FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

HMCTS code (audio, video, paper)		**V: CVPREMOTE**
Case Reference	**:**	**CAM/00MC/LSC/2020/0025**
Property	**:**	**16 & 35 Albion Terrace Reading Berks RG1 5BG.**
Applicant	**:**	**Peter Bishop**
Respondent	**:**	**Albion Place Reading Limited**
Type of Application	**:**	**Application for the determination of the reasonableness and payability of service charges**
Tribunal Members	**:**	**Tribunal Judge S Evans Mrs Alison Flynn MA MRICS**
Date and venue of Hearing	**:**	**1 December 2020 Remote, by Cloud Video Platform**
Date of Decision	**:**	**23 December 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote decision. The form of remote decision is V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable on account of the Coronavirus pandemic, and all issues could be determined remotely. The documents before the Tribunal are contained in a bundle of 469 pages, and a supplemental bundle of 111 pages.

The Tribunal determines that:

(1) The fair and reasonable proportion for the Applicant to pay by way of service charge from 2014 onwards, for each of his flats, is:

- **1/58th of the total General Expenditure, including any expenditure on that part of the Building which includes 65A Albion Place ("65A");**

- **1/101st of the total Common Parts Expenditure;**

(2) Such Expenditure excludes any costs in relation to installation of walls removed by the lessee of 65A;

(3) Such Expenditure excludes any costs in relation to any extension of land by the lessee of 65A;

(4) Such Expenditure excludes costs in relation to the "toilet block" and store shed;

(5) Such Expenditure includes the costs expended in the installation of the metal staircase and its ongoing maintenance;

(6) The Respondent's costs of major works which are challenged by the Applicant are reasonable, save as set out in paragraph 67 of this decision;

(7) 50% of the Respondent's legal costs in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

REASONS

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of costs to be incurred by way of service charges pursuant to an application made under s.27A of the Landlord and Tenant Act 1985.

2. References in this decision in square brackets are to pages in the hearing bundle.

Relevant law

3. The relevant statutory provisions are set out in Appendix 1 to this decision.

Parties

4. The Applicant Mr Peter Bishop is the long leasehold owner of 2 flats at 16 Albion Terrace and 35 Albion Terrace, London Road, Reading RG1 5BG ("the Property").

5. The Property is within a Grade II listed terraced building.

6. The Applicant purchased the first of his flats in April 1988, after the building had been converted. On 26 February 2013, a new 999 year lease was granted to the Applicant of the Property, it is assumed on the original terms [4.8].

7. The Respondent is the freeholder of all relevant land, by conveyances dated on or about 18 December 2001 and 16 January 2003 [4, 5]. It was originally named under the 1988 lease as the Management Company, the lessor being a company called Rodwise Ltd [7.1].

8. Pertinent to this case is the fact that there is another property called 65A Albion Place, London Road, Reading ("65A") which forms part of the terrace of properties which include the Applicant's property. It is held under a long lease originally granted by Reading Council to Mr and Mrs Morjaria on 12 September 1985 [9.1]. The leaseholders under that lease from 2014 have been Edward Odlin and Sapna Odlin [6.1]. The lessor under that lease is now the Respondent. 65A was not part of the conversion which took place in 1988.

Background

9. The Property has been the previous subject of proceedings in the Leasehold Valuation Tribunal. On 13 July 2010 a decision was made by the Leasehold Valuation Tribunal in a claim brought by the Applicant against the Respondent in relation to service charges: see CAM/00MC/LSC/2010/0038 [12].

10. In those proceedings , the Tribunal found that, on the basis of facts as they stood, the Applicant was liable for 1/57th of the total service charges levied. The Tribunal also concluded that the Respondent must take all reasonable steps to ensure that the lessee of 65A becomes liable to pay a similarly fair and reasonable proportion of the services [12.7].

11. In addition, on 10 September 2010 there were proceedings brought in the Leasehold Valuation Tribunal by the Respondent (as Applicant) against Mr and Mrs Morjaria, the lessees of 65A, which resulted in variations to their lease under section 35 of the Landlord and Tenant Act 1987 [13]. However, the variations made, so far as are material to the present proceedings, only provided that the amount of the service charge levied to 65A should be ascertained and certified by a certificate signed by the Respondent or its Agent. It did not record a variation to any proportion of the service charge payable by 65A.

