



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

**Case Reference** : **BIR/00FY/LIS/2020/0048**

**HMCTS** : **CVP**

**Property** : **Apartment 11, One Fletcher Gate, Adams Walk, Nottingham NG1 1QP**

**Applicant** : **Dr Lellis Francis Braganza**

**Respondent** : **One Fletcher Gate RTM Company Ltd**  
**Managing Agent** : **In Residence Block Management**  
**Representative** : **Nelsons Solicitors**

**Interested Party** : **Fairhold Appollo Limited (Landlord)**

**Type of Application** : **To determine the reasonableness and  
payability of Service Charges (Section 27A  
Landlord and Tenant Act 1985)**

**Tribunal** : **Judge JR Morris**  
**Mr D Satchwell MRICS**

**Date of Application** : **11<sup>th</sup> December 2020**  
**Date of 1<sup>st</sup> Directions** : **17<sup>th</sup> December 2020**  
**Date of 2<sup>nd</sup> Directions** : **22<sup>nd</sup> February 2021**  
**Date of 3<sup>rd</sup> Directions** : **9<sup>th</sup> March 2021**  
**Date of Hearing** : **29<sup>th</sup> April 2021**  
**Date of Decision** : **15<sup>th</sup> June 2021**

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**DECISION**

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## **Covid-19 Pandemic: Remote Video Hearing**

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

### **Decision**

1. The Tribunal determines that the Estimated Service Charges for the costs to be incurred for the period 15<sup>th</sup> November 2019 to 31<sup>st</sup> December 2019 and the years, 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2020 and 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2021 (“the years in issue”) are reasonable.
2. The Tribunal determines that the Estimated Service Charge for each of the years in issue is payable by the Applicant to the Respondent when apportioned 0.852% in relation to the Residential Charges and 0.780% in relation to the Estate Charges in accordance with the Lease.
3. The Tribunal makes no order under either Section 20C of the Landlord and Tenant Act 1985.

### **Directions**

4. The Tribunal Directs that:
  - 1) Each party shall make a written submission regarding their respective Applications under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which will be served on each other and the Tribunal by 28<sup>th</sup> June 2021.
  - 2) Each party may then make a reply which will be served on each other and the Tribunal by 12<sup>th</sup> July 2021.

## **Reasons**

### **Application**

5. The Application dated 11<sup>th</sup> December 2020 is for a determination under section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of service charges for the period 15<sup>th</sup> November 2019 to 31<sup>st</sup> December 2019, and for the costs to be incurred for the year ending 31<sup>st</sup> December 2020 and for the year ending 31<sup>st</sup> December 2021 (“the years in issue”). However, although the costs were incurred for the years 2019 and 2020 the accounts had not been prepared and therefore only the Estimated Service Charge was available for all the years in issue.
6. On 17<sup>th</sup> December 2020 the 1<sup>st</sup> Directions were issued. The parties were identified as the Dr Lellis Francis Braganza as the Applicant and One Fletcher Gate RTM Company Limited (“the RTM Company”) as the Respondent although the Application form referred to a Mr Simon Flude, a Director of the RTM Company as the Respondent. The matter relates solely to the Service Charge and the RTM Company, therefore copies of the Application and attached documents were provided to the Freeholder, Fairhold Apollo Limited, as an Interested Party only. On the Application Form the Applicant referred to the appointment of a manager. The Procedural Judge stated that the Application under section 27A of the Landlord and Tenant Act 1985 does not include this procedure and an application under the relevant provision of the Landlord and Tenant Act 1987 would have to be made if this was to be pursued.
7. On 22<sup>nd</sup> February 2021 the 2<sup>nd</sup> Directions were issued. The Procedural Judge recorded that the Applicant had said that it was his intention to bring proceedings against Mr Simon Flude personally. The Procedural Judge found that this was not appropriate and pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and in the absence of objections, confirmed the RTM Company as the Respondent in the Directions.
8. The Procedural Judge further recorded in the Directions that he had found that the Respondent failed to comply with the Direction to provide a Statement of case by 5<sup>th</sup> February 2021. As a result, the Procedural Judge had written to the Respondent on 10<sup>th</sup> February 2021, with a further copy of the Directions, stating that if the Respondent failed to comply with the Direction within the next 7 days a Procedural Judge would consider whether the Respondent should be barred from taking further part in the proceedings. The Letter was to invoke a potential barring under Rule 9(3)(a) and not an automatic barring under Rule 9(1). The letter was copied to the RTM Company’s Managing Agent, In Residence, and to the RTM Company’s Solicitors, Nelsons.
9. It was also recorded that the Tribunal received an email the same day, from Mr Flude, named as the Respondent on the Application Form, stating that he had not received the 1<sup>st</sup> Directions and would take action immediately. On 11<sup>th</sup> February 2021 the Tribunal received a Notice of Acting from Nelson Solicitors

