FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/21UH/LSC/2020/0104 (1) V:CVPREMOTE**
Property	**:**	**1,5,6,7,8,9,and 10 Old School Place, Union Street, Maidstone Kent ME14 1EQ**
Applicant	**:**	**Lisa Frankish and Others as listed on the Application**
Representative	**:**	**Lisa Frankish**
Respondent	**:**	**Adriatic Land 1 (GR3) Ltd**
Representative	**:**	**Residential Management Group Ltd**
Type of Application	**:**	**S20ZA, s27A and s20C Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge F J Silverman MA LLM Mr R Athow FRICS Mr D Ashby FRICS**
Date and venue of Hearing	**:**	**Remote CVP hearing 24 and 25 February 2021. The Tribunal met in chambers on 15 March 2021**
Date of Decision	**:**	**22 March 2021**

DECISION AND ORDER

1 The Tribunal has used the Scott Schedule prepared by the Respondent as the basis to calculate the final amounts that can be charged. The changes to the amounts in the Respondents' Scott Schedule are the addition of the half-year account fees for 2016/17 and managing agent fees for 2017/18, 2018/19 and 2020/21; less Forte Freehold Management loan for insurance in 2018/19. Using the above as the basis the Tribunal determines that the amount payable by the tenants in respect of the service charge year 2015-6 is £9,032.33; for the service charge year 2016-17 is £9,927.99; for the service charge year 2017-18 the sum of £18,876.60; for the service charge year 2018-19, the sum of £33,523.24 (including £21,540.00 from the reserve fund) and for the service charge year 2019-2020 the sum of £7,817.25. A summary of these costs and a comparison between the Respondents' Scott Schedule and the figures determined by the Tribunal are attached. These totals are payable by the Applicants in the proportions as set out in their respective leases.

2The Tribunal approves the provisional budget for the service charges for 2020-2021.

3The Tribunal makes an unlimited order under s20C Landlord and Tenant Act 1985 in favour of Pak Cheong Tang (Flat 1); William Brownsdon (Flat 5); Rosemary Williams (Flat 6); Sam Gibbons (Flat 7); Kiu Yan Shuen (Flat 8); Jeremy Tuck (Flat 9); Lisa Frankish (Flat 10).

4 The Tribunal orders the Respondent within 28 days of the date of this decision to repay to the Applicants jointly and severally the sum of £400 representing their application fees (£200) and hearing fee (£200).

5 The Tribunal's calculations are shown on the attached schedule which forms part of this Decision.

6 The Tribunal determines that it will exercise its discretion to dispense with the consultation requirements imposed by s.20 of the Landlord and Tenant Act 1985 on the grounds that the Applicants were notified of the works and of the application under s20ZA but the s20 procedures were never completed before some of the works were carried out. This dispensation only applies to those works which were proposed by the original s20 notice which and have either been done in part or

have been completed. This dispensation does not apply to any works specified in the original s20 notice which remain outstanding (ie have not been commenced) and in respect of which a new and fully compliant s20 procedure may be required.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in electronic bundles comprising approximately 1000 pages the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1 The Applicants are the tenants and long leaseholders of various flats at Old School Place, Union Street, Maidstone Kent ME14 1EQ (the property) of which the Respondent is the landlord and reversioner.

2 On 23 October 2020 the Applicant tenants filed an application under s27A and s20C Landlord and Tenant Act 1985 relating to service charges for the period 2015-20 and budget for 2021 and under Sched 11 Commonhold and Leasehold Reform Act 2002 relating to administration charges which they alleged were incorrectly levied on them by the Respondent through its management company.

3 Directions were issued by the Tribunal on 11 November 2020 and 30 January 2021. Part of the application which relates to estate charges for which a different landlord is responsible has been severed from this application and has been dealt with separately under case no CHI/21UH/LSC/2020/0104 (2). This decision relates only to service charges affecting the block of flats itself.

4 The Tribunal is also asked to deal with an application under s20ZA Landlord and Tenant Act 1985 made by the Respondent in respect of qualifying works which the Respondent acknowledges were carried out without having completed the necessary consultation procedures under s20 of the Act.

