FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**MAN/00CA/LSC/2019/0039V** **MAN/00CA/LLC/2019/0001V**
Property	**:**	**6 Burbo Mansions, Burbo Bank Road South, Blundellsands, L23 6SP**
Applicant	**:**	**Burbo Mansions (Crosby) Management Compar Limited**
Representative	**:**	**J B Leitch Limited**
Respondents	**:**	**Thomas Joseph Coskeran** **Margaret Ita Coskeran**
Type of Application	**:**	**Under the Landlord and Tenant Act 1985 s.27A a s.20C, and** **paragraph 5A Schedule 11 of the Commonhold a Leasehold Reform Act 2002**
Tribunal Member	**:**	**Judge P Forster** **Mr I James MRICS 5**
Date of Determination	**:**	**4 February 2021**

DECISION

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Decision

- The services charges payable in respect of the years 2016, 2017 and 2018 are as claimed by the Applicant and total £14,987.80.

- The Respondents' applications under s.20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, are both dismissed.

Introduction

1. This case was transferred to the First-tier Tribunal (Property Chamber) by an order made on 20 May 2019 in proceedings in the County Court at Liverpool under claim number F19YJ295. The Tribunal is asked to determine whether a service charge is payable, and the reasonableness of the charges that have been made in respect of 6 Burbo Mansions, Burbo Bank Road South, Blundellsands, Liverpool, L23 6SP ("the Premises"). The claim concerns the service charge years 2016, 2017 and 2018.

2. The service charges are payable to Burbo Mansions (Crosby) Management Company Ltd. ("the Applicant"). The company was incorporated to manage the common parts of Burbo Mansions. There are twenty-five issued shares in the Company and each leaseholder in the property holds one share.

3. Thomas Joseph Coskeran and Margaret Ita Coskeran ("the Respondents") are the registered leasehold proprietors of the Premises. Their title is derived from a lease dated 7 February 1977 ("the Apartment Lease") granted for a term of 99 years from 25 December 1974 made between (1) Burbo Mansions (CI) Ltd. (2) Christopher John Cornwall and Elizabeth Cliff and (3) Burbo Mansions (Crosby) Management Company Ltd. The lease is subject to a Deed of Variation dated 17 November 1980.

4. The Respondents also hold the leasehold interest in a garage. Their title is derived from a second lease dated 7 February 1977 ("the Garage Lease"), for the same term and made between the same parties as the Apartment Lease.

5. The Applicant issued proceedings in the County Court on 26 November 2018 against the Respondents to recover unpaid service charges, fees and interest totalling £16,979.88 due under the Apartment Lease. In separate proceedings (E14YY46) the Respondents made a claim against the Applicant alleging breaches of the Garage Lease. Those proceedings were consolidated with the Applicant's proceedings and the balance of the claim and counterclaim was stayed pending resolution of the Tribunal proceedings.

6. The Tribunal is only concerned with the Applicant's claim for service charges and not the claim for fees, interest and costs.

7. The Respondents have applied under s.20C of the Act for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with the 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.

8. In separate proceedings, the Respondents made an application to the Tribunal under paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002, to determine an administration charge. The application was received on 12 December 2019.

9. Burbo Mansions is a three-storey purpose-built art Deco property built in the 1930s overlooking Crosby beach. It houses 25 apartments. The Tribunal did not inspect the property but notes that a previous Tribunal in December 2014 observed that the Burbo Mansions "*is a striking and distinctive building in an enviable location but one which was clearly in need of ongoing maintenance which due to the nature and style of the architecture and construction was likely to be costly*".

10. The Tribunal issued directions on 18 June 2019 that required the parties to exchange statements of case, copies of all documents on which they intend to rely for the years in dispute and any witness statements. The hearing started on 29 January 2020 but was not concluded. Further directions were issued which provided:

    i) The hearing is adjourned on the Respondents' application because they received the Applicant's bundle of documents on 24 January 2020, had not considered the documents in the bundle and are not ready to proceed today.

    ii) The Applicant's application that the Respondents pay the costs of today's hearing, is reserved to the next hearing.

    iii) The Tribunal only has jurisdiction to determine the issue remitted to it by the County Court. That is: to determine whether a service charge is payable, and the reasonableness of the charges that have been made in respect of the service charge years 2016, 2017 and 2018.

    iv) The parties agreed the following list of issues to be determined by the Tribunal:

        (a) Is money collected under clause 5(1)(f) of the Deed of Variation to be repaid to tenants at the end of the financial year, if not expended?