for the Respondent and a request for an extension of time until 4<sup>th</sup> March 2021. The Applicant objected to the extension and sought a barring order referring to BPP Holdings Ltd and others v Commissioners for HMRC [2017] UKSC 55. The Procedural Judge granted the extension noting that notwithstanding that the 1<sup>st</sup> Directions referred to the RTM Company as the Respondent in the head note, Mr Flude was named as the Respondent on the Application Form. It was not until the 2<sup>nd</sup> Directions that the RTM Company was made the Respondent under rule 10. A barring order was therefore not appropriate until the correct Respondent had been formally added. Although the address for correspondence was not disputed and no substantial explanation had been put forward for non-receipt, the Respondent had replied immediately to the letter of 10<sup>th</sup> February 2021, notifying of non-receipt of earlier correspondence. The Procedural Judge took into account paragraph 11 of the Amended General Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal issued on 14<sup>th</sup> September 2020 regarding the impact of the Covid 19 pandemic and granted the extension.

10. On 9<sup>th</sup> March 2021 the 3<sup>rd</sup> Directions were issued. By way of an email dated 23<sup>rd</sup> February 2021 the Applicant sought to include the Service Charges to be incurred for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2021 in addition to the Service Charge for the period 15<sup>th</sup> November 2019 to 31<sup>st</sup> December 2019, and for the costs incurred for the year ending 31<sup>st</sup> December 2020. This was agreed and dates for further representations were set.
11. The Applicant served a Statement of Case on 7<sup>th</sup> January 2021 with supporting documents. From the Application Form and the Statement of Case the Tribunal identifies the following issues:
  1. The Respondent is not entitled to issue Service Charge Demands as it does not operate in accordance with its Memorandum of Association or the Companies Act 2006.
  2. In addition, the Applicant contends the Service Charge Demands issued are not payable because:
    - (i) The 2020 Service Charge Demand was not issued with the Service Charge Budget and the end of year Statement of Accounts have not been issued in accordance with the Lease;
    - (ii) The Budget Statement has not been issued following a request under section 21(4) of the Landlord and Tenant Act 1987;
    - (iii) The Service Charge Demands are not issued four times a year in accordance with the Lease;
    - (iv) The Budget does not fulfil the requirements of the Estimated Service Charge as stated in the Lease namely that the Residential and Estate Charges reflecting the Tenant's Portion are not shown separately;

- (v) The Respondent is not entitled to establish a reserve or sinking fund and if it is the amount demanded is not reasonable.
- 12. The Applicant has also applied for an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

### **The Law**

- 13. A statement of the relevant law is attached to the end of these reasons.

### **Description of the Property**

- 14. The Tribunal did not inspect the Development in which the Property is situated due to Government restrictions and sets out the following description based upon the Statements of Case together with the photographs and documents annexed thereto, the Lease and the Internet.
- 15. The Property is an Apartment in a Development of about 100 purpose-built and self-contained apartments and commercial premises in Nottingham. The Apartments are of mostly one and two bedrooms, some have balconies and allocated parking spaces. The Property is a one-bedroom Apartment on the fourth floor without balcony or allocated parking space. In addition the Development has Lifts to the upper floors, roller shutter doors to the basement garage and a fire alarm system.
- 16. The Development is 7 storeys including the basement car park. At street level and above it is in two sections divided by Adam Walk. The two sections are therefore connected below Adam Walk by the basement car park. The smaller section is named Ocean Island and the larger is One Fletcher Gate. Both sections have commercial units on the ground floor and residential on the upper floors. The Development has brick elevations on the upper floor and reconstituted stone on the ground floor. The windows and doors appear to be coated metal alloy. The roof is not pitched but is believed to be on a single gradient plane. It is probably constructed of a metal alloy but the material is not known with certainty. One Fletcher Gate is constructed around an inner courtyard with shrubs, trees, raised beds and hard landscaping in a piazza style. The outer elevation of One Fletcher Gate has a street frontage. The Property is located in Ocean Island which does not have access to the inner courtyard of One Fletcher Gate.
- 17. The Development is managed by One Fletcher Gate RTM Company whose Managing Agent is In Residence Block Management, the Landlord is Fairhold Apollo Limited whose Agent is Estates and Management Ltd.