5 The Tribunal received and read over 1000 pages of electronic documentation, including the parties' respective statements of case, Scott schedules and witness statements which are referred to below. Additional documents which the Tribunal only received on the morning of the hearing were not considered during the hearing. An application for their inclusion was made by the Applicant at the hearing and was refused by the Tribunal because the documents were adduced too late and neither the Respondent nor the Tribunal had been given the opportunity to consider them.

6 The hearing took place by way of a remote video (CVP) link to which the parties had previously consented. The Applicants were represented by Ms L Frankish who was accompanied by her father and the Respondent was represented by Mr Rose of Residential Management Group Ltd. For the Applicants the Tribunal heard evidence from Mr Williams and Mr Gibbons. Mr Rose was assisted by Mr Amadeo and Mr Gibbs.

7 In accordance with current Practice Directions relating to Covid 19 the proceedings were recorded and the Tribunal did not make a physical inspection of the property but were able to obtain an overview of its exterior and location via GPS software and from photographs and a short video supplied by the Applicants and included as part of the hearing bundle.

8 The Tribunal understands that Old School Place comprises a three storey block of flats of brick construction under a tiled roof in a larger development of similar blocks on the site of a former school. Only this block is managed by the Respondent. The outside space including car parking, bin and cycle sheds and an area of grass are under separate management and are not the subject of this application.

9 The Respondent is the freeholder of this block currently delegating day to day management to Homeground for whom RMG are the representatives in this application. Homeground took over responsibility for the property part way through the period under consideration and there appears to be a lacuna in the documentation supplied to them on the handover from the previous agents.

10 The Tribunal notes that the Respondent has divided the service charge equally between the ten flats in this block. This is an incorrect allocation of liability which does not comply with the lease terms which provide for the one bedroom flat (no 10) to pay a smaller proportion than the remaining 9 two bedroom units. The Respondent pointed out that the lease provides for the percentage contribution to be altered but was unable to demonstrate that proper notice of the alteration had ever been given to the tenants. That being so, the original provisions of the lease remain in force and the proportions in which the tenants are liable for their service charge remain as originally drafted unless and until the Respondent alters them in compliance with the lease provisions. This means that for all current and future calculations flats 1-9 inclusive will each be liable to pay 10.309% of the total service charge and flat 10, 7.217 %.

14 Turning now to the service charge accounts. Each year is discussed in turn starting with 2015-16 where the Applicants agreed the charge for cleaning (£791.00) but disputed the charge of £194.00 for window cleaning.

15 Ms Frankish said that her windows were never cleaned and therefore she should not contribute to this charge. The Tribunal does not accept this argument; Ms Frankish is equally liable with all the other tenants for her share of the maintenance of communal areas. By way of analogy, the Tribunal would not accept an argument from a ground floor flat owner that they should not be liable for cleaning the staircase because they did not use it. The Tribunal understands that Ms Frankish's flat or part of it is suspended over the vehicle entrance way

to the estate and the Respondent said that the cleaners had difficulty in safely accessing he windows. The Tribunal encourages the Respondent to engage a window cleaning firm which has the proper equipment to be able to clean safely the windows of all of the flats.

16 The objection to this charge appears to be a challenge from Ms Frankish alone. As stated above, the Tribunal does not accept her argument and finds the charge reasonable (£194.00).

17 The following charges for this year were not disputed: door entry (£455); electrical maintenance (£396.00); management fees (£2,240.00); electricity (£211.00); water (£2,364.00); and reserve fund contribution (£660.00).

18 The Applicants queried part of the water treatment charges (total £828.00) saying that the drinking water samples had been taken too frequently. This is essentially a health and safety issue and the Tribunal does not find either the Respondent's conduct or the cost to be unreasonable. This amount is allowed in full.

19 The sum of £240.00 was charged for replacement of one electronic door latch. This does appear to be a totally unreasonable amount for a simple repair job and in addition to which the repair did not work as 5 months later the door was still not latching correctly, therefore the sum of £240.00 is disallowed in full.

