



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

Case reference : **BIR/17UB/LIS/2020/0008**

HMCTS code (paper, video, audio) : **V:CVPREMOTE**

Property : **Kedleston Close, Belper, Derbyshire, DE56 1TZ**

Applicant : **Heritage Court RTM Company Limited**

Representative : **RTMF Services Limited**

Respondent : **Fairhold Homes (No 14) Limited**

Representative : **JB Leitch solicitors**

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

Tribunal members : **Judge D Barlow
Mr R P Cammidge**

Date of Hearing : **8 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVP . A face-to-face hearing was not held because it was not practicable, no one requested it and all issues could be determined in a remote hearing. The remote video hearing took place on 8 January 2021. The Respondent provided a combined digital bundle of 641 pages (the Combined Bundle) and a Supplemental Bundle of the Applicant's additional authorities of 124 pages (the Supplemental Bundle).

DECISION OF THE TRIBUNAL

The Tribunal does not have jurisdiction to determine this application and the proceedings are therefore struck out pursuant to Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules").

REASONS

The application

1. The Applicant RTM seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether rent charged for the use of Flat 4 within the Property ("Flat 4") as accommodation for a resident House Manager during the service charge years 2014 to 2020, is payable to the Respondent, under the terms of the long residential leases and if so whether the rent is reasonable.
2. The service charge items in issue, which all relate to rental payments for the use of Flat 4 by the House Manager, are:
 - (i) Service charge y/e 27/08/2014: rent £7,736
 - (ii) Service charge y/e 27/08/2015: rent £7,983
 - (iii) Service charge y/e 27/08/2016: rent £8,167
 - (iv) Service charge y/e 27/08/2017: rent £8,232
 - (v) Service charge y/e 27/08/2018: rent £8,290
 - (vi) Service charge y/e 27/08/2019: rent £8,414
 - (vii) Service charge year to 27/08/2020: rent £8,540
3. The Respondent has applied for the application to be struck out under Rule 9(2)(a) on the grounds that the Tribunal does not have jurisdiction on an

application under s27A of the 1985 Act, to determine what is a contractual issue between the Applicant RTM and the Respondent. The detailed grounds for the application are set out in the Respondent's statement of case dated 9 November 2020.

4. The Applicant's grounds for opposing the Respondents strike out application are set out in paragraph's 6-10 of a skeleton argument filed by the Applicant's representative on 7 January 2021.
5. The Tribunal determined that it would consider the strike out application as a preliminary matter on the morning of the hearing and then, depending on its decision, go on to consider the substantive application under s27A.

Background

6. The Respondent is the registered proprietor of the freehold of the Property, which is a block of 50 flats known as Heritage Court. The flats are let on long leases granted in 2006 by the developer McCarthy and Stone (Developments) Ltd ("McCarthy"), prior to the Respondent acquiring the freehold on 13 September 2006. The leases of 49 of the flats contain age restrictions limiting occupation to persons aged 60 and over.
7. Flat 4 was retained by McCarthy through the grant of a head lease to a company called Littonace (No 9) Ltd and lease back to McCarthy, both dated 16th of June 2006. The underlease to McCarthy was granted for a term of 125 years from 1 February 2006 (less seven days) reserving an initial rent of £10,503 per annum subject to an upward only annual review based on 6% of the market value of the flat (subject to a minimum RPI increase). The Respondent is both freeholder of the head lease reversionary title and the registered leasehold proprietor of the underlease under title DY404540.
8. On 3 May 2011, the Applicant RTM acquired the right to manage Heritage Court pursuant to the provisions of Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and from that date, took over all management functions of the "premises" pursuant to sections 96 and 97 of the 2002 Act.
9. Flat 4 appears to have been used as accommodation for a House Manager since the grant of the long residential leases in 2006 and rent for that accommodation was initially paid to the Respondent, by the long leaseholders, through the service charge. After the Applicant RTM acquired the right to manage in 2011, that use appears to have continued and rent for the use of Flat 4 was paid by the Applicant RTM to the Respondent until March 2017.
10. During 2010 to 2011 there was some correspondence between the leaseholders, the Applicant RTM and the Respondent concerning the level of rental for Flat 4. Gordon Glover, on behalf of the Applicant RTM,

accepted by letter dated 10 June 2011, a proposed rental of £7,140.00 for the year 2011/2012. In March 2017 the Applicant RTM stopped paying rent to the Respondent for the use of Flat 4.