### **The Lease**

- 18. A copy Lease for the Property was provided and the relevant clauses are as follows:

19. Definitions
  - 1.2 The Accounting Year is 1<sup>st</sup> January to 31<sup>st</sup> December
  - 1.5 The Common Parts are those parts of the Estate and the Service Installations no included or intended to be included in the demise or a demise of any other part of the Building (which are more particularly described)
  - 1.6 The Estate is the buildings and grounds comprising the land within the Title Number NT52943
  - 1.7 Estate Charges are set out in Part 2 of Schedule 2 and are payable in accordance with Part 4 of Schedule 2
  - 1.8 Estimated Service Charge for each Accounting Year is such sum as shall be certified by the Landlord as being a reasonable estimate of the expenditure likely to be incurred by the Landlord by way of Service Charge during such Accounting Year
  - 1.11 Payment Days are 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July and 1<sup>st</sup> October in each year
  - 1.19 The Residential Charges are set out in Part 1 of Schedule 2 and are payable in accordance with Part 3 of Schedule 2
  - 1.20 Residential Parts are the entrances hallways reception area staircases lobbies and landings in the Building (more particularly described) ...exclusively serving the Residential Units
  - 1.21 The Service Charge is the Tenant's Proportion of the residential and the Tenant's proportion of the Estate Charges
  - 1.24 Tenant's Proportion in relation to the Residential charges zero point eight five two per centum (0.852%) in relation to the Estate Charges zero point seven eight zero per centum (0.780%)
  
20. Tenant's Covenants
  - 6.1 to pay the Estimated Service Charge to the Landlord in advance by equal quarterly payment on the Payment Days by direct debit or otherwise as the Landlord shall prescribe...
  - 6.17 to pay all expenses including solicitors' costs and disbursements .... incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925...or of proceedings on account of arrears of Service Charge for forfeiture of this Lease and ...incidental to the services of notices and schedules relating to defects or wants of repair decoration...
  
21. Landlord/Management Covenants
  - 7.2.1 to manage run keep in good and substantial repair maintain reinstate replace and renew the residential parts and the Common Part and any facilities therein and
  - 7.2.2 to keep in good and substantial repair reinstate replace and renew all external window frames door and door frames in the residential units
  - 7.4 to keep in good order and stocked with plants as the Landlord may think fit the grounds of the Estate
  - 10.2 The Landlord shall have power to reasonably to vary the Tenant's Proportion in consequence of any alteration or addition to the Building or Estate or any other relevant circumstances

22. Second Schedule Part 1 Residential Charges  
The costs incurred by the Landlord in:  
The performance and observance of the covenants, obligations and powers ...contained in Clause 7 of the Lease insofar as they relate to the Residential Parts
23. Second Schedule Part 2 Estate Charges  
The performance and observance of the covenants, obligations and powers ...contained in Clause 7 of the Lease insofar as they relate to the Common Parts
24. Second Schedule Part 3 Provisions relating to the Service Charge
  - 1.5 administering and managing the said services and calculating certifying and collecting the Service Charge
  - 1.6 setting aside such sums of money (which shall be deemed items of expenditure incurred by the Landlord) as the Landlord may reasonably require by way of reasonable provision for future expenditure of complying with its obligations hereunder
  2. The Tenant shall pay the estimated Service Charge by equal instalments in advance on the payment by direct debit or otherwise as the landlord shall prescribe
  3. As soon as convenient after the expiry of each Accounting Year... there shall be prepared and submitted to the Tenant a written statement ("the Statement") setting out the Service Charge for that Accounting Year.
  4. Any shortfall shall be made good by the Tenant and be due on demand.

## **Hearing**

25. A hearing was held by CVP on 29<sup>th</sup> April 2021 and was attended by Dr Lellis Braganza, the Applicant, Mr Piers Digby of Counsel, for the Respondent and Mr Oliver Maxwell of In Residence Block Management, the Managing Agent, and Mr Simon Flude, a Director of the Respondent.

