FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LAC/2020/0016 (FVHREMOTE)**
Property	**:**	**Flat 1B, 22.23 Hyde Park Place, London W2 2LP**
Applicant	**:**	**Mehnaz Arshad Malik**
Representatives	**:**	**Gavin Bennison of Counsel**
Respondent	**:**	**22/23 Hyde Park Place Freehold Limited**
Representative	**:**	**Philip Byrne of Counsel**
Type of Application	**:**	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	**:**	**Judge Professor Robert Abbey** **Mr Peter Roberts Dip Arch RIBA (Professional Member)**
Date and venue of Hearing	**:**	**15 and 16 March 2021 by an online video hearing**
Date of Decision	**:**	**29 March 2021**

DECISION

Decisions of the tribunal

(1) The tribunal determines that: -

(2) Reserve/sinking fund: the Tribunal finds that the reserve/sinking fund charges are reasonable and payable at the increased level of £637.50 per quarter

(3) Balancing charge: the balancing charge is correct and reasonable and therefore properly payable by the applicant without deduction.

(4) Administration charges: the administration charges are not payable and as a result, the respondent cannot recover any of the administration charges in issue pursuant to the terms of the lease of the property

(5) Otherwise, if service charge items are not specifically mentioned under this heading then the Tribunal has found them to be reasonable.

(6) The tribunal further determines that it is just and equitable in the circumstances for an order to be made under section 20C of the Landlord and Tenant Act 1985 that 100% of the costs incurred by the applicant in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenants.

The applications

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **Flat 1B, 22/23 Hyde Park Place, London W2 2LP**, (the property) and the liability to pay such service charge.

2. 22/23 Hyde Park Place, London W2 2LP is a three-bedroom ground floor flat in a six storey West London mansion block. The respondent is the landlord and the applicant is the leaseholder of flat 1B in the block. The block consists of 11 residential flats in all, each of which is held a long residential lease. The respondent company is the freehold registered proprietor and a company wholly owned by ten of the leaseholders.

3. The applications to the Tribunal were concerned with service charges and administration charges arising in service charge years 2019 and 2020. There are two applications being heard together. Both were commenced on 11 August 2020. The first is for a Landlord and Tenant Act 1985 s.27A determination in respect of service charges, in the sum of £4,146.13.

4. In the second application the applicant seeks a determination pursuant to the Commonhold and Leasehold Reform Act 2002, Schedule 11, paragraph 5 relating to administration charges, in particular, the recoverability of legal and other professional costs. The sums now in dispute in this application are £27,744.20.

5. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

6. The applicant was represented by Mr Gavin Bennison of Counsel and the respondent was represented by Mr Philip Byrne of Counsel.

7. The Tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. There were no witness statements, and there was no oral evidence. For the most part, the facts before the Tribunal were not contested; the parties simply disagreed as to the application of the law to the facts and indeed as to the interpretation of some of the facts and figures relating to the service charges.

8. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as FVHREMOTE - use for a hearing that is held entirely on the MoJ Full Video Hearing Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties

Decision

9. The Tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal considered in detail written evidence and the surrounding documentation as well as the oral submissions provided by Counsel for both the parties at the time of the video hearing.

10. The Tribunal were required to consider service charges and administration charges arising in service charge years 2019 and 2020 as well as extensive administration charges. In that regard there are three areas of concern, first, the reserve/sinking fund, secondly, the

balancing charge and third the administration charge. The Tribunal will consider each in turn.

Reserve/Sinking fund

11. Schedule 2, paragraph 2 of the lease of the property permits the respondent to recover, as part of the service charge, an amount in respect of *"Maintaining a sinking fund for future expenditure in accordance with the advice tendered by the Lessor's Managing Agents or Surveyor"* . At the hearing this fund was called a reserve fund but actually referred to the sinking fund allowed for in the lease of the property. The applicant's concerns were raised when the reserve fund element of the service charge demanded from her by the respondent increased commencing from the quarter 25 December 2019 onwards: from £212.50 to £637.50. The applicant asserts that there was no obvious reason for that; nor was the justification for such a large increase explained to her.

12. The lease of the property limits the respondent's ability to maintain a reserve/sinking fund to a fund being in accordance with advice tendered by the Lessor's Managing Agents or Surveyor. In March 2020, the applicant asked for a copy of that advice. Apparently, this was initially refused, disclosing it only on 29 May 2020 but without key attachments. Eventually a direction had to be obtained from Judge Donegan at the Case Management Hearing on 20 September 2020 requiring full disclosure, which the respondent complied with on 20 October 2020. The respondent's managing agents' (Fresh's) advice takes the form of a Memorandum dated 25 October 2019. The applicant takes the view that the advice given by Fresh does not justify the increase.