11. One 16th of January 2019, following unpaid demands for the rent, JB Leach solicitors wrote to the Applicant RTM demanding payment of the arrears of rent from 1 March 2017 to 28 February 2019, totalling £17,121.56. The letter points out that the Heritage Court leases make provision for payment of service charge for accommodation of the House Manager, at paragraph 1.2.11 of the Fourth Schedule to the leases and that despite management functions having been acquired by the Applicant RTM, the rents remained payable to the Respondent. (Page 632 of the Combined Bundle).
12. On 1 February 2019, RTMF Services Ltd responded to the letter on behalf of the Applicant RTM. The letter is a denial that rent for the accommodation is payable by the Applicant RTM or overdue. The letter disputes the right of the Respondent under paragraph 1.2.11 of the Fourth Schedule to the leases, to charge a rent for the House Manager's flat. It contends that the clause required the leaseholders to pay the costs incurred by way of expenditure in providing and maintaining the accommodation but did not specify a rent. The letter goes on to require the Respondent to (a) identify the accommodation referred to and provide details of the expenditure in providing and maintaining the accommodation; and (b) identify the clause or clauses in the lease that required the leaseholders to pay rent for the accommodation. (Page 631 of the Combined Bundle)
13. On 22 April 2020, an application with made to the Tribunal by the Applicant RTM under s27A of the 1985 Act, for determination of the Respondent's entitlement to charge a rent for the House Manager's flat and if so, the amount of rent which is reasonable. Mr Joiner of RTMF Services Ltd, representing the Applicant RTM, confirmed at the hearing that this application was filed as a consequence of the exchange of correspondence between the Respondent and the Applicant RTM in January/February 2019 referred to above.
14. Directions were made by the Regional Judge on 21 May 2020, confirming refusal by the Chamber President of the Applicant's request for a transfer to the Upper Tribunal under Rule 25, but staying proceedings under Rule 6(3)(m) pending the handing down of the decision of the Upper Tribunal in the appeal of Fountain Retirement Housing Association Re: Flats at Batworth Park House, Crossbush, Arundel, West Sussex, BN18 9PG, under reference LRX/4/2020.
15. The stay was lifted in September 2020 and Directions issued by the Tribunal on 16 September 2020, for the parties to file statements and evidence.

Material statutory provisions

16. The material statutory provisions are set out in Appendix I.

Written submissions and evidence

17. Both parties filed written statements of case pursuant to the Directions. The Applicant's statement of case dated 16th of October 2020, appears at pages 68 to 72 of the Combined Bundle. The Respondent's statement of case dated 9 November 2020, which includes the strike out request at paragraphs 19 – 28, and exhibit's two witness statements, appears at pages 73 to 218 of the Combined Bundle.
18. The Applicant RTM did not file a Reply to the Respondent's statement (as permitted by paragraph 3 of the Directions). The Applicant's representative Mr Joiner, did however file two bundles of additional authorities (pages 219 –344 of the Combined Bundle and pages 1-156 of the Supplemental Bundle) and on 7 January 2021, Mr Joiner also filed a skeleton argument addressing the substantive issues, including the strike out request.
19. The parties' written submissions were considered by the Tribunal before and during the hearing.

The Hearing

20. The Applicant RTM was represented at the hearing by Mr Joiner of RTMF Services Ltd. The Respondent was represented by Ms Crampin of counsel. Also attending were Ms K. Edwards, solicitor from JB Leach, the Respondent's two witnesses, Mr M. Loughnane and Ms L. Smith from Estates and Management Ltd (the Respondent's agents) and Ms E. Gough in-house counsel for Estates and Management Ltd.
21. The parties' submissions at the hearing on the strike out application were very similar to their written submissions, but will be identified separately in this decision, where relevant.

Respondent's submissions

22. On behalf of the Respondent, Ms Crampin submitted that the Tribunal did not have jurisdiction to determine the application for reasons that are summarised as follows:
- (i) The sums being challenged are rent for the use of Flat 4, charged by the Respondent, who is both freeholder and the underlessee of Flat 4, to the RTM company. That is evident from the demands attached to the statement of case which all show that what is being demanded by the Respondent's agent from the RTM company is rent for Flat 4.