## **Evidence**

26. Both the Applicant and Respondent provided written Statements of Case which are summarised below. The written statements of each party (the Applicant's contention and the Respondent's reply) are followed by additional evidence provided at the hearing.

### **1. Respondent not entitled to issue Service Charge Demands**

#### ***Applicant's Case***

27. The Applicant stated that the Respondent is not entitled to issue Service Charge Demands because it is not acting in accordance with its Memorandum of Association or with the Companies Act 2006 for the following reasons:
  - a) The Respondent failed to acknowledge receipt of the Applicant's Notice of Assignment upon acquisition

- b) The Respondent does not comply with its Memorandum of Association
  - c) The Respondent does not comply with the Companies Act 2006
  - a) *Failure to acknowledge receipt of the Notice of Assignment*
28. The Applicant purchased the Property on 15<sup>th</sup> November 2019 (copy of Land Registry entry NT406313 provided at Appendix 1). The Applicant stated that there had been difficulty in registering the Transfer with the Respondent and the Respondent had not acknowledged the receipt of the Transfer. The following evidence was provided:
- a) Copy of Leasehold Property Enquiries (Appendix 3)
  - b) 5<sup>th</sup> June 2020 email from the Applicant's solicitors informing the Landlord via its authorised agent, Estates and Management Ltd that attempts had been made to serve Notice of Transfer on the Respondent at the address given on Leasehold Property Enquiries Form for the Managing Agent, In Residence Block Management but the correspondence had been returned (Appendix 2).
  - c) 30<sup>th</sup> June 2020 letter from Estates and Management Ltd to the Applicant's Solicitors acknowledging receipt of the Notice of Transfer and informing them that the RTM Company was understood to be self-managing and that the address for service was 93 One Fletcher Gate (Appendix 5).
  - d) 3<sup>rd</sup> July 2020 letter from Applicant's solicitors to the Respondent addressed to 93 One Fletcher Gate informing the Respondent that attempts had been made to serve Notice of Transfer on In Residence Block Management without success, confirming that Estates and Management Ltd had updated their records with regard to the transfer and requesting that the Transfer be registered with the Respondent (Appendix 4).
29. At the Hearing the Applicant said that he was not merely making a technical point in bringing the action regarding the Respondent's failure to notify him of the registration of the transfer. He was genuinely concerned that the address at which he had been serving the Notice of Transfer and to which he had been corresponding was correct. He had had two occasions regarding other properties where there had been problems. With one he had inadvertently failed to inform the Landlord of the transfer. As a result, he was not sent rent demands which therefore were not paid and he found himself liable for a significant amount of money. With the other the service charge demands were sent to the address of the property instead of to the address he had told the landlord to send them. The tenant at the property did not pass the demands on and although the Applicant said that he was eventually successful, it caused a great deal of inconvenience. He therefore wanted to be sure that the Landlord and Respondent had registered the Transfer, knew his address for service and he knew their address for service.



- b) *Non-Compliance with the Memorandum of Association*
30. The Applicant said that the Respondent has not complied with Article 4 of its Memorandum of Association dated 30<sup>th</sup> October 2006 as follows:
- a) It failed to receive the Notice of the Transfer of Lease as required by Article 4(j);  
It failed to participate in the current proceedings before the Tribunal in contravention of Article 4(k);
- b) The Respondent's Directors did not retire in the manner required under Article 51 of the Memorandum of Association.
- c) *Non-Compliance with Companies Act 2006*
31. The Applicant submitted that the Respondent's address is "non-functional" as an address for service contrary to the Memorandum of Association and the Companies Act 2006. The Applicant and the Tribunal have attempted to service documents at the address and they have been returned or they have not received a response.
32. The Applicant referred to an entry on the Companies register that the respondent had been the subject of a striking off action in June 2015 (Appendix 6) and that this had been discontinued in June 2016 (Appendix 7).

### ***Respondent's Reply***

33. The Respondent provided a written statement of case with photographs in support of his case.
- a) *Failure to acknowledge receipt of the Notice of Assignment*
34. The Respondent said that it could see no obligation within the Lease of the Property to acknowledge the Applicant's Notice of Assignment. It further stated:
- a. The Applicant was provided with the address to which the Notice of Assignment was to be sent in the Leasehold Property Enquiries Form.
- b. Section 1.5 of the Form explains that it was to be sent to the Managing Agent as opposed to the Respondent.
- c. The Applicant acknowledges that on 14<sup>th</sup> January 2020 he received a service charge demand for the year 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2020 in the amount of £1,491.26.
- d. The acknowledgment of receipt of the demand predates the email to Estates and Management Ltd in June 2020 and the letter to the Respondent in July 2020. Therefore, the Applicant knew that the Notice of Transfer had been received and the records had been up dated.
- The acknowledgement of the Notice of Transfer cannot be considered a pre-condition upon the Respondent's ability to issue service charge demands.