(b) Does the Apartment Lease provide for a reserve fund?

(c) In respect of clause 5(1)(h) of the Deed of Variation, should any balancing credit be refunded to the tenant?

(d) Does the Tribunal have jurisdiction to determine the service charges claimed in respect of the garage?

(e) Is service of a certificate certifying the service charges claimed a pre-condition for the collection of the charges from tenants?

(f) Is the tenant only liable to pay as part of the service charge items for which invoices have been produced by the Management Company?

11. The Tribunal did not inspect the Premises. The case was due to be resumed on 15 April 2020 but had to be adjourned because of the Corvid-19 pandemic. The hearing resumed on 1 December 2020 and was concluded on 10 December 2020.

The Applicant's case

12. The Applicant alleges that in breach of covenant, the Respondents have failed to pay charges of £16,979.88 that includes service charges, fees and interest. The Tribunal is only concerned with the service charges which total £14,987.80.

13. The services provided and charged for by the Applicant are permitted within the leases. The Applicant properly budgeted for the service charges and relies on budgets prepared for the period 2014 to 2018. These provide a breakdown of the services anticipated to be provided and the anticipated costs of such. The service charges are properly accounted for as evidenced in the service charge accounts. Demands for payment were properly made. The service charges are both payable and reasonable. The Respondents have withheld payment over many years while continuing to benefit from the services provided. This has prejudiced the Applicant's ability to manage and maintain the Development.

The Respondent's case

14. The Respondents accept that they are liable to pay fair and reasonable service charges. The timing of payments is not in dispute. Any arrears are in large part due to the actions, and inaction, of the Applicant's managing agents, the failure to apply all provisions of the lease and the failure to respect the decision of the First-tier Tribunal in Case reference MAN/00CA/LSC/2014/0093. The claim has been inflated by the inclusion of interest and costs. The Garage Lease does not allow for interest charges. Expenses related to the garages should not be included in the service charge accounts. The Respondents contend that matters such as interest and fees should be part of the Tribunal's decision. The Respondents apply under both paragraph 5A to Schedule 11

of the Commonhold and Leasehold Reform Act 2002 and section 20C of the Landlord and Tenant Act 1985, to mitigate any claim for costs.

15. The Respondents' case can be summarized as follows:

- There is no provision in the Apartment Lease for "the future maintenance fund" included in the financial statements for 2016, 2017 and 2018. No documents have been provided to indicate what the fund will be used for, how much will be allocated to specific projects, nor when those projects will take place. These lacunae extend to the omission of s.20 notices to validate such demands.

- The accounts provided by the Applicant do not provide the detail necessary to establish whether the charges collected have been properly dispersed in accordance with the provisions of the Apartment Lease because no certificates have been produced showing the calculation of any balancing charges for the years in question.

- Under clause 5(1)(a) of the Apartment Lease, as amended by the Deed of Variation, the amount of the service charge should be ascertained and certified by a certificate signed by the auditors… and by clause 5(c), a copy of the certificate for each financial year should be supplied by the Management Company to the lessee on written request. These were not provided.

- The financial statement for 2015 is unaudited and marked "for management information only". The financial statement for 2017 is incorrect. It was superseded by a later version. The financial statement for 2018 has not been accepted by the Applicant's directors. No minutes for the meeting authorising it has been made available to the Respondents. No certificates have been provided in respect of the financial statements for the years, 2016, 2017 and 2018.

- The service charge demands do not include information on the rateable value of the Respondent's property. This makes it impossible to determine if the amount demanded by the Applicant is reasonable.

- The Respondents did not receive the payment request dated 31 January 2016. It includes a balance brought forward for Blundellsands Properties Ltd. The managing agents that preceded Mainstay Residential Ltd. The Respondents contest the amount of the balance brought forward.

- The Respondents have paid the budgeted service charges in the sum of £3,067.06 for 2018. The Respondents offered in September 2017 to pay £5,254.68 for the service charges for 2017. This was refused by the Applicant. The refusal to accept payment was designed to exaggerate the amount of the claim to facilitate the issue of proceedings in the County Court.

- The Respondents submit that the garage is appurtenant to the apartment, to be enjoyed with it, and so a part of the dwelling.