13. The Tribunal considered the RICS's definition of a sinking fund as being "A fund formed by periodically setting aside money for the replacement of a wasting asset (for example, major items of plant and equipment, such as heating and air-conditioning plant, lifts, etc.). It is usually intended that a sinking fund will be set up and collected over the whole life of the wasting asset." Clearly this kind of fund will cover costly items and will therefore need to be of a size that will in due course cover such significant expenditure.

14. The respondent collects sinking fund contributions through the service charge and holds the monies in trust for the tenants in an account that earns interest that accrues to the benefit of the tenants. (As an example, in the December 2019 accounts the interest earned and credited was stated to be £97).

15. The lease terms in this regard simply require the respondent to maintain a sinking fund for future expenditure in accordance with advice given by the managing agents. There are no conditions made for that advice. There are no limits or any other financial guidance to assist. Simply put if the respondent takes advice and that advice is given in a proper and reasonable way then the terms of the lease provision are fulfilled. Accordingly, the advice tendered by Fresh pursuant to the lease terms mentioned above was appropriate in the view of the Tribunal and satisfied the lease requirements. Given the age of the block, the life expectancy of its elements (roof, lift, redecoration etc.) and the projected costs of replacement/repair/planned preventative maintenance or service by reference to inflation and interest and the frequency or otherwise of previous major works (cyclical and/or planned major works) in the context of the value of the individual apartments, such an increase is reasonable.

16. The sinking fund is for the benefit of the property and remains a provision for inter alia major works, cyclical works and equipment replacement. If sinking fund payments were reduced, when major repairs are required there may not be enough money to cover the cost of larger works. As a result, the residents may have to pay the full cost for major works if several major repairs occur or any additional costs are not covered by the sinking fund. The Tribunal takes the view that the sinking fund amount for contributions has been calculated to help ensure should any of the major works etc. needs of repairing/replacement this can be covered by the sinking fund, thus lessening the instant financial burden for residents for these types of works. The total amount of the fund each year and interest earned is, as mentioned above, set out fully in the accounts.

17. The Tribunal firmly supports the provision of a sinking fund and believes its existence is beneficial to the tenants in this block. The amount collected does not seem disproportionate but may seem large in comparison with the service charges. However, it seems very sensible for all the tenants that there be such a fund accruing interest for their sole benefit that is in existence to enable repair costs to be met in the future and that the level of the current sums demanded are reasonable and payable. The fund accruing should be of a size commensurate with the age of the block and the complexity of repairing and renewal issues that might arise in the future. The Tribunal was of the view that the current size was therefore appropriate.

18. In the light of the above the Tribunal finds that the reserve/sinking fund charges are reasonable and payable at the increased level of £637.50 per quarter.

Balancing charge

19. Dealing next with the balancing charge, Schedule 2, paragraph 17 of the lease permits the respondent to recover any deficit between the income generated by receipt of quarterly on account payments from lessees and its actual annual expenditure, following the service charge year end (25 December in each year). It appears that the respondent started making use of this procedure in 2020, in respect of the year ending 25 December 2019. It would seem that previously it met shortfalls by drawing on the reserve fund instead, but has since discontinued this practice. Accordingly, the respondent made a demand for a "balancing payment" in the sum of £958.63 on 23 June 2020. This was calculated by reference to the 2019 accounts. The "*service charge income and expenditure account*" showed income of £48,637, described as "*Service charges budgeted for the year*", in 2019 and expenditure of £59,915. The applicant was then required, following the lease terms, to pay 8.5% of the deficit of income over expenditure of £11,278.

20. Paragraph 17 of the second schedule in the lease states that the costs of the service charges is to be certified by the managing agents and that certificate is final and binding. The certificate applies at the year end and then payment is required within one month of the production of the certificate. In accordance with Schedule 2 paragraph 17, Fresh certified the cost of the services provided under Schedule 2 of the lease by its certificate dated 27 April 2020. The certificate is quite clear. It describes itself as a certificate of expenditure for the service charge year and is signed and dated. The form of the certificate is not set out in the lease which merely requires a certificate. The Tribunal was satisfied that the document issued by the respondent's agent was sufficient to satisfy the lease terms.

21. However, the applicant says that the respondent had forgotten to include in its "income" figure the £10,000 demanded and collected as "reserve fund" payments in 2019 and for this reason the balancing charge was wrong. In reply the respondent says that it was and is not appropriate for the respondent to use funds collected as the sinking fund to off-set against any shortfall in service charge income. For that reason, the balancing charge was correctly made.