20 The Applicants said that the building insurance costs for the property were too high (£2,620) and said that the 'mirror' block on the estate had a quote for £1,099.17. The alternative quotation was not put before the Tribunal. They also said that they considered that the £25 m cover for owner's liability and employee liability was both too high and unnecessary. The Respondent stated that the figure paid for the year under discussion might have been assessed on an over valuation as premiums for later years were lower. Irrespective of that comment, the premium was paid and now forms part of the service charge contribution for that year. The Tribunal reminds the Applicants that to compare the disputed figure with a comparable insurance quotation the two quotations must be like for like. They have not produced a quotation which is like for like with the premium under discussion because they cannot show that both quotations covered the same values and the same risks. Neither does the Tribunal accept that the cover provided for employers' liability and owner's liability was unnecessary either in itself or in amount. Both are normal features of this type of policy. In the absence of any substantiated evidence to the contrary the Tribunal allows this amount in full. Similar arguments apply to challenges made to insurance premiums for later years (below).

21 The Applicants challenged the £180 charge for health and safety inspections. The Tribunal does not accept the Applicant's suggestion that these were done too regularly and considers them to be essential. This sum is allowed in full. Similar arguments apply to later years (below).

22 The applicants challenged the £2240 management fees as it weas felt that they had given poor service by failing to address issues when reported by lessees. They asked Miss Frankish to find a contractor to carry out certain repairs. When she asked for a surveyor to look at her flat they said it was not necessary. She felt Hunters were not worth any

more than £50 per flat per annum, and they had only billed for 8 months fees in the year. The Tribunal accept the Applicants' argument and assesses the management fee to be £333.33. The setting-up fee of £240 is also disallowed as they did not adhere to the terms of the lease and were charging the wrong percentage service charges

23 For the year 2016-17 window cleaning (£389); repairs by Window Fix Direct (£816) and a RMG recharge of £10 were not disputed.
Amounts for building insurance (£2,398) and health and safety (£451.44) are allowed in full on the basis of the reasoning set out above in relation to the previous year.

24 The way in which the cleaning charge (£1,578) has been recorded in the Respondent's accounts is difficult to follow but is correct when the adjustment made in the following year's accounts is taken into account. This amount was otherwise unchallenged and is allowed in full.

25 The charge for water treatment for the year under discussion includes the costs of water sampling (previously separately billed) and when analysed shows that the individual costs had not increased. This sum of allowed in full (£1,307).

26 The Tribunal agrees with the Applicants that the charge of £796.38 from HMC Compliance Ltd for emergency testing and wiring appears to be excessive for the amount of work involved. In the absence of an explanation from the Respondent, the sum claimable is reduced to £400.

27 Denham Electrical's invoice for £776.40 is disallowed in its entirety because they have not supplied a certificate to show that the work has been completed correctly (as requested in the bundle, page 261).

28 Simply BMS Ltd charged £176.40 for two notice boards and a fire door adjustment which the Applicants assert to be excessive. The Tribunal agrees and this invoice is reduced to £50.

29 Hunters, the firm then responsible for managing the property charged £2,050.45 for management fees for the year under discussion. The quality of service provided during this period was not acceptable and the Tribunal agrees with the Applicants that the management fees should be reduced to £50 per month. This reduces the amount claimable for this item to £350.

30 RMG took over the management during this year. It does not appear that their management was significantly better than that of their predecessor continuing to charge the wrong percentage for the service charges, and the Tribunal again adopts the sum of £50 per month in relation to their fees making the total amount claimable for this period £250 (instead of the £620.55 claimed).

31 The fee paid the preparation of six months' accounts is however considered by the Tribunal to be reasonable and is allowed in full (£600).

32 The Respondent agreed to deduct all the late payment charges from the electricity bills which leaves £758.15 as the amount recoverable for this year in place of £834 claimed. Throughout this set of accounts there are 9 instances of charges being levied for late payments of electricity bills by the Respondent. This is totally unacceptable and further evidence of a very poor standard of management.

33 The Applicants disputed the £959.40 paid to a surveyor for a report on damp work in connection with major works. The Tribunal does not agree that this was unnecessary, as alleged by the Applicants. The Applicants said that two previous reports had been made to the Respondent from contractors about this matter. The Applicants have not suggested that all three reports covered exactly the same issues and have failed to distinguish between a report given by a contractor (builder) and one commissioned from a qualified surveyor which may cover a broader range of issues. The sum claimed (£959.40) is considered by the Tribunal to be reasonable and is claimable in full.

34 Most of the above issues re-appear in the 2017-18 accounts. The following items were not disputed by the Applicants and all therefore are payable in full: water charges (£3,401); an amount for the previous year's water charges (£538); a one off payment of £480; and an RMG invoice for £120.