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The Applicant's response

16. The Respondents have raised generic complaints about the progression of the dispute or set out background matters. These are irrelevant because they do not deal with the matter of the payability and reasonableness of the service charges claimed. The Respondents have made limited submissions to establish unreasonableness. No evidence is put forward to show that the Applicant has charged excessive costs for works that are not covered by the Apartment Lease or are not actually required.

17. The Respondents accept their liability to pay service charges. The issue for the Tribunal is how much of the Applicant's claim the Respondents should pay.

18. By clause 5(1) of the Apartment Lease, as varied by the Deed of Variation, the Respondents are obliged to pay service charges each year on account without deduction in respect of the repair, maintenance, renewal and insurance of the building of which the Premises forms part and the provision of services there in as set out in the Fourth Schedule to the Apartment Lease.

19. By clauses is 5(1)(f) and (h) of the Apartment Lease, as varied by the Deed of Variation, provision is made for payment of the balancing charge by the Respondents each year and references to expenses and outgoings incurred by the Management Company includes those not only actually incurred but also those anticipated to be incurred.

20. The Applicant has provided the service charge accounts for the years 2016, 2017 and 2018 and all such accounts have been certified. Such certification as provided by clause 5(1)(d) is "*conclusive evidence*".

21. The service charge accounts are sufficient to prove on the balance of probabilities both the servicing and expenditure in each service charge year to which they relate. The service charge accounts could not be produced or certified if the underlying invoices did not exist reflecting the costs incurred. The production of every single invoice from 2014 to 2018 is unnecessary and disproportionate in terms of time and costs.

The Law

22. The law relevant to the case is set out in the annex to this decision.

Reasons for the decision

23. The relationship between the Applicant and the Respondents has broken down to such an extent that neither party trusts the other. The consequence of this is that any request for payment made by the Applicant is challenged by the Respondents who seek to scrutinize everything. This inevitably effects the management of Burbo Mansions. The property by its age and condition requires ongoing maintenance the cost of which ultimately falls on the leaseholders.

24. The Tribunal's jurisdiction is prescribed by the terms of the County Court order dated 20 May 2019. The order states that "*the Claimant's claim in relation to service charges is transferred to the First-tier Tribunal and the balance of the claim and counterclaim is stayed pending resolution of the First-tier Tribunal proceedings*". The County Court claim is to recover unpaid service charges, fees and interest totaling £16,979.88 due under the Apartment Lease. The Tribunal is therefore limited to consideration of the services charges and the claim for fees, interest and the counterclaim is left to be determined by the County Court.

25. The Respondent's counterclaim relates to the alleged failure of the Applicant to repair and maintain the garage which is the subject of the separate lease. This is not a matter for the Tribunal but rather for the County Court. The inevitable consequence, whatever the outcome of these proceedings, is that the dispute between the parties will continue.

26. Costs is a contentious issue for the parties. The Applicant wants the Respondents to pay the costs it has incurred because of the Respondents' failure to pay the service charges. The Applicant unsuccessfully opposed the Respondents' application to transfer the County Court proceedings to the First-tier Tribunal. The Respondents' intention was clearly to limit their potential liability for costs. Generally, the Tribunal does not have a costs jurisdiction. The contractual liability for payment of costs is governed by the terms of the Lease. In the present proceedings, the Respondents have applied for an order under s.20C to restrict the Applicant's ability to recover costs as a service charge. The Respondents also issued separate proceedings under paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to restrict their liability for an administration charge.

27. There is a further costs issue relating to the costs of the first hearing on 29 January 2020 when the proceedings were adjourned on the Respondents' application.

28. The Tribunal will deal with each of the issues that have been identified by the parties.

Clause 5(1)(f)

29. The main issue between the parties is the Applicant's ability to charge the Respondents for anticipated future expenditure. The question is: does the Apartment Lease provide for a reserve fund? This is issue (b) in the agreed list of issues. The Respondents submit that there is no provision in the Apartment Lease that enables the Applicant to establish a reserve fund. This is not in dispute, but the Applicant contends that clause 5(1)(f) is sufficient to enable it to charge the leaseholders for future expenditure.