*b) Non-Compliance with the Memorandum of Association*

35. The Respondent stated that Sections 8 to 28 of the Companies Act 2006 greatly reduce the significance of the Memorandum of Association. With regard to the Notice of Assignment the Respondent said it had already made its submissions above and that there is no obligation to respond to such notices. In addition, the Respondent denied that the Directors had not rotated in accordance with the memorandum and that Article 51 had to be read in conjunction with Article 53. Even if the requisite rotation had not occurred the actions of the Directors would not be invalidated by virtue of section 161 of the Companies Act 2006. Also, a breach of the constitution, which can be ratified under section 239 of the Companies Act 2006, does not deprive the Respondent from demanding service charges.
36. In any event, alleged breaches of the Memorandum of Association of the Respondent are not within the jurisdiction of the Tribunal under section 27A of the Landlord and Tenant Act 1985. Any action in this respect would have to be made by the Applicant as shareholder and not Leaseholder.

*c) Non-Compliance with Companies Act 2006*

37. The Respondent said that there was no legal concept of a “non-functional” address for service.
38. The Respondent said that the striking off action was discontinued and so is not relevant to proceedings.

**1. Tribunal’s Decision Re Respondent’s entitlement to issue Service Charge Demands**

*a) Failure to acknowledge receipt of the Notice of Assignment*

39. It was conceded that the Respondent failed to acknowledge receipt of the Applicant’s Notice of Assignment upon acquisition. Whereas the Tribunal appreciated the concern of the Applicant after his past experiences. However, although it may be discourteous not to acknowledge a Notice of Assignment, nevertheless, there was no obligation in legislation or under the Lease which required a landlord or Management company to do so.

*b) Non-Compliance with the Memorandum of Association*

40. The alleged breaches of the Memorandum of Association of the Respondent are not within the jurisdiction of the Tribunal under section 27A of the Landlord and Tenant Act 1985. Any action in this respect would have to be made by the Applicant as shareholder and not Leaseholder.

*c) Non-Compliance with Companies Act 2006*

41. The Tribunal appreciated the Applicant’s frustration that he had sent correspondence to the address given as that of the Respondent but had

received no answer. This does not mean that the address is not a valid address for service. If the address was incorrect for any reason, then there may have been an issue with regard to the demands being defective as not having an address for service. However, the Tribunal found the address was correct and Applicant and the Tribunal did receive a response in time.

*Overall*

42. The Tribunal finds that the Respondent exists as Right to Manage Company and as such is able to issue Service Charge demands.

**2. Service Charge demands issued by Respondent are not payable or reasonable**

***Applicant's Case***

43. The Applicant stated that the 2020 Service Charge Demand was not issued with the Service Charge Budget and the end of year Statement of Accounts have not been issued in accordance with the Lease and so the charges are not payable. The Applicant set out the following time line:

- a. On 14<sup>th</sup> January 2020 the Applicant received a Service Charge Demand for £1,491.26 (Appendix 8).
- b. On 17<sup>th</sup> January 2020 the Applicant paid the Demand by Bank Transfer.
- c. On 5<sup>th</sup> June 2020 the Applicant requested the Respondent's Solicitors to send the 2020 Service Charge Budget, referred to in the "Budget 2020 - Notes from Directors" attached to the Demand. No response was received.
- d. On 11<sup>th</sup> June 2020 the Applicant requested confirmation of the Respondent's address for service (Appendix 9). No response was received.
- e. On 27<sup>th</sup> October 2020 the Applicant sent a letter to the Respondent and its Managing Agent, In Residence Block Management and the Respondent's Solicitors (Appendix 10). No response was received from either and the letters were sent by registered post on 30<sup>th</sup> October 2020 to the Respondent at the address 93 Fletcher Gate, Adams Walk, Nottingham NG1 1QR, England.
- f. On 1<sup>st</sup> December 2020 apparently in response to the letter dated 27<sup>th</sup> October 2020 a Budget was received.