- (ii) The rent was paid up until 2017 when the RTM company stopped paying rent.
- (iii) The rent is payable to the Respondent as owner of Flat 4, not as a 'landlord' within the meaning of s30 of the 1985 Act, because the Respondent does not have the right to charge or enforce payment of a service charge. That is the effect of s96 and s97 of the 2002 Act.
- (iv) This is an application under section 27A of the 1985 Act and s27 is the source of the Tribunal's jurisdiction. Section 27 sets out a list of matters that a Tribunal can determine in relation to whether a service charge is payable. A service charge for the purposes of any determination under section 27A is defined in section 18 (1) of the 1985 Act as an amount payable "by a tenant of the dwelling as part of or in addition to the rent". The RTM company is not a tenant and the straightforward submission is that this cannot therefore be a service charge. The Respondent was responsible for management of the Property but that was taken away on the acquisition of rights to manage by the RTM company in 2011.
- (v) Before 2011 the Respondent would have charged rent for Flat 4 through the service charge. However, since 2011 it charges rent to the RTM company, which it is entitled to do because the acquisition of rights to manage by the RTM company, does not prevent the Respondent from either receiving or charging a rent for the use of the Flat 4. The rent charged to the RTM company for the use of Flat 4 is not a service charge within the meaning of the 1985 Act. Any issue concerning the level of the rent is a contractual, or estoppel, or trespass issue between the Respondent and the RTM company.
- (vi) If the Applicant wants to raise issues concerning the service charge, the other parties should be leaseholders of the flats, since it is they who pay the service charge to the Applicant. The Respondent is not an appropriate Respondent to a s27A application, since it neither charges nor pays a service charge. Any determination of whether the Applicant can recover the rent it has paid to the Respondent from the leaseholders, through the service charge, would not affect its liability to pay the Respondent that rent.
- (vii) The Applicant's liability to pay rent to the Respondent does not arise through any relationship between them of landlord and tenant. It arises from an implied agreement to pay rent for the use of Flat 4, based on its actual payment of rent from 2011 to March 2017. Its refusal since to either pay rent, or vacate the flat gives rise to an estoppel by convention, in respect of any argument that the RTM company is not liable for the rent. Alternatively, the Applicant RTM is liable to the Respondent for damages in trespass. These are not issues as to service charges and the application should be struck out.

Applicant's submissions

23. Mr Joiner made a number of submissions in his skeleton argument filed on 7 January 2021, which he expanded on at the hearing. They are summarised as follows:

- (i) The Applicant RTM is entitled to make an application under s27A of the 1985 Act as the party obligated to demand and collect service charges. The Tribunal therefore has jurisdiction to hear the application.
- (ii) The Tribunal's jurisdiction extends to determining the proper construction of leases where necessary or incidental to issues of liability or quantum of the service charges. (*Southend-on-Sea BC v Skiggs [2006] 2 E.G.L.R. 87 (LT)*).
- (iii) It follows therefore that the Tribunal's jurisdiction extends to determining the scope of a service charge demanded under a lease and any item that does not meet the statutory definition of service charge is 'not reasonably incurred'.
- (iv) This application was prompted by the Respondents letter dated 16 January 2019, quoting paragraph 1.2.11 of the Fourth Schedule of the Flat Lease and stating that "the leases at Heritage Court provide for the payment of a service charge in connection with...*accommodation for the House Manager(s) together with rent(s) in respect thereof...*", and threatening winding up proceedings if the demand was not paid. This application is therefore rightly before the Tribunal and it is disingenuous for the Respondent to allege otherwise.

24. The Tribunal explained to Mr Joiner that there was a difficulty with his application in that first, it seeks a determination of sums paid by the RTM company to the Respondent for use of Flat 4 and secondly, the leaseholders, who are paying the service charge, which includes the disputed sums, are not parties.

25. Mr Joiner submitted that s27A of the 1985 Act didn't require the leaseholders to make the application or state that the leaseholders were the only parties that could make an application. If the landlord of a lease was uncertain as to whether or not charges are appropriate as a service charge and wanted that to be determined before charging it to the tenant, then in his submission, the landlord could make an application under s27 of the 1985 Act.

26. The Tribunal explained that it did not dispute the right of an RTM to make an application under s27 of the 1985 Act, but the Tribunal was unlikely to make a determination affecting the liability of the leaseholders to pay service charges, or the amount of the charges, if they were not parties to the proceedings. The leaseholders were not parties and had not been served

with notice of the proceedings, which would have provided them with an opportunity to make submissions, if they wished.