30. The Deed of Variation replaced clause 5(1) in the Apartment Lease with a new clause. Clause 5(1)(f) now reads:

> *The expression (the expenses and outgoings incurred by the Management Company hereinbefore used shall be deemed to include not only those expenses outgoings management charges and other expenses hereinbefore described which have been actually disbursed incurred by the Management Company during the year in question but also such reasonable parts of all such expenditure outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise incurring a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof and which the Management Company or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances.*

31. Clause 5(1)(h) now reads:

> *As soon as practicable after the signature of the Certificate the Management Company shall furnish the lessee an account of the service charge payable by the lessee for the year in question due credit being given therein for the interim payments under clause 5(1)(g) hereof in respect of the said year. Upon the furnishing of such adjustment showing such adjustment as may be appropriate there shall be paid by the lessee to the Management Company any balance of the service charge as aforesaid or shall be allowed by the Management Company to the lessee any amounts which may be overpaid by the lessee by way of interim payments as the case may require.*

32. In earlier proceedings in 2014 the First-tier Tribunal considered the payability and reasonableness of service charges for the years 2011 to 2014. The Respondents were party to those proceedings. The Tribunal decided that the service charges were not payable until the Applicant complied with s.47 of the Landlord and Tenant Act 1987 because the payment demands were defective. The defect was capable of rectification and so the Tribunal went on to consider disputed elements of the service charges for 2013 and 2014.

33. At paragraph 39 of its decision, the Tribunal concluded that under clause 5(1)(f) of the Apartment Lease, the Applicant was entitled to include within the service charge a reasonable provision for future expenditure. There was no requirement under the lease for unspent sums to be reimbursed at the end of the service charge year.

34. In the present case, this Tribunal comes to the same conclusion on its own analysis of the Apartment Lease.

35. The Respondents quote from paragraph 49 of the 2014 decision where the Tribunal stated that "*it was not reasonable to demand additional money from tenants to be held for future works when there are already several other outstanding projects awaiting completion*". They also recite from paragraph 57 where it was stated that "*the need to have monies on account before commencing work must be balanced against responsibilities which arise when holding another person's money*". These comments of the Tribunal are obiter dicta. They are said in passing and incidental to the Tribunal's decision. The comments are not necessary for the decision which decided the issue before the Tribunal.

36. The Respondents submit that the money collected in 2016, 2017 and 2018 has exceeded spending on works in those years. "*In circumstances where the Applicant has the discretion, as allowed for in clause 5(f) of the apartment lease to make "reasonable provision for anticipated expenditure", this discretion must be exercised with proper caution as to the principles of fairness and reasonableness and not be perceived as an unrestricted contingency the collecting leaseholder's money…*". This statement goes to the root of the Respondents' case.

37. The Respondents say that clauses 5(1)(f) and (h) are there to protect leaseholders from excessive demands from the management company as well as to ensure that necessary services and works to the building are carried out. The Respondents submit that where money previously collected has not been spent it would be reasonable for leaseholders to withhold all service charges demanded for any additional works until such time as the works have been completed. This is contrary to the Respondents' liability under clause 5(1) of the Apartment Lease, as varied by the Deed of Variation, which obliges them to pay service charges each year on account without deduction. The mechanism exists under s.18 of the 1985 Act for the Respondents to challenge the demands for payment, ultimately by making an application to the Property Tribunal. The Respondents have chosen to withhold payment, forcing the Applicant to issue proceedings in the County Court.

38. The Respondents accepted that the Tribunal's finding in respect of issue (b) would for the most part lead to the answers to the other questions in the agreed list of issues.

39. Issue (a) is the question of whether money collected under clause 5(1)(f) is to be repaid to tenants at the end of the financial year, if not expended. This question was also addressed by the previous Tribunal in 2014, which found that there was no requirement under the lease for unspent sums to be reimbursed at the end of the service charge year. This is also the conclusion of this Tribunal on its construction of the Apartment Lease.

40. Issue (c) is whether in respect of clause 5(1)(h), should any balancing credit be refunded to the tenant. The Respondents stated that they did not expect to be repaid but rather that they should receive a credit against their account. On this point there

was no dispute. This is what happens in practice, with payments made by the Respondents in anticipation of future expenditure being credited to them.

41. The next issue to be addressed, issue (d), is whether the Tribunal has jurisdiction to determine the service charges claimed in respect of the garage? The amount claimed in respect of the garage is the relatively small sum of £205.44 which is included in the total claim of £14,987.80. There is a question about whether charges made by the Applicant under the Garage Lease are service charges for the purpose of s.18(1) of the 1985 Act. The Tribunal only has jurisdiction in resect of a "dwelling" which the garage is not. In any event, both parties were content to ask the Tribunal to adjudicate. The Respondents conceded that they do not challenge the services charges claimed, either in respect of payability or reasonableness. Therefore, the garage service charges stand.