22. The Tribunal agrees with the respondent and therefore is of the view that the balancing charge is correct and reasonable and therefore properly payable by the applicant.

Administration charges

23. The respondent raised administration charges of £27,744.20 for various activities and at various times. Within the applications the applicant confirmed that the applicant wanted to make an application under paragraph 5A of schedule 11 to the Commonhold and Leasehold

Reform Act 2002. This provides that a tenant may apply to the Tribunal for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs" i.e., contractual costs in a lease.

24. The amounts in dispute in detail are: -

a. Tim Greenwood Associates, surveyor's fees (Invoice 0719/05) 'water leaks' inspection £1,233.74;
b. DAC Beachcroft legal fees (Invoice 10215951) 'water ingress' £1,314.00;
c. Company expenditure £870.30 (not recoverable under the Lease);
d. Charles Russell Speechlys legal fees (Invoice 219101298) 'alterations' and 'new leak' £2,418.00;
e. Charles Russell Speechlys legal fees (Invoice 219121554) 'disrepair' £1,200.00;
f. Charles Russell Speechlys legal fees (Invoice 220020967) 'disrepair' £1,200.00;
g. Fresh management fee (Invoice 0520284346) £1,500.00 (description referrable to additional time to respond to A's service charge enquiries and recover service charge arrears);
h. Charles Russell Speechlys legal fees (Invoice 220030849) 'disrepair' £1,200.00;
i. Tim Greenwood Associates (Invoice 0320/03) 'waterproofing' inspection £2,037.36;
j. Charles Russell Speechlys legal fees (Invoice 220040854) 'disrepair' £1,800.00;
k. Charles Russell Speechlys legal fees (Invoice 220060990) 'disrepair' £1,800.00 (described as referrable to 'alterations');
l. Charles Russell Speechlys legal fees 'disrepair' £1,800.00 (described as referrable to 'alterations');

m. Fresh management fee £1,500.00 (description referrable to additional time to respond to A's service charge enquiries and recover service charge arrears);

n. Charles Russell Speechlys legal fees (Invoice 220081051) 'dispute' £8,160.00 (including counsel's fees).

25. The respondent says these charges are recoverable under schedule 3 paragraph 4 of the lease and the amounts are related to the respondent's investigations in the block relating to ongoing leaks and alleged unauthorised alterations (converting the property from a one to three bedroomed apartment, including the installation/alteration of bathrooms and the relocation of the kitchen). Schedule 3 paragraph 4 states that a tenant is (Bold by this Tribunal): -

> "*To pay unto the Lessor all costs charges and expenses including legal costs and fees payable to a surveyor which may be properly incurred by the Lessor* ***in or in proper contemplation of any proceedings under sections 146 and 147 of the Law of Property Act 1925*** *or any statutory modification thereof which may for the time being be subsisting notwithstanding forfeiture be avoided otherwise than by the court granting relief under the said Act and to pay all costs and expenses incurred (including solicitors and own client costs) in recovery or attempting to recover all sums payable by the lessee under these presents whether or not proceedings of any nature are commenced in respect of these same*"

26. It is the respondent's position that "Broadly speaking, the background to the present matter relates to leaks that emanated from the Property into the flats below it and to the subsequent investigations and responses undertaken on behalf of the respondent into the cause of those leaks. Those investigations revealed apparently unauthorised alterations to the Property, that were previously unknown to the present directors of the respondent (no copy of any licence for alterations was available to them, until the applicant provided a copy, although the respondent repeatedly asked the applicant for a copy). There followed a period of further investigations to identify and remedy the cause of the leaks within the Property, thought to be the consequence of those alterations, although the exact cause of which was difficult to identify. There was a protracted period of correspondence relating to the enforcement of the terms of the Lease….".

27. On the other hand, the applicant says "On the administration charge application, as a preliminary matter, the parties are apart on an issue of law as to the proper interpretation of paragraph 4 of the Third Schedule to the Lease, by which the applicant as lessee is required (subject to the

statutory qualification of reasonableness) to "*pay unto the Lessor all costs charges and expenses including legal costs and fees payable to a Surveyor which may be* ***properly incurred by the Lessor in or in proper contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925…***" (emphasis added).

28. It appears common ground between the applicant and the respondent that, in order to recover the sums demanded from the applicant pursuant to Sch. 3, para. 4, the respondent must, at the very least, have directed its mind in some conscious way to the prospect of forfeiting the applicant's lease of her flat on account of (in this case) alleged disrepair of the bathrooms.