27. Mr Joiner submitted that the issue was not one of quantum the issue was essentially as to liability. This was, he said, *“not an issue in which the leaseholders themselves are qualified to speak even if they were here as parties listening in - they are not in a position to make those decisions, it is a decision that has to be made by the RTM company in deciding whether or not it is appropriate to make that charge”* and that, in Mr Joiner’s submission, came well within s27A. Mr Joiner feared that the Tribunal were putting limitations on s27A that were not there, that nowhere in s27A did it say that an application couldn’t be made if the tenant wasn’t present. The issue, Mr Joiner submitted, is whether the RTM standing in the shoes of the landlord is entitled to make these charges to the leaseholders. The party that has to make that decision is the RTM company and that is why the RTM company has made the application.
28. Mr Joiner went on to explain that the sequence of events started with the letter from JB Leach to the RTM company referred to above. It was not sent to the leaseholders but to the RTM company - saying you’ve got to pay these sums and charge them back to the leaseholders. It goes on to say in the letter, effectively, that there is an obligation under the service charge. The lease they say, provides for the payment of the service charge in connection with and providing the use of the accommodation and they are therefore demanding the payment. So, what Mr Joiner asked, are the options of the RTM company? The issue Mr Joiner submitted, is whether or not it is a service charge. So, any argument put to the Tribunal that it’s not a service charge and therefore out of the Tribunal’s jurisdiction is, Mr Joiner submitted, a bit circular because jurisdiction depends on whether or not it is a service charge.
29. Mr Joiner submitted that the *Southend-on-Sea* case extended the jurisdiction of the Tribunal to construction of the lease terms where relevant to determining the reasonableness issue and contended that was what the Tribunal should do and there was no authority to say that the leaseholders needed to be present for the hearing of such an application.

Deliberation and Decision

30. The Tribunal adjourned to consider the parties submissions and determine the strike out application.
31. The Tribunal considered the overriding objective set out in Rule 3, to deal with cases fairly and justly and determined that it could not proceed with an application under s27A, that effectively seeks to determine the liability of leaseholders to pay service charges, where the leaseholders have not been joined to the proceedings. Some of the leaseholders may be aware of the proceedings in their capacity as shareholders of the Applicant RTM. Some leaseholders (possibly all) may have no wish to make individual submissions or participate in the proceedings, but as leaseholders liable to pay the service

charges, they have that right and are the proper first respondents to this application.

32. As the application seeks a determination that affects the proprietary rights of the Respondent, it is right that the Respondent should also be a party to the proceedings. However, having determined that the Tribunal could not make a determination of the leaseholders' liability to pay service charges because they were not parties, it was left with an application that seeks a determination of the Respondent's contractual right to demand payment from the Applicant RTM for the use of Flat 4 by the House Manager. That application is not within the jurisdiction of this Tribunal on an application under s27A of the 1985 Act, for the following reasons:

- (i) The service charge referred to in s27A of the 1985 Act is defined in s18(1) of the 1985 Act, as an "*amount payable by a tenant*". The Applicant RTM is not a tenant and sums paid by it for the provision of accommodation for a House Manager cannot therefore be service charges within section 18(1) of the 1985 Act. They may be "relevant costs" under s18(2) and s19 of the 1985 Act, that the Applicant RTM can include in the annual service costs, but the sums paid (and/or payable) to the Respondent are not service charges.
- (ii) The Respondent does not have the right to charge or enforce payment of service charge because all management functions under the lease are now functions of the Applicant RTM, and have been since the RTM acquired the right to manage in 2011.
- (iii) To the extent that the payments are "relevant costs" under s18 or s19 of the 1985 Act, incurred or to be incurred by a 'landlord' in connection with the provision of the services, then paragraph 4 of Schedule 7 of the 2002 Act provides that, in ss18-30 of the 1985 Act, references to the 'landlord', are to the RTM company.
- (iv) Whether on a proper construction of the lease, the 'landlord' is entitled to include payment of rent for the House Managers accommodation within the service charge, is and has since 3 May 2011, been an issue between the leaseholders and the RTM company. That is the effect of s96 and 97 of the 2002 Act.
- (v) The leaseholders can of course challenge the charges for the House Managers flat, they can bring proceedings under s27A against the RTM company (and it would be correct for the landlord and owner of Flat 4 to be joined, as the application seeks to affect its proprietary interests). However, the leaseholders are not parties to these proceedings, the Tribunal cannot therefore make any determination under s27A of the 1985 Act which would affect them - and it has no jurisdiction to determine what remains, which is a contractual dispute between the RTM company and the Respondent.
- (vi) Under Rule 9(2)(a), where a tribunal does not have jurisdiction in relation to the proceedings, it must strike out the proceedings.