12. In or about 2017, major works were undertaken to the building in which the Property is situated. These first appear in the service charge accounts for the year ending 31 March 2019 [15.51, 15.55].

13. On 25 September 2019 the Applicant obtained a report from a chartered surveyor, on which he now relies to make good his assertions that some of the major works were not undertaken to a reasonable standard [31].

The Leases

14. The Lease to flat 16 [7.1] contains the following material clauses:

15. Within Clause 1 [7.1]:

    (1) "Service Charge" is defined as "one such proportion of the General Expenditure and such proportion of the Common Parts Expenditure as the Management Company shall consider fair and reasonable" [7.1];

(2) "The Building" is defined as "the building of which the Flat (as hereinafter defined) forms part being edged blue on the Plan" (at [7.29]).

16. By clause 3 (17) the lessee has the obligation to pay an Interim Service Charge and Service Charge [7.8].

17. By clause 3 (18) the lessee is obliged to pay a reserve sum, being such sum as the Management Company may reasonably require towards items set out in the 3rd Schedule to the lease, being matters which are likely to arise at intervals of greater than one year [7.8].

18. By clause 5 of the lease, the Management Company covenants with the lessor that it will perform the obligations in the 3rd Schedule to the lease [7.9].

19. By clause 6 of the lease, the lessor covenants with the lessee to give quiet enjoyment, and to enforce covenants made by other tenants in any other part of the building [7.10].

20. Two plans are incorporated within the lease [7.29, 7.30].

21. Clause 7 sets out what is included in the demised premises [7.11].

22. The 3rd Schedule of the lease contains the obligations of the Management Company [7.17]. These include:

(1) At paragraph 1, matters of repair etc [7.17];
(2) At paragraph 2, matters of redecoration [7.17];
(3) At paragraph 3, requirements as to common parts lighting etc. [7.17];
(4) At paragraph 9, the ability to employ experts, lawyers and managing agents [7.19];
(5) At paragraph 10, matters as to apportionment of expenditure, in order to arrive at a reasonably fair calculation of total expenditure [7.19];
(6) At paragraph 11, what might be described as a catch-all provision [71.9].

23. The 4th Schedule to the lease contains the service charge mechanism. It includes:

(1) At paragraph 1, the "accounting period", being 1 April to 31 March in each year [7.20];

(2) At paragraph 1(2)(a) the definition of "General Expenditure" , which includes the obligations in the 3rd Schedule to the lease and any other costs reasonably and properly incurred in connection with the building (except parking, access, and common areas) [7.20];

(3) At paragraph 1(2)(b), the definition of "Common Parts Expenditure", which includes the obligations in the 3rd Schedule so far as they relate to parking, access, and common areas. It also includes any other costs and expenses reasonably and properly incurred in connection with such works [7.20];

(4) At paragraph 1(3), the definition of the "Interim Charge", which must be a fair and reasonable payment, payable in advance in equal parts on 30 June and 31 December in each year, or as specified by the Management Company [7.20];

(5) At paragraph 4, the ability to carry forward any surplus, excluding the reserve [7.21];

(6) At paragraph 6, the requirement for certification as soon as practicable after the expiration of the accounting period [7.21];

(7) At paragraph 7, the ability of the lessee to challenge the certificate within 28 days, with the matter then being referred to the lessor's surveyor for final determination [7.22].

24. The Tribunal notes for the purposes of this determination that each of the flats which are the subject Property in this Application have leases on identical terms.

25. The lease to 65A was also provided to the Tribunal [9.1]. The extent of the demise can be ascertained by the wording of the lease itself and the plans which it incorporates [9.37 to 9.39]. The demised premises may generally be described as part of the ground floor of the building known as 65 and 65A Albion Place, London Road, Reading, plus the 1st floor, 2nd floor, 3rd floor , and the gardens, and a store shed [9.4].

26. This means that the top 3 floors of the end of the terraced building comprise 65A, and the lower floors (ground and basement, presumably) consist of 2 flats in Albion Place held by different lessees.

27. The only part of the ground floor which the lessee of 65A uses is presumably part of the ground floor for access.

28. By clause 3(b) of the lease to 65A, the lessee is required to pay a proportionate part of the expenditures and outgoings of the building , and other heads as set out in the 4th Schedule to the lease [9.5].