29. It also appears to be common ground that only forfeiture on the basis of *disrepair* could ever have been tenable (though A does not admit that it ever was), because any right to forfeit the applicant's lease in respect of her covenant against alterations would have been a "once-and-for-all" breach which would have been repeatedly waived by the respondent" for example by the demand and collection of quarterly service charges. In this context the applicant contends that the respondent must have had a bona fide intention to forfeit A's lease and that forfeiture must have had at least a real prospect of success had it been pursued by the respondent (which it wasn't). Otherwise, the lessor's intention is not "proper" and/or the sums in question are not "properly" incurred. Alternatively, the respondent contends that the word "contemplation" means something less than "intention" and that the word "proper", which is used twice in Schedule 3, paragraph. 4 does not really add anything in terms of the threshold to be met, save that "the bringing of the subject proceedings and the costs arising therefrom, must be correctly attributable to a presumed breach of the Lease covenants by the lessee"

30. Both Counsel referred the Tribunal to the Upper Tribunal case of *Barrett v Robinson* [2015] L&TR 1 ([2014] UKUT 322) where Martin Rodger QC Deputy President wrote: -

> *"51. For costs to be recoverable under cl.4(14) a landlord must show that they were incurred in or in contemplation of proceedings, or the preparation of a notice, under s.146. Sometimes it will be obvious that such expense has been incurred, as when proceedings claiming the forfeiture of a lease are commenced, or a notice under s.146 is served. In other circumstances it will be less obvious. The statutory protection afforded by s.81 of the 1996 Act requires that an application be made*

to the first-tier tribunal for a determination of the amount of arrears of a service charge or administration charges which are payable before a s.146 notice may be served, but proceedings before the First-tier Tribunal for the determination of the amount of a service or administration charge need not be a prelude to forfeiture proceedings at all. The First-tier Tribunal's jurisdiction under s.27A of the 1985 Act covers the same territory, and proceedings are often commenced in the County Court for the recovery of service charges without a claim for forfeiture being included. A landlord may or may not commence proceedings before the first-tier tribunal with a view to forfeiture; a landlord may simply wish to receive payment of the sum due, without any desire to terminate the tenant's lease, or may not have thought far enough ahead to have reached the stage of considering what steps to take if the tenant fails to pay after a tribunal determination has been obtained.

52 Costs will only be incurred in contemplation of proceedings, or the service of a notice under s.146 if, at the time the expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not in fact contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on a clause such as cl.4(14) as providing a contractual right to recover its costs.

53 In this case there is no evidence whatsoever that the respondent contemplated proceedings for the forfeiture of the appellant's lease or the service of a notice under s.146 as a preliminary to such proceedings. The first LVT proceedings were commenced by the appellant under s.27A of the 1985 Act for a determination of the extent of her liability to pay the insurance rent. Nothing in the respondent's own statement submitted to the first LVT suggested that she had any intention of forfeiting the lease, none of the correspondence from her solicitors suggested that that such a course of action was in her mind, even before it was discovered that the appellant was entitled to a net credit for overpayments in previous years, and there was no mention of forfeiture, or of s.81 of the 1996 Act, in the skeleton argument prepared by her counsel. As a matter of fact, therefore, there was no justification for the second LVT's assumption that costs of £6,250 had been

incurred in or in contemplation of proceedings, or the preparation of a notice, under s.146."

31. This case suggests that it is no longer enough to rely on the lease provision at paragraph 4 of the third schedule without an evident intention to forfeit. To show this the landlord might have to record, for example, in correspondence, that his actions are aimed at getting permission to serve a s.146 notice as a preliminary step towards forfeiture.

32. Accordingly, the above judicial guidance for this Tribunal must be that costs will only be incurred in contemplation of proceedings, or the service of a notice under s.146 if, at the time the expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not in fact contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on a lease clause such as set out above providing a contractual right to recover its costs.

33. Turning therefore to the specific fees and dealing first with the two amounts for surveyor's fees the Tribunal could not see the clear connection required to contemplation of proceedings required to enable a charge to be allowed. The initial fee of £1,233.74 charged by the respondent's surveyor in an invoice dated 30 July 2019 for an initial inspection of the flat on 17 July 2019 and the second is for a reinspection in relation to waterproofing in the sum of £2037.36. These cannot possibly have been incurred by the respondent in "*proper contemplation*" of forfeiture of the applicant's lease as they seem more concerned with ascertaining and remedying water leaks somewhere in the building, possibly in the flat but even this was not conclusively confirmed. The time sheet relating to the first inspection makes clear that the time spent related largely to alleged acoustic issues related to the flooring in the flat. In the light of this the Tribunal disallows both charges as unreasonable administration charges to the applicant. As Counsel for the applicant rightly observed, "This is exactly the sort of charge which should be put through the service charge and borne by the leaseholders of a building collectively."