33. The hearing was reconvened to confirm to the parties the Tribunal's determination that the application would have to be struck out. The chair

gave brief reasons for the decision and explained that the detailed decision would explain what evidence and issues the Tribunal had taken into account in arriving at their decision.

Further Directions and costs

34. Ms Crampin indicated that the Respondent wished to apply for an order for costs under Rule (13)(1)(b) against the Applicant for acting unreasonably in the bringing of proceedings, having earlier submitted that it was incumbent on a person bringing an application, especially one that is represented, to ensure that it is within the jurisdiction of the Tribunal before embarking on it.
35. The Tribunal therefore makes the further Directions set out in Appendix II

NAME: Judge D Barlow

DATE: 27 January 2021

APPENDIX I

Material statutory provisions

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, Improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the 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 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.

(1) 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.

s30. Meaning of “flat”, “landlord” and “tenant”.

In the provisions of this Act relating to service charges—

...

“landlord” includes any person who has a right to enforce payment of a service charge;

Commonhold and Leasehold Reform Act 2002

s96 Management functions under leases

- (1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.
- (2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.
- (3) And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.
- (4) Accordingly, any provisions of the lease making provision about the relationship of—
 - (a) a person who is landlord under the lease, and
 - (b) a person who is party to the lease otherwise than as landlord or tenant, in relation to such functions do not have effect.
- (5) “Management functions” are functions with respect to services, repairs, maintenance, improvements, insurance and management.
- (6) But this section does not apply in relation to—
 - (a) functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or
 - (b) functions relating to re-entry or forfeiture.
- (7) An order amending subsection (5) or (6) may be made by the appropriate national authority.

s97 Management functions: supplementary

- (1) Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.
- (2) A person who is—
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.
- (3) But subsection (2) does not prevent any person from insuring the whole or any part of the premises at his own expense.
- (4) So far as any function of a tenant under a lease of the whole or any part of the premises—
 - (a) relates to the exercise of any function under the lease which is a function of the RTM company by virtue of section 96, and
 - (b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant, it is instead exercisable in relation to the RTM company.
- (5) But subsection (4) does not require or permit the payment to the RTM company of so much of any service charges payable by a tenant under a lease of the whole or any part of the premises as is required to meet costs incurred

before the right to manage was acquired by the RTM company in connection with matters for which the service charges are payable.

Schedule 7 Right to Manage: Statutory Provisions

...

Service charges

4(1) Sections 18 to 30 of the 1985 Act (service charges) have effect with the modifications provided by this paragraph.

(2) References to the landlord are to the RTM company.

APPENDIX II

Rule 13(2) costs application

DIRECTIONS

- (1) The Tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a).
- (2) The application is to be determined without a hearing, unless either party makes a written request (copied to the other party) to be heard before the paper determination.

Respondents case

- (3) The Respondent shall not later than **25 February 2021** send to the Tribunal and to the Applicant's representative, a statement of case setting out:
 - (a) The reasons why it is said that the Applicant has acted unreasonably in bringing or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT (LC), with particular reference to the three stages that the Tribunal will need to go through, before making an order under rule 13;
 - (b) Any further legal submissions;
 - (c) Full details of the costs being sought, including:
 - A schedule of the work undertaken;
 - The time spent;
 - The grade of fee earner and his/her hourly rate;
 - A copy of the terms of engagement with Respondent;

- Supporting invoices for solicitor's fees and disbursements;
- Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate.

Applicant's case

- (4) The Applicant shall not later than **26 March 2021** send to the Tribunal and to the Respondent's representative a statement in response setting out:
- (a) The reasons for opposing the application, with any legal submissions;
 - (b) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;
 - (c) Details of any relevant documentation relied on with copies attached.

Reply

- (5) The Respondent may provide a short statement in Reply no later than **9 April 2021**.

Documents for hearing

- (6) The Respondent shall be responsible for preparing the bundle of documents (in a file, with index and page numbers) and shall at least 2 weeks before the hearing date send one copy to the other party and send three [two if paper track] copies to the Tribunal.
- (7) The bundle shall contain copies of:
- (a) The tribunal's determination in the substantive case to which this application relates;
 - (b) These directions and any subsequent directions;
 - (c) The Respondent's statement with all supporting documents;
 - (d) The Applicant's statement with all supporting documents.

Determination/hearing arrangements

- (8) The Tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the two week period commencing **12 April 2021**.

- (9) If an oral hearing is requested, it shall take place on a date to be fixed, by remote video hearing, with a time estimate of 3 hours.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).