29. By Clause 5(4), the lessor has a repairing covenant, which includes the main structure of the building, the common parts of the building, the paths and roads on the central estate, the conduits on the central estate, the lighting on the central estate, and redecoration of the building on the central estate of which the demised premises form part [9.15].

30. By clause 6 it is provided:

> " The Corporation shall be at Liberty but shall not be bound to provide all or any services of any kind whatsoever for the reasonable comfort and reasonable convenience of the lessee his servants agents and visitors including maintenance decoration cleansing insuring and securing the building and the remainder of the central estate or any part thereof respectively or any equipment fixtures or apparatus therein."

31. The 4th Schedule to the lease to 65A set outs the matters for which service charge is payable [9.26].

32. The 5th Schedule [9.27] sets out the service charge mechanism, which is somewhat complex, and since it is not of direct relevance to the Application, it is not set out now.

The Application

33. In summary, for the years 2014 onwards, the Applicant seeks a revision of the 2010 determination which held that he is required to pay 1/57th of the total service charge for each of his flats [1.4, 1.9].

34. The Applicant also takes some discrete points on the reasonableness of certain sums for major works executed in 2017 [1.9].

The Issues

35. On 6th May 2020 directions were given in this matter by Tribunal Judge Wayte [2.2]. The Tribunal identified the following issues to be determined [2.4]:

    (1) What is a fair and reasonable proportion for the Applicant to pay for his 2 flats comprising the Property, bearing in mind that 65A is also to contribute on that basis (2014 to date);

    (2) Whether the costs of the major works which are challenged are reasonable;

    (3) Whether an order should be made under s.20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

36. The Tribunal understands that the parties were invited by Judge Wayte to consider joining the lessees of 65A to the Application, but declined to do so.

The Hearing

37. At the outset of the hearing the issues were reiterated by the Tribunal, and confirmed by the parties. It was also confirmed that the Tribunal would not be making a determination of any sum by way of service charge which it was reasonable for the lessee of 65A to pay or have paid, as opposed to what the Applicant should pay. This was particularly so, given that the lessees to 65A were not joined to the Application. However, as the directions had indicated, the position of 65A was to be borne in mind in the Tribunal's determination.

38. It was further established at the outset that neither party had fully complied with Judge Wayte's directions. The absence of a Schedule of service charge items, and the lack of concise statements of case or witness statements from the parties themselves meant that time was spent establishing the parties' cases, which somewhat developed over the course of the hearing.

39. The Applicant had served a statement dated 13 November 2020 from Mr Teh, the leaseholder of 10 Grey Court, RG1 4PP, but the Respondent indicated this was not challenged, and no evidence was called. The hearing proceeded essentially on the basis of representations by the Applicant and Mr Dugdale for the Respondent, which were made at length and courteously, for which we are grateful.

Issue 1: What is a fair and reasonable proportion for the Applicant to pay for his 2 flats comprising the Property, bearing in mind that 65A is also to contribute on that basis (2014 to date) ?

40. With some assistance from the Tribunal, it was established that the Applicant was seeking:

    (1) 1/57th for each of his flats of the General Expenditure for Albion Terrace but any excepting any expenditure whatsoever on 65A;

    (2) 1/103rd for Common Parts Expenditure.

41. The Applicant's main concern was that 65A had been 'lumped in' (our expression, not his) with the remaining units; there were 60 units in total (see plan at [7.30]), with 65A covering geographically the same space as 3 regular flats. He had purchased the first of his leases in 1988 believing he would be pay 1/60th for each of his flats, because the property was advertised as having 60 units. He relied on the marketing documentation which refers to 103 apartments (i.e., the 60 at Albion Place and 43 elsewhere) [34.11].

42. Accordingly, the Applicant's position was that a fair and reasonable proportion for him to pay for each of his flats was 1/57th of all expenditure save for any money spent on 65A, which should be accounted for separately.

43. He pointed to the fact that 65A was of considerable size, that it has its own post code, has its own separate entrance and has its own private garden. He emphasised that the lease to 65A was already in existence in 1988 and the demise survived the redevelopment of the block in that year. He relied on the fact it called "65A Albion Place" not "65A Albion Terrace".

44. When it came to an analysis of the leases, the Applicant suggested that the part of the terraced building comprising 65A was situated to the right (east) of the blue-edged terraced building shown on the plan to the Lease of the Property [7.29]. In other words, 65A was not part of the "Building" as defined in Clause 1 of his leases [7.1].