35 The cleaning charge of £1,260 was disputed by the Applicants but the Tribunal finds that the final costs were reasonable once the accounting reversals had been accounted for and reminds the Applicants that the work in this block cannot realistically be compared to that undertaken in a different block managed by another landlord.

36 As in previous years the Applicants challenged the bill for fire equipment maintenance (£510) and health and safety inspections (£442). Both of these items are considered by the Tribunal to be essential and the cost charged to be reasonable and they are therefore payable in full.

37 As above, the amount charged for electricity has been reduced with the Respondent's agreement to the figure of £790.44 having removed from the original bill the sum of £123.56 for late payments.

38 The item charged for water pump maintenance relates mainly to a water supply problem in flat 10. The Respondents were not able to provide any detail about these invoices totalling £1,136. Although Ms Frankish alleged that she had suffered a continuing problem with low water pressure for several months there was little recorded evidence of this and although the Tribunal is not convinced that the Respondent took a proactive response to this problem they reluctantly accept that this bill should be paid in full.

39 In relation to water treatment, the Applicants queried the increase in costs but produced no evidence to show that alternative quotes would have been less expensive and on that basis the Tribunal once again finds that the charge of £712 is reasonable and payable in full.

40 The same comments are made about building insurance as have been made in relation to previous years and once again the Tribunal finds that the sum of £2,438 charged by way of premium is reasonable and payable in full.

41 The bill from SJS Maintenance relates to the cost of loft insulation and replacement guttering (pages 551/553). The Applicants disputed this bill which came to £1,512. The Tribunal only allows the sum of £400 for the insulation work on the basis that that the area covered by the insulation was extremely small and does not merit a greater sum. The cost of £768 for the guttering is disallowed because the guttering work

was done again as part of the Section 20ZA application, which was not successful in rectifying the problem.

42 Trevaskis Consulting Ltd was paid £4,931.16 as a 50% part payment in respect of the major works contract in accordance with the terms of the contract between them and the Respondent. The Applicants suggested that this amount should be reduced because the amount of work actually done under the major works contract was less than 50% of the total works. However, the Tribunal is satisfied with the Respondent's explanation for the work done by Trevaskis and find that the costs were in these circumstances reasonable and are payable in full under the terms of the contract between the Respondent and Trevaskis.

43 Although the Applicants queried the £350 charged by Hagerty Contractors for two signs and posts as excessive, the Tribunal considers that this charge is not unreasonable for the actual work done which included digging a hole and cementing in a new post and allows it in full (see photo bundle pp 124/5).

44 Two invoices from Lakeview Property Maintenance appear to duplicate each other. The Respondent agreed that only one cost should be charged and the Tribunal therefore allows £768 for this item which relates to lagging pipe work (pages 561/2).

45 The Respondent's management fee for the year of £1,500 is reduced to the sum of £600 ie £50 per month as in previous years and for the same reasons.

46 For the year 2018 - 2019 the only item not disputed by the Applicants was the water charge of £2,614 which is payable in full.

47 Cleaning charges from Spotless Services limited were not challenged on the grounds of quality and accordingly, in the absence of alternative quotations, the Tribunal finds the sum of £1,236 is payable in full. The Applicant stated there was an invoice for cleaning included in electrical maintenance for £123.60 and this should be included under the heading of cleaning, the Tribunal agrees. When the cleaning costs are correctly added to this heading the costs increase from £1,236 to £1,359.60. A bill from and NJV Enterprises Limited was disputed as a duplicate and the Respondent agreed to remove this item from the schedule (£117.30).

48 The window cleaning charges have been reduced to £259.20 with the Respondent's agreement because no cleaning was carried out after December 2018.

49 In relation to fire equipment maintenance (Lakeview £252) and health and safety (Osterna £441.60) the Tribunal makes the same observations as above and finds that both of these items are payable in full.

50 The charge for water pump maintenance of £3,145 was challenged by the Applicants who said that the cost of cleaning and chlorinating the water had nearly doubled and that the cost of work to fit a new vessel was high but they did not however, produce any alternative estimates. The Respondent agreed that the sum of £675.60 should be removed from this bill because the work to which it related (pipe lagging) had been done in the previous year. The cost to clean and chlorinate the tank has risen from £540 to £900 with no evidence to show how this work was tendered and the Tribunal agrees with the Applicant that this

cost is unreasonable and allows £650. The cost of fitting a new vessel (£1,209.60) and £360.00 for a new booster are allowed. The total amount allowed here is £2,219.60. This means that the issue over the application of section 20 and consultation is removed because the total falls below the section 20 limit for this property.