44. The Applicant contends the Service Charge Demands issued are not payable for the following reasons.

- (i) *Failure to issue End of year Accounts in accordance with the Lease*
45. The Applicant submitted that the Respondent has failed to comply with Part 3 to serve end of year accounts certified by a qualified accountant.
- (ii) *Failure to respond to Section 21(4) Landlord & Tenant Act 1985 Request*
46. The end of year Service Charge Statement of Account has not been issued following a request under section 21(4) of the Landlord and Tenant Act 1987.
- (iii) *The Service Charge Demands are not issued four times a year in accordance with the Lease*
47. The Applicant submitted that the Service charge demands should be issued 4 times a year as stated in the Lease. The payment days are 1<sup>st</sup> January, 1<sup>st</sup> April and 1<sup>st</sup> October in each year. In the supplementary Statement of Case the Applicant states that the offer to pay by 10 monthly instalments with an administration charge of £30.00 is not in accordance with the Lease. Clause 6 requires payment to be in equal quarterly instalments.
- (iv) *The Budget does not fulfil the requirements of the Estimated Service Charge as stated in the Lease*
48. The Applicant submitted that the Budget does not fulfil the requirements of the Estimated Service Charge as stated in the Lease namely that the Residential and Estate Charges and the Tenant's Portion are not shown separately. An aggregate percentage apportionment is made by the Respondent of the Residential Charges of 0.852% Estate Charges of 0.780% resulting in a charge of 0.816%. The Applicant submits that this is not in accordance with the Lease and the amounts should be shown and charged separately divided. The percentages in the Lease are Residential Charges of 0.852% and Estate Charges of 0.780%.
49. The Applicant submitted that the Variation Clause only applies in specific circumstances i.e., "in consequence of any alteration or addition..."
- (v) *The Respondent is not entitled to establish a reserve or sinking fund and if it is the amount demanded is not reasonable.*
50. The Applicant submits that the wording of paragraph 1.6 of Part 3 of Schedule 2 does not extend to the establishment of a general and unspecified reserve or sinking fund. He referred to a number of precedents which he said were typical wording for a reserve fund and that the wording in the Lease did not correspond to any of these precedents.
51. The Applicant also submits that the amount is excessive.

### ***Respondent's Reply***

52. The Respondent replied as follows to the Applicant's case.

(i) *Failure to issue End of year Accounts in accordance with the Lease*

53. The Respondent referred to paragraph 3 of Part 3 of the Second Schedule stating that the accounts were provided as soon as practicable. There is no penalty within the Lease for a delay in having the Statement certified and the failure to properly certify the accounts is not fatal. Paragraph of Part 3 of the Second Schedule provides the mechanism for dealing with estimated versus actual costs of the service charge.

54. At the Hearing the Respondent referred the Tribunal to the end of year accounts for the years 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2019 which had been included in the Bundle. It was said that they had been significantly delayed this year due to the COVID 19 outbreak. It was added that the accounts are complex to produce and each year negotiations take place with regard to other stakeholders in the Development who are the commercial premises and an adjacent building which has a right of way through and a right to use a portion of the underground car park. Therefore, each year the accounts are produced later than the Respondent's Directors would wish.

(ii) *Failure to respond to Section 21(4) Landlord & Tenant Act 1985 Request*

55. The Respondent submitted that the request for the Budget Statement under section 21(4) of the Landlord and Tenant Act 1985 was not valid and was not within the Tribunal's jurisdiction.

(iii) *The Service Charge Demands are not issued four times a year in accordance with the Lease*

56. The Respondent states that the Payment Days are linked to the payment of the Estimated Service Charge over the period of 12 months of the Accounting Year. The Demand is made at the beginning of the year following the certified reasonable estimate for the following Accounting Year.

57. At the Hearing in answer to the Tribunal's questions the Respondent said that all Tenants can pay the Estimated Service Charge by four equal quarterly payments by Direct Debit on the Payment Days as specified in the Lease. The payment of the Service Charge by 10 monthly instalments at a charge of £30.00 is an additional option which many Tenants find helpful. When the End of the Year Accounts are produced it will then be known if there is a surplus of payments or a shortfall whereupon the Tenant will be charged the shortfall.

58. The Applicant referred to *Leonora Investment Company Limited v Mott MacDonald Limited* [2008] EWCA Civ 857 saying in that case the Landlord had not followed the rules stated in the lease.

