk)

Accountancy fee £30.00

Management fee £230.00

Mr Younghusband referred to the Citywide Investments invoice at Page L33 of the bundle, adding that the two amounts, each of £45.00 for health and safety risk assessments are still being claimed, but that they are for work yet to be done. Mr Piper said that his concerns were the same as for 2014; however, he added that the four lessees were together being expected to pay £360.00 on account for health and safety assessments without knowing what the cost will be, and that these are “fantasy” figures. Mr Younghusband said that he had dealt with the company carrying out the assessments before, being Lima Associates, and that such figure reflects their quote.

21. Legal Costs

2014: Mr Younghusband referred to Citywide Investments invoices respectively for £250.00 at Page L16 and £651.00 at Page L17; no actual invoices from Trafalgar Law had been included in the bundle. Mr Younghusband said that the

work related to debt collection and the county court claim in 2014/15. Mr Piper said that there were no actual invoices from the law firm and that in any event as the county court had disallowed costs in regard to the 2014/15 claim, it would be inequitable now to allow them.

2015: Mr Younghusband referred to Citywide Investments invoices respectively for £335.00 at Page L19, £115.00 at Page L20 and £1612.50 at Page L21 variously relating to the 2014/15 county court claim. Mr Piper repeated that his comments as before, adding that the bills had not been taxed and were extremely high.

2016: Mr Younghusband referred to a Citywide Investments invoice at Page L22 for two amounts being £3855.00 and £415.00 which he said relate to the more recent county court claim under Ref E45YJ764. Mr Piper objected as before, adding that this is by far the largest item for legal costs.

2017: Mr Younghusband said that there is no claim for legal costs in this service charge year.

2018: Mr Younghusband referred to Citywide Investments invoices respectively for £566.85 at Page L28 and £255.00 at Page L32 which he said are for court fees in relation to the current county court proceedings. Mr Piper said that it should be for the county court to decide whether or not any such costs should be payable, adding that liability to pay legal costs as part of service charges, is not clear in the Lease.

2019: Mr Younghusband referred to the Citywide Investments invoice for £4837.50 at Page L34 being he said, for preparation of court papers. Mr Piper said this is a huge amount, with no actual supporting invoice, no justification or relating detail.

22. Section 20C & Paragraph 5A Costs

Mr Piper submitted that it would not be equitable to impose the landlord's cost of these proceedings on the Applicant, adding that the Respondent should have sought a transfer to the Tribunal by the County Court, of the proceedings in Ref E45YJ764, and that the Applicant was therefore forced to bring this Tribunal application. Mr Piper said that it is as a result of the landlord's claim for money for which oddly, the Applicant has had to make this claim and that the landlord would be tempted to impose his costs upon the Applicant in circumstances where the Applicant has already incurred costs of his own. Mr Piper said that this would be unjust, adding that the Tribunal should order the landlord to pay the Applicant's reasonable expenses. Mr Younghusband said that costs had been incurred to recover service charges, and which process has been going on for years as a result of Mr Piper arguing until June 2019 that the lease did not entitle the landlord to make service charges. Mr Younghusband added that there had been many hearings and discussions with a lot of effort by both sides which could have been avoided years ago, had the Applicant accepted the existence of service charge liabilities.

23. Closing Statement – Mr Younghusband

Mr Younghusband repeated that this matter could have been dealt with many years ago had the Applicant accepted in principle, the liability to pay service charges, adding that the process had been drawn out partly due to the Applicant's desire to acquire the freehold of the Cottage. Mr Younghusband said the Applicant

would have been informed of the obligations in the Lease when he purchased and that it had not been right for him to deny those obligations over many years.

24. Closing Statement – Mr Piper

Mr Piper said that the Respondent had put forward very little actual evidence of expenditure, relying instead only on generalised invoices. In regard to management fees, although the Respondent said insurance was in place, either the cover was insufficient or the Respondent had failed properly to pursue the storm damage claim which Mr Piper said any reputable insurer would have met. Mr Piper added that scaffolding had been erected for the work to be done and left in place for far too long, and that there is still a problem with pigeon ingress in the roof void, rendering Flat 3 to be uninhabitable. Mr Piper added that the Respondent is incompetent regarding accounts, with no repair fund and unclear invoices. Mr Piper concluded by saying that the claims in their totality are an abuse and would result in the Applicant having to pay an amount for service charges, equivalent to the cost of rental, if he were renting the Cottage.

CONSIDERATION

25. The Tribunal, have taken into account all the case papers in the bundle and the oral evidence given at the hearing.
26. In regard to the preliminary issue as to the correct proportion of service charges payable pursuant to the Lease, the Tribunal finds that the correct proportion is 25% of the costs referred to in Part 1 of the Fourth Schedule (but excluding those costs as set out in Part 2 of the Fourth Schedule), as provided for in clause 4.1 of the Lease.
27. In regard to the absence of summary of rights and obligations from any of the service charge demands as required by Section 21B of the 1985 Act, the Tribunal notes the Respondent`s claim that these would have been sent with each of the invoices issued by Citywide Investments; however no actual copies were provided and the Applicant denied having received any. In the absence of clearly persuasive and conclusive evidence that such summaries were issued, the Tribunal determines that consequently none of the service charges claimed are presently due. Nevertheless, in the event that the landlord corrects the position in this regard and re-issues demands properly complying with the legislation then, and only then, the Tribunal makes the following determinations as to reasonableness and payability of the service charges claimed (excluding legal costs) in each of the relevant years.
28. 2014: In regard to insurance, whilst the Applicant questioned the existence and adequacy of the cover, the Respondent had at the least provided at Pages L37 to L42 of the bundle, copies of summaries of cover issued by Noyce Insurance providing outline details of cover for each of the relevant years, through Axa Insurance. Mr Piper did not seek specifically to question the amount of the premiums; the Tribunal further notes that the cost of insurance is within the matters referred to as service charge items at clause 4 in Part 1 of the Fourth Schedule of the Lease. Accordingly, on the face of it, and exercising its experience the Tribunal concludes in the absence of any comparable evidence as to availability of cover or premiums, that the amount claimed being £285.61 is not wholly unreasonable. In regard to the accountancy fee, there is no clear evidence provided by the Respondent for this year of an accountant`s certificate, and in the absence of same the Tribunal considers the £30.00 claimed to be not payable. In regard to