42. Issue (e) is whether the service of a certificate certifying the service charges claimed is a pre-condition for the collection of the charges from tenants. Clause 5(2)(a) as substituted by the Deed of Variation, provides that "*the amount of the service charge shall be ascertained and certified by certificate…signed by the auditors…acting as experts…as soon after the Management Company's financial year as may be practicable*. It is provided at 5(2)(b) that "*a copy of the certificate for each such financial year shall be supplied by the Management Company to the Lessee on written request…"*. The Upper Tribunal held in Klosterkotter-Dit-Rawe v Greyclyde Investments Ltd. that although it is possible for interim charges to require certification, the wording of the particular lease was determinative. In the present case, the Tribunal finds that non-compliance with the certification regime does not prevent the Applicant from recovering service charges payable on account. This is because the lease does not require certificates before charges can be recovered.

43. The final issue on the agreed list is issue (f), whether the tenant is only liable to pay as part of the service charge items for which invoices have been produced by the Management Company? Before the commencement of the proceedings, the Applicant provided inspection of the underlying invoices in response to requests from the Respondents. The relevant documents have been included in the papers before the Tribunal. The service charge accounts for the relevant years have been provided and such accounts have been certified. Certification of the accounts is conclusive evidence. A failure to comply with clause 5(1)(a) or indeed any other accountancy type requirements does not obviate the Respondents' obligation to pay the service charges. There is no express language in the Apartment Lease that makes strict compliance a condition precedent.

44. The omission of an express provision in the Apartment Lease for a "future maintenance fund" gives rise to the Respondents' claim that no documents have been provided to indicate what the fund gathered under clause 5(1)(f) will be used for, how much will be allocated to specific projects, nor when those projects will take place. These lacunae

have fueled the Respondents' rejection of the Appellant's service charge demands and undermined the relationship between the parties.

45. The issues raised by the Respondents are mainly ones of process rather than specific challenges to amounts claimed by the Applicant. These issues do not deal with the matter of the reasonableness of the service charges claimed. The Respondents have made very limited submissions to establish unreasonableness. The burden is on the Respondents to provide evidence to support the challenges made but very little evidence has been produced.

46. The Respondents set out their objections to as follows to specific items in respect of 2016, 2017 and 2018:

		Applicant	Respondent
2016	1	Veritas Security and Maintenance	£594 to collect rubbish is excessive
	2	Communal Gas invoices	no documents provided
	3	Mainstay invoice 21/07/16	work is within the contract
	4	JVSA Accountants	invoice is for preparing certificate certificates not provided
2017	1	Roberts and Sons invoice	work subject to an insurance claim
	2	City Maintenace	insurance claim
	3	SMS Environmental	insurance claim
	4	Arthur Gallager – insurance broker	no equivalent invoice for 2016
2018	1		no documents provided

47. The Respondents do not allege that any of the work was either not required, nor that it was not done, nor that it was done badly. Where it is alleged that the cost was excessive, no alternative cost has been put forward. The Respondents raise questions but provide no evidence of their own to challenge the individual items. The objections lack substance and come back to the issue of documentation which the Tribunal has dealt with above. The 2016 Mainstay invoice covered work that was outside the scope of the agent's contract. The Accountant's certificates were prepared, and they are entitled to be paid. The 2017 claims relating to repairs were under the insurance excess. Arthur Gallager was the insurance broker and his fees were payable. The Tribunal allows all of the items in 2016, 2017 and 2018 and rejects the challenges made by the Respondents.

S.20(1) C of the 1985 Act

48. The Respondents made an application under s.20(1) C of the Landlord and Tenant Act 1985 for an order that all or any of the costs incurred by the Applicant in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.

49. The Tribunal has a wide discretion under s.20(1) C. It must look at all the circumstances and do what is just and equitable. The factors to be considered go beyond simply the outcome of the proceedings.