45. During the course of the hearing, it became apparent that clarity was needed as to individual items of potential service charge expenditure to which the Applicant objected which might come within the geographical limits of the lease to 65A:

(1) There is a “toilet block” marked as a white rectangle immediately to the north of the shed on the plan to the lease to 65A [9.38]. This “toilet block” is a semi-detached building, which the Tribunal understands to be in a somewhat parlous state, having broken windows and an old hand pump inside;

(2) There is a new metal stairway and walkway (photograph [42.3]) which has replaced the wooden one at some time since 2014. It is attached to the flank elevation of the terraced building, and leads to the rear of the Albion Terrace flats which have a rear door access. At the top of the metal stairs is a gate with a fob access;

(3) The lessees to 65A have knocked down certain boundary walls, and the Applicant is concerned that he might have to pay for their reinstatement;

(4) The lessees to 65A have extended the geographical extent of the land demised.

46. The Respondent acknowledged that the situation was complicated, such that it had obtained legal advice in 2017 which wasn't particularly conclusive. However, the Respondent was adamant that 65A did fall within the blue edged terrace building shown on the plan to the lease of the Property [7.29], when compared with the lease to 65A and the plans thereto [9.37, 9.38].

47. The Respondent’s representations were that the Applicant should pay 1/58th of the expenditure in relation to the whole terraced building which including the part comprising 65A. This should also include the expenditure on legal charges to enforce matters in relation to 65A’s removal of boundary fences and creation of a vehicular access, and the upkeep of the store shed.

48. The Respondent relied on the fact that that in reality 65A is a single flat, albeit a larger one, and that in 2017 they had been required to negotiate with the lessees of 65A in respect of major works provision to the building, including the roof, which had then resulted in the lessees (including the Applicant) being charged 1/58th of total expenditure since 2018/2019.

49. Mr Dugdale confirmed that the Respondent had demanded service charges of the lessees of 65A since 2014, but they had been resistant to paying, albeit they had paid 1/58th of the expenditure (unspecified) for 2018/2019 and 2019/2020.

50. Mr Dugdale candidly accepted that previous directors of the Respondent had been "befuddled" by matters, and that previous managing agents had not kept records, and or least could not find them. Neither party could assist the Tribunal with interpretation of a certain document, said to be created by the previous Managing Agents (Encore Estates) for 2010 to 2016, which appeared to show payments made by then lessee of 65A in 2012-2014 and 2016 [17]. Nor could the parties assist with a computer printout entitled in manuscript "Albion Certificate Calculations 2015-01" [16].

51. However, Mr Dugdale emphasised that since he had come on board, he had tried to simplify matters, whilst trying to be fair and equitable to all parties.

52. Finally, Mr Dugdale informed the Tribunal that the lease to 65A was on the market, and it might in time be possible to renegotiate the service charge proportion with the incoming lessee.

Determination

53. The Tribunal has to determine what is a fair and reasonable proportion for the Applicant's 2 flats, given that the Respondent is required to "arrive at a reasonably fair calculation of its total expenditure attributable to (a) the Dwellings and (b) the Accessway parking areas and the Communal Area….": see 3rd Schedule, paragraph 10 [7.19].

54. This is essentially a balancing exercise of all material factors.

55. However, there is a preliminary matter of lease interpretation: the Tribunal rejects the Applicant's submission that 65A does not fall within the blue edged terrace building shown on the plan to the lease of the Property [7.29]. When compared with the lease to 65A and the plans thereto [9.37, 9.38], it is plain in the Tribunal's view that it does.

56. The Tribunal prefers the submissions of the Respondent that the proportion should be 1/58th of the General Expenditure and 101st of the Common Parts Expenditure. The sheet anchor of the Applicant's case is that 65A is geographically larger, and he should not be subsidising it. However, the Tribunal notes that the Applicant does not take issue with a paying an identical proportion to any other lessee, even though the service charge proportion is exactly the same for 1 and 2 bedroom flats, whether they be cellar, 1st floor, 2nd floor, or roof flats. Therefore,

whilst 65A is a larger flat/maisonette, its size is of less importance than might at first appear.

57. Secondly, the apportionment of 1/58th and 1/101st has the advantage of some working agreement since 2018 with the majority of lessees, including those at 65A.