the accountancy fee and the management fee, the Tribunal notes that both the fees of managing agents and the reasonable costs in respect of the annual certificate of accounts, are in principle within the matters referred to as recoverable service charge items at clause 10 in Part 1 of the Fourth Schedule of the Lease. In regard specifically to the management fee claimed for this year in a sum of £200.00, the Applicant claimed that no management had occurred but evidently at least some work had been done in regard to the arranging of insurance. The Applicant provided no comparable evidence or suggestion of alternative costs; accordingly using its experience, the Tribunal determines that the management fee is not wholly unreasonable and is payable.

29. 2015: In regard to insurance and management fees, the Tribunal makes a determination for similar reasons as for 2014 and accordingly the sums claimed respectively of £289.31 and £225.00 are payable; the Tribunal notes the slight increase in the management fee for this year but regards this as not unreasonable taking account of inflation. In regard to the accountancy fee of £30.00 the Tribunal notes that the accountant`s certificate for 2015/16 had been provided at Page T95 of the bundle. Given the relatively modest amount and that evidence was provided as to accountancy work having been carried out, the Tribunal determines that such sum is payable.
30. 2016: For reasons similar as for those in relation to 2014, the Tribunal determines that the sums of £288.91 for insurance, £225.00 for management fees and £60.00 for accountancy fees, are due and payable. In regard to the existence of two accountancy fees, the Tribunal notes that the second fee was in advance; the Tribunal notes the effect of clause 4.2 in the Lease which provides for payment of contributions due under clause 4.1 in advance on an estimated basis.
31. 2017: For reasons similar as for those in relation to 2014, the Tribunal determines that the sums of £296.45 for insurance, £225.00 for management fees and £30.00 for the accountancy fee, are due and payable.
32. 2018: For reasons similar as for those in relation to 2014, the Tribunal determines that the sums of £306.82 for insurance, £225.00 for management fees and £30.00 for the accountancy fee, are due and payable.
33. 2019: For reasons similar as for those in relation to 2014, the Tribunal determines that the sums of £307.57 for insurance, £230.00 for management fees and £30.00 for the accountancy fee are due and payable. In addition, the two amounts in a total of £90.00 in anticipation of health and safety risk assessments are considered to be not unreasonable advance estimates, given the evidence on the point given by Mr Younghusband. The Tribunal further notes and accepts the slight increase in the management fee for this year.
34. Legal Costs: the Tribunal notes the reliance placed by Mr Younghusband for claiming legal costs as service charges, based on clause 9 to Part 1 of the Fourth Schedule of the Lease. However, the Tribunal does not accept that such provision allows for legal costs to be so claimed. In regard to clause 9, legal costs as such, may not reasonably be construed or in normal parlance, interpreted as being “*expenses ... incurred by the Lessor in and about the maintenance and proper and convenient management and running of the Building*”. The Tribunal notes that in his written statement, Mr Younghusband had also indicated generally that costs could be claimed under Clause 6.3 of the Lease and also clauses 6, 7 and 8 of Part 1 of the Fourth Schedule. However, Clause 6.3 is an obligation on the lessor to

enforce covenants by lessees of other flats, subject to indemnity in respect of costs; Clause 6 in Part 1 of the Fourth Schedule refers to costs and expenses incurred by the lessor in fulfilling its obligations under the Lease. Clause 7 relates to rates taxes and outgoings in respect of the Building, and Clause 8 relates to costs incurred by the lessor under the terms of a separate underlease. None of these provisions specifically entitles the lessor to include legal costs in service charges. Accordingly, the Tribunal determines that none of the legal costs claimed in any of the relevant years may properly be regarded as service charge costs. It will however be for the County Court to make its own determination in due course, as to whether or not any costs order should be made in the proceedings under Ref E45YQ764.

35. Section 20C Costs and Paragraph 5A Costs: the Tribunal has determined that a very significant proportion of the costs claimed against the Applicant, by the Respondent landlord, namely the legal costs, are not payable as service charges. Accordingly, and exercising its discretion under Section 20C the Tribunal orders that none of the costs incurred or to be incurred by the landlord in connection with these tribunal proceedings, are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant tenant. Similarly, the Tribunal exercising its discretion, orders that the liability (if any) of the Applicant tenant to pay an administration charge in respect of litigation costs in relation to these tribunal proceedings, is extinguished. For the avoidance of doubt, the Tribunal is not minded to exercise its discretion to make any order for costs against the Respondent in favour of the Applicant, pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

36. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal
appointed by the Lord Chancellor

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.