34. The Tribunal then considered the company expenditure charge, invoice dated 24 September 2019 from Fresh in the sum of £870.30. The Tribunal could find no link to the requirements of the lease for an administration charge and therefore this amount is disallowed in full. The Tribunal was satisfied that company expenditure was not properly incurred by the Lessor in or in proper contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925.

35. The Tribunal then considered the two Fresh management fees both for £1500 each. The first from May 2020 was described as being a charge for work done "dealing with correspondence in relation to the service charges due time spend to date 5 hours charged at £250 per hour". The respondent's solicitors stated that these fees arose from the agents having to address the applicant's concerns and in seeking to recover the service charge arrears outstanding. The Tribunal was not persuaded by this evidence that it demonstrated that this expenditure was properly incurred by the Lessor in or in proper contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925. The Tribunal Disallows this first management fee.

36. The second Fresh management fee was from July 2020 and related to correspondence and could be seen to be a continuation of the work set out in the first charge. For that reason, the Tribunal was similarly not persuaded by the evidence that it demonstrated that this expenditure was properly incurred by the Lessor in or in proper contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925. The Tribunal Disallows this second management fee.

37. The remaining nine separate administration charges all cover legal fees issued by DAC Beachcroft and Charles Russell Speechlys. When considering these legal bills, the Tribunal needed to be sure that they were all properly incurred by the Lessor in or in proper contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925. From July 2019 onwards, the respondent took the step of involving solicitors and hence the several legal bills. Those solicitors have since incurred sums advancing allegations of unauthorised alterations and disrepair. In 2020, numerous other issues also arose and were addressed in correspondence between the parties. However, on inspection it seemed to the tribunal that really this was entirely unrelated to any possible forfeiture claim, but rather relating to the managing agent's management of the Building. The allegations of unauthorised alterations were not really pursued following the exchange of correspondence in August-October 2019 and, being 'once-and-for-all' breaches of covenant, could never have founded a forfeiture claim in any event bearing in mind the distinct possibility of waiver following demands for payment by the landlord. Despite three site inspections being carried out by the surveyor acting for the respondent, (in July 2019, March 2020 and September 2020), the allegations of disrepair were never tenable because the cause of the leaks from the property into the flats below was never accurately identified. Apparently, there have been no leaks from the property since October 2019.

38. As Counsel for the applicant rightly observed "Most of the costs which the respondent now claims from the applicant were incurred after

March 2020, in which any allegation of disrepair was completely untenable and since which the respondent has plainly not contemplated forfeiting the applicant's lease. Its own board minutes make this clear, as do its actions: it re-commenced the demand and collection of service charge from the applicant in March 2020 and its solicitors turned their attention to "various [other] matters" It also progressed, albeit painfully slowly, discussions regarding the grant of a new lease of the flat to the applicant, which completed in January 2021." Indeed, it was noted by the Tribunal that the applicant had been able to negotiate a new lease notwithstanding the suggestions of possible forfeiture, the two things really being impossible together, they are evidently incompatible. You cannot offer a new lease and meanwhile apparently contemplate forfeiture.

39. The respondent needs to show proper contemplation of possible forfeiture. The Tribunal was not convinced from the evidence that this was likely. The Tribunal looked at the invoices, time sheets, board minutes and correspondence but this review left it unconvinced about the intentions of the respondent. In all this large volume of evidence, (the trial bundle stretched over 727 pages), there were just three limited specific references to possible forfeiture amongst the welter of other allegations, assertions and disputes. The references themselves are of limited value in the context of the other documentation. There was nothing very convincing that the Tribunal could identify that might persuade them that there was a proper contemplation of forfeiture. The Tribunal therefore disallows all the legal bills and finds them unreasonable administration charges that are not payable by the applicant.

Application for a S.20C order

40. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 100% of the costs incurred by the applicant in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

41. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge. The s.20C decision in this dispute gave the

tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them.

42. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also took into account all oral and written submissions before it at the time of the hearing.

43. It was apparent to the tribunal that there had been a history of fractious disagreement between the parties, to put it at its simplest. The applicant has resorted to taking steps under legislation that exists to protect leaseholders by way of this application. Moreover, it has taken this application to reach a resolution notwithstanding steps taken elsewhere, including mediation. Accordingly, in the light of the determinations made by this Tribunal the Tribunal has made this decision in regard to the 20C application.

44. Finally, in the light of the determinations set out above the Tribunal is not minded to make an order for the refund of the application fees.

Name: Judge Professor Robert Abbey **Date:** 29 March 2021

Appendix of relevant legislation and rules

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.

(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.

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 Tribunal 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 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.

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.