58. Thirdly, the Respondent's only source of income for expenditure on this Grade II listed building is solely that which it derives from service charge income. The Respondent has no separate income of its own. Too small a proportion payable by lessees including the Applicant might result in a deficit which the Respondent would be unable to meet, and which the Respondent alleged might lead to liquidation. To have expended money on legal advice or litigation against 65A, rather than reaching a commercial solution, would also be likely to have come at a cost to either the Respondent or the Applicant/ other lessees.

59. Fourthly, whilst the Tribunal appreciates that there has ostensibly been poor management previously by the Respondent's former directors (and perhaps agents), re-apportionment of service charge proportions to any significant degree would not be in both parties' better interests, whether in terms of time, administration or costs.

60. In relation to the specific items complained of by the Applicant (see paragraph 45 above) the Tribunal determines:

(1) The "toilet block" and store shed:

(a) Are not part of the "Building" as defined within the Applicant's leases;

(b) Accordingly, costs expended in relation thereto do not fall within the terms of the 3rd Schedule, or the definition of "General Expenditure" in the 4th Schedule, unless and to the extent the state of the toilet block has directly impacted, or will directly impact, on the structure of the Building, in which case they might be "other costs and expenses reasonably and properly incurred in connection with the Building" within the definition of "General Expenditure". By way of illustration only, if the state of repair of the toilet block were to directly impact on the Building, costs in relation thereto might be recoverable. However, there is no evidence that is the case to date;

(2) The new metal stairway, being a replacement for the wooden one, is either an "other part of the Building other than those parts which are the responsibility of individual lessees" within the meaning of paragraph 1(a) of the 3rd Schedule to the Applicant's leases [7.17] , or the Tribunal finds that the replacement and maintenance of the same does fall within the "catch-all" provision which is paragraph 11 of the 3rd Schedule [7.19]. In either case, it is a recoverable item of "General Expenditure" as defined under the 4th Schedule [7.20];

(3) The boundary walls removed by the lessees of 65A and their extension of land fall outside of the green edged area on the Applicant's lease plan, which is the "Communal Area" [7.29]. As such, any works to the same do not fall within the 3rd Schedule paragraph 7 [7.18], and do not therefore fall within "Common Parts Expenditure" as defined in the 4th Schedule [7.20];

(4) For the avoidance of doubt, the legal costs of the Respondent in relation to the actions of the lessee of 65A as regards (3) above do not, in our view, fall within the 3rd Schedule, paragraph 9 of the Applicant's leases [7.19]. He is not therefore liable to contribute any payment for them.

61. The Tribunal does not determine whether any of the above items might also be recoverable against the lessee of 65A under the terms of their lease. Whilst it may be the case that such items fall within clause 6 of that lease, the Tribunal has not heard full argument, in particular any argument from the lessees of 65A, and declines to comment further.

62. Accordingly, the Tribunal determines the fair and reasonable proportion for the Applicant to pay from 2014 onwards for each of his flats should be:

- 1/58th of the total General Expenditure, including any expenditure on that part of the Building which includes 65A;

- 1/101st of the total Common Parts Expenditure.

63. Further, the Tribunal determines that:

- Such Expenditure excludes any costs in relation to installation of walls removed by the lessee of 65A;

- Such Expenditure excludes any costs in relation to any extension of land by the lessee of 65A;

- Such Expenditure excludes costs in relation to the "toilet block" or store shed, unless and to the extent they have directly impacted, or will directly impact, on the structure of the Building (of which there is no evidence);

- Such Expenditure, however, includes the costs expended in the installation of the metal staircase and its ongoing maintenance.

Issue 2: Whether the costs of the major works which are challenged are reasonable

64. The Applicant had provided a Schedule which was only partially complete, and it did not include figures for costs, or indicate what he was prepared to pay [28]. The Tribunal had to ask both parties to attempt to complete the same during the course of the hearing.

65. This resulted in the following more complete Schedule:

Item	**Cost (£)**	**Tenant's Comments**	**Landlord's Comments**
Roof	442,890	Defect, still scaffold up	Scaffold up as last defects being completed
Front and end Facades	100,710 5730 15480	Superficial, untidy, bad	We are not aware of issues
Front Garden	Destroyed	Destroyed, not reinstated	To be repaired in spring
65A external wood stairs	Estimate 26,000?	Replaced, and improved by steel stairs	Correct - for fire safety – only escape route
Rear entrance walls disaster	Estimate £3000?	Colour mismatch, no cement used	Not sure what this is but final snagging ongoing

Garden Wood pagodas collapse	Damaged	Left to rot for 32+ years scandalous	?
Front/rear windows	62,500	Painted shut, from outside	All leaseholders asked to make issue known to contractor
65A Toilet block	Left	Rat infested derelict	Not 65A!