51 The Applicants' objection to the cost of replacement lights and sensors mainly relates to the expense but again they do not offer any alternative estimates or quotations. In relation to Lakeview, they raised a query rather than an objection and on that basis both of these invoices for £352.54 and £138 are accepted by the Tribunal and are payable in full. A third invoice in this category (Spotless Services £225.56) is, with the Respondent's agreement, reduced to £101.96 the balance having been charged under the cleaning bill above.

52 The Respondent agreed to reduce Hagerty's bill (£1,250 for general repairs) by £800 leaving an amount payable by the Applicants of £450 which the Tribunal considers is a reasonable sum for the work done.

53 The same comments apply here as above in relation to building insurance and the amount payable is £2,427.

54 Late payment charges have been removed from the electricity bill (£912 less £144.26) leaving a sum payable by the Applicants of £767.74.

55 The reserve fund was charged £24,714 for work carried out by S&K Construction for decorations and undercroft insulation. The summary of the costs are contained in the additional bundle (pages 53 and 54). The Applicant stated that no decoration was completed to the balconies, one set of guttering was not replaced and the other side of the building still overflows. Documentary evidence of this was provided by the Applicant. The Applicant also stated that the scaffold alarm was not installed from the start of the works. The Respondent did not dispute the issue of the alarm and could not provide any evidence to show that the disputed works were completed, in fact the Respondent could not provide any diary records of site inspections, or any site inspections and could provide no completion certificates for the work. Therefore, the following costs were disallowed:

- 50% of the scaffold alarm: £150
- 100% for gutter removal: £300
- 100% for new guttering: £1,200
- 100% for gutter guards: £195
- 100% for balcony decorations: £800
- VAT on the above items: £529

The above items total £3,174 and this reduces the cost for this work that can be recovered from £24,714 to £21,540.

56 The Respondent's management fee for the year of £1,545 is reduced to the sum of £600 ie £50 per month as in previous years.

57 The final year under consideration, 2019-20 once again starts with cleaning charges. The Applicants did not challenge the Spotless bill of £247.20 (payable in full) but did challenge the replacement cleaner's invoice from NJV Enterprises Ltd for £1,348.95. On examination however, it was found that NJV's monthly rate was less than that of their predecessor. The apparent increase in charges relates to the fact

that NJV charge VAT on their services whereas Spotless did not. The Tribunal therefore allows NJV's bill in full (£1,348.95).

58 The Respondent agreed to remove the window cleaning invoice (£367.50) from the schedule accepting that no window cleaning had been carried out during this period. This changes the charge of £173 to a credit of £194.50.

59 A bill for fire equipment checks (Lakeview: £252) was not substantially challenged by the Applicants and is payable in full. The amount for replacement smoke alarms (Nirvana £224.94) is disallowed in total. All the alarms had been renewed two years previously and no explanation was provided as to why their replacement was necessary at this stage.

60 The SMS invoice for water maintenance, explained by the Respondent as likely to have been in part for removing sludge from the tank, is reduced by £333.48 (amount allowable is £543.60) because the Tribunal consider that this work should have been carried out as part of routine maintenance and should not have been necessary as a discrete issue.

61 Lakeview's water pump maintenance bill of £3,170.92 was disputed by the Applicants. The Respondent agreed to reduce the bill by £900 to remove the cost of a second tank clean. The removal of the bib tap (£525) on the outside wall appears to have been unnecessary (a simpler solution would have ben to cut back the ivy and lag the tap) and the Respondent was unable to identify the pump for which £366 was charged. Removal of these two items from the invoice leave an amount payable by the Applicants of £1,380.

62 It is unclear to what the £200 charge for the removal of rubbish relates. The Applicants state that it concerned rubbish in the roof void, the Respondent's explanation was that it was domestic waste which the local authority was unable to access because of the scaffolding around the building. Whichever explanation is correct the Tribunal's view is that this is not a service charge item and should not have been charged to the tenants. It is disallowed in full.