50. The origins of the dispute between the parties go back ten years. Proceedings were issued by the Applicant to determine the Respondents' liability to pay and the reasonableness of service charges in 2010, 2011 and 2012. The First-tier Tribunal found for the Applicant and against the Respondents. The Tribunal noted that the Respondents had withheld payment of service charges and considered such action to have prevented the Applicant from receiving sums which would have enabled it to carry out its responsibilities to the detriment of flat owners as a whole. It was stated that the payment of service charges does not preclude the making of an application under s.27A of the 1985 Act. The Tribunal deplored the withholding of service charges by owners.

51. The 2014 proceedings concerned an application by the Appellant to determine the liability and reasonableness of service charges. The Respondents in the current proceedings were respondents in the 2014 case. The First-tier Tribunal decided that subject to compliance with the requirements of s.47 of the Landlord and Tenant Act 1987, service charges for 2011 to 2014 were payable with the exception of some items to be deferred to 2015 and 2016. The Tribunal addressed clause 5(1)(f) of the Apartment Lease as discussed above. A s.20C costs application was allowed because the Tribunal concluded that it was reasonable for the tenants to bring matters to its attention not least because of the lack of clarity on the face of the papers in respect of how the tenants' money was being held.

52. The Respondents have adopted a litigious approach in all their dealings with the Applicant. They have been respondents and not applicants in each of the three sets of tribunal proceedings. They have chosen to withhold payment and not to use the legal processes available to challenge service charge claims. The Respondents criticize the Applicant for refusing offers of mediation but on the evidence the Tribunal finds that mediation was unlikely to provide a solution. Mediation requires good will and a willingness to compromise on both sides, qualities which the Respondents have failed to demonstrate. Many of the issues raised in the present proceedings were considered in 2014 but the Respondents failed to heed the outcome and their understanding of the decision is misconceived.

53. The Tribunal does not make an order under s.20C of the 1985 Act based upon its assessment of the Respondents' conduct in the proceedings. The costs of the proceedings should be regarded as relevant costs in determining the amount of service charges payable.

Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002

54. Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides that an application to the Tribunal may be made for a determination as to whether an administration charge is payable, and if it is, to whom it is payable; by who it is payable; the amount which is payable; the date by which it is payable and the manner in which it is payable.

55. The Respondents' application seeks to limit the Applicant's ability to recover costs incurred in respect of the proceedings by way of an administration charge. The grounds for the application are the Respondents' assertion that the Applicant's conduct during the course of the dispute has been unreasonable. The Applicant's ability to make an administration charge under the Apartment Lease is not challenged.

56. The Respondents submit that the Applicant acted unreasonably in refusing to engage in mediation or other forms of alternative dispute resolution. The Tribunal comments on this at paragraph 53 above. Parties in all types of dispute should be encouraged to try to find an agreed resolution. Issuing County Court or Tribunal proceedings should be a last resort. The Tribunal's findings in respect of the s.20C application are relevant in the context of the Respondents' Schedule 11 application. The Tribunal rejects the Respondents' assertion that the Applicants have pursued a litigious approach and finds that to the contrary it is the Respondents who have acted in this way. The Applicant was entitled to issue proceedings in the County Court and that is the forum to decide issues about costs. The Respondents will have the opportunity to present their arguments there. The Court will be able to consider what, if any, effect offers made by the Respondents before proceedings were issued should have on the outcome.

57. The Tribunal finds that it is the effects of the Respondents' conduct which have significantly raised costs related to the dispute. In these circumstances, the Tribunal does not grant the Respondents' application to extinguish their liability to pay an administration charge.

58. The question of the costs of the hearing on 29 January 2020 were reserved to be determined at the next hearing. That was not to be until 10 December 2020. The hearing on 29 January 2020 was adjourned on the Respondents' application because they claimed not to have received the Applicant's bundle of documents until 24 January 2020, they had not considered the documents in the bundle and were not ready to proceed that day. The Tribunal makes no findings in this respect and leaves the question of costs to be decided by in the County Court.

59. For the reasons given, the Tribunal finds that the service charges payable for 2016 2017 and 2018 are a total of £14,987.80. The Respondents' applications under s.20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, are both dismissed.

Dated 4 February 2021

Judge P Forster

RIGHT OF APPEAL

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.

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.

If the person wishing to appeal does not comply with the 28-day time limit, that 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.

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.

ANNEX

S.18 of the Landlord and Tenant Act 1985 defines "service charges" and "relevant costs":

(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.

S.19 of the 1985 Act deals with limitation of service charges:

(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 provision 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.

S.27A of the 1985 Act deals with the liability to pay service charges:

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount, which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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