66. With the assistance of the Tribunal, it was established that:

(1) Roof: the Applicant is seeking 11 months of unnecessary scaffolding, at a cost to him of about £20 per flat;

(2) Front and end facades were poorly finished (as per his expert report). The Applicant is seeking deduction of £20 per flat. (The Respondent agreed to this deduction during representations);

(3) Front garden plants destroyed during major works. £50 damage was sought, but the Applicant withdrew this item during the course of representations;

(4) Staircase: The Applicant could not place a figure as being the cost to him. He argued it was an improvement for which he should not pay;

(5) Rear entrance walls. Poor pointing in between bricks for 2 years, as per photographs [39, 39.1]. The Applicant is seeking deduction of £20 per flat;

(6) Garden pagoda: the Applicant withdrew this matter during submissions;

(7) Front/rear windows: expert evidence only evidences problems at Flat 16. The sum of £50 is sought for 3 windows at the front and 1 at the rear. (The Respondent agreed to this deduction during the hearing);

(8) 65A toilet block: no cost indicated.

67. The Tribunal determines:

(1) Roof: The Respondent's cost is reasonable, it being established on the Respondent's representations that the delay in striking the scaffold has not incurred, and will not incur, any additional costs;

(2) Front and end facades: there shall be an agreed deduction of £40 for the Property (i.e. £20 per flat);

(3) Front garden plants destroyed during major works. No deduction (item withdrawn by Applicant);

(4) Staircase: the Tribunal determines this cost is reasonably incurred against the Applicant, for the reasons given earlier in this decision. There is no evidence the cost estimate at £26,000, to which all relevant lessees will have contributed, was excessive;

(5) Rear entrance walls: there shall be an agreed deduction of £40 for the Property (i.e. £20 per flat). The Tribunal finds the works were not to a reasonable standard;

(6) Garden pagoda: no deduction (item withdrawn by Applicant);

(7) Front/rear windows: there shall be an agreed deduction of £50 for flat 16 only;

(8) 65A Toilet Block: No costs shall be allowed, if any were incurred during the major works, for the reasons given earlier in this decision (i.e. there is no evidence that such costs fall within the terms of the Applicant's leases).

Issue 3: Whether an order should be made under s.20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

68. Mr Dugdale indicated that the Respondent might seek to recover the legal costs of EPMG Legal Ltd incurred within these proceedings, although he was not certain.

69. Mr Dugdale did confirm that any legal costs would not include the legal advice of Boyce Turner from several years previously.

70. The Respondent directed the Tribunal to its ability to recover such costs under the service charge mechanism of the leases: see 3rd

Schedule paragraph 9 [7.19] and the 4th Schedule, paragraph 1(b) [7.20].

71. Mr Dugdale did not advance any case the legal costs might be recoverable as an administration charge.

72. In *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), HHJ Rich held:

> "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

73. In the instant case the Tribunal determines that only 50% of the Respondent's legal costs in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant, for the following reasons.

74. There has been no clear "winner" in the instant proceedings; although the Tribunal has agreed that the service charge fractions the Respondent has recently applied should be applied going back to 2014, and may be reasonable to apply in the future, the Tribunal has some sympathy for the Applicant, who has been compelled to prosecute these proceedings in order to obtain a resolution of the matter of most importance, namely the assessment of the reasonable proportion he has to pay. The part of the Application in relation to major works was not his strongest point, but this has been resolved for the most part with some sensible concession on both sides.

75. The Tribunal concludes by thanking the parties again for the civil way the hearing was conducted, given the considerable history to the case. The Tribunal expresses hope that this decision might lead to a clearing of the air between the Applicant and the Respondent, and a promote an amicable working relationship going forward.

Judge: _____
S J Evans

Date:
23/12/20

ANNEX – 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 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 to 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 1

Landlord and 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 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, a First-tier Tribunal, or the Lands 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) .....

(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.

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.