63 The Respondent agreed to remove amounts charged by Nirvana for general maintenance (page 810, £300, page 813, £200) and the Tribunal disallows a third Nirvana invoice (page 815, £250) on the grounds that the work done in May 2020 to a faulty door has still not been completed satisfactorily.

64 A further invoice from Nirvana for the replacement of three lamps (page 814 - £265.68) is considered by the Tribunal to be excessive for the amount of work done and is reduced to £100.

65 Lakeview's invoice for £276 and the SMS/Osterna bill for £725 were not disputed and are payable in full.

66 As above, the building insurance is payable in full (£2,539) and management fees are assessed at £600 (reduced from £1,592) to reflect the continued poor standard of management from the Respondent during this period.

67 Finally for this year, the Respondent agreed to remove from the Schedule Lakeview's invoice for £1,104 which related to cleaning the water tank.

68 The Applicants queried both how the reserve fund contribution of £20,000 per flat per year was calculated and its amount (p 565). The

Respondent said that the money was required for the planned major works which were estimated at £60,000. Since approximately £25,000 has already been spent on major works it appears that the amount needed by the Respondent is now reduced to £35,000 and the Respondents could make an appropriate adjustment to the annual contributions to reflect that fact. No planned maintenance programme had been discussed with the tenants. However, the estimated amount of £60,000 was judged to be reasonable to cover the external decorations work that is planned (the first part of which has been completed although not entirely satisfactorily, as discussed in the section covering the 2018/19 financial year).

69 The Tribunal was asked to deal with an estimate for the year ending 2021 for which no accounts are yet available. The Applicants queried the increased insurance costs which the Respondent explained were due to the rebuild value having increased which in turn increased the reinstatement value of the property. A further query from the Applicants on insurance related to the difference between the declared value of the property and the rebuild value insured. The Respondent was unable to answer this question. The Tribunal, using its own knowledge and experience suggests that this is an industry standard provision to guard against inflation over the period of the claim. The Respondent agreed to review the electricity tariffs charged to the property which the Applicants had repeatedly suggested had not been obtained at the most favourable rate. With these two issues resolved the Tribunal approves the proposed budget for the year 2020-21. The Applicants will be able to review their position on this year's expenditure when they receive the final accounts and supporting documentation.

70 The Applicants asked the Tribunal to make an order under s20C Landlord and Tenant Act 1985 restricting the Respondent from recovering litigation costs through the service charge. Having heard representations from both parties the Tribunal determines that it will makes such an order in favour of the Applicants as named above and for an unlimited amount. With the exception of insurance, few of the Respondent's arguments have been substantiated or justified. The general standard of management has been very poor with little evidence of completed works having been checked or signed off in particular the major works. Contractors had to return to site several times to rectify defects which previously had not been dealt with properly. The Representatives of the Respondent who attended the Tribunal did not appear to be familiar with the property or its problems. There appears to be no active management service being provided.

71 The Tribunal also orders the Respondent to repay to the Applicants the sum of £400 representing the cost of their application and hearing fees.

72 In respect of a major works contract in 2018/19 the Respondent accepts that the s20 procedure should have been followed and that although an initial notice was served, the procedure was never completed. Some of the specified works were subsequently carried out and their cost charged to the Applicants. The Tribunal is being asked to exercise its

discretion under s.20ZA of the Act in respect of these works. The wording of s.20ZA is significant. Subs. (1) provides:

"Where an application is made to a [leasehold valuation] tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination *if satisfied that it is reasonable to dispense with the requirements*" (emphasis added).

71 The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable .

72 Having considered the submissions made by the parties the Tribunal is satisfied that the work carried out was necessary and that no undue prejudice has or will be caused to or suffered by the Applicants by the grant of dispensation under s20ZA.

73 The Tribunal notes however that not all the works proposed under the notice were completed (eg painting of the Juliet balconies, some replacement guttering) and the Respondent has been unable to produce records of inspection of the works or a certificate of completion.

74 The Tribunal's dispensation applies only to those works which have been completed. This includes the erection of scaffolding, insulation of the undercroft and some replacement guttering.

75 In relation to the remainder, the Tribunal would expect the Respondent to undertake any necessary consultation in full compliance with statutory requirements before commencing the further works

78 **The Law**

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Section 47 Landlord and Tenant Act 1987

(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a)the name and address of the landlord, and

(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

(a)a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed

by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.

(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 22 March 2021

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.