(iv) *The Budget does not fulfil the requirements of the Estimated Service Charge as stated in the Lease*

59. The Respondent submitted that there is no requirement in the Lease that the Estimated Service Charge should be divided between the Residential and the Estate Charges or that it should apportion the Residential and Estate Charges as per the Tenant's Portion.
60. The Respondent stated that in lieu of the percentages as set out in the Tenant's Portion the Respondent apportions according to a prescribed aggregate which is lower than that which would be charged according to the Lease. For example, the Applicant's Service Charge demanded on 10<sup>th</sup> January 2020 is £1,491.26 of a total of £193,056.00 which equates to 0.77% as opposed to the prescribed aggregate of 0.816%.
61. In addition, the Respondent submitted that it had a broad contractual power within Clause 10.2 to vary the Lease in any circumstances it deems "relevant".
62. At the Hearing Mr Flude said that at the end of the year when the Service Charge costs are accounted for the Directors enter negotiations with the other stakeholders in the Development to apportion certain of the charges, most particularly those relating to the car park.
63. Mr Flude said that the costs are apportioned in accordance with the Lease. They are then adjusted to take account of the negotiated percentages which are to be paid by each of the stakeholders of the Development for certain of the shared costs. The stakeholder includes the commercial units, a car parking company and an adjacent building. The shared costs which include the roller door, lights and CO<sup>2</sup> fans for the car park and the concierge service, are apportioned to each stakeholder according to their use.
64. In answer to the Tribunal's questions Mr Flude said that the apportionment was made of all the costs and then they are adjusted as it had been since the Development was constructed.
65. The Applicant said that neither the Estimated nor the Actual costs were apportioned as per the Tenant's Portions and so are not in accordance with the Lease. He said that both the Estimated Service Charge and the End of Year Accounts should be divided into the Estate Heads of Expenditure and the Residential Heads of Expenditure and each should be apportioned according to the Tenant's Proportion for the Estate of 0.780% and for the Residential of 0.852%.
66. The Applicant submitted that neither the Estimated Service Charge nor the Actual costs of the Service Charge as set out in the Statement are payable for 2019 and 2020 until they are apportioned in accordance with the Lease.
- (v) *The Respondent is not entitled to establish a reserve or sinking fund and if it is the amount demanded is not reasonable.*
67. The Respondent submits that the wording of paragraph 1.6 of Part 3 of Schedule 2 does extend to the establishment of a general and unspecified reserve or sinking fund.

68. The Respondent submits that the amount is reasonable.

**2. Tribunal's Decision re Service Charge demands issued by Respondent are not payable or reasonable**

69. The Tribunal considered all the evidence made by both parties in respect of the issues raised by the Applicant with regard to the submission by the Applicant that the Service Charge demands issued by the Respondent are not payable or reasonable for the reasons which are set out and considered below.

*(i) Failure to issue End of year Accounts in accordance with the Lease*

70. The Applicant submitted that the Respondent has failed to comply with paragraph 3 of Part 3 of the Second Schedule of the Lease by failing to serve end of year accounts for the year 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2019 certified by a qualified accountant and therefore the Service Charge Demands are not payable. The Tribunal found that as at the date of the hearing the account had now been provided and a copy was included with the Bundle. The Tribunal found the stamp of the accountant as being sufficient certification.

71. The Tribunal noted that paragraph 3 of Part 3 of the Second Schedule of the Lease requires "As soon as convenient after the expiry of each Accounting Year... there shall be prepared and submitted to the Tenant a written statement ("the Statement") setting out the Service Charge for that Accounting Year". Paragraph 4 states that "Any shortfall shall be made good by the Tenant and be due on demand". However, this cannot be, and, so far as the Tribunal, is aware none has been, demanded, until the account is produced. The Tribunal did not find that the Landlord was subject to any penalty under the Lease for failure to provide a Service Charge within a specific time. The only penalty would be that any demand for a balancing payment would not be known and not due until the accounts were produced.

72. The Tribunal determined that the lateness of the Service Charge account did not invalidate the Estimated Service Charge demand made for 2020 nor the demand for the balancing payment for 2019 when made.

*(ii) Failure to respond to Section 21(4) Landlord & Tenant Act 1985 Request*

73. The Applicant submitted the end of year Statement of Accounts have not been issued following a request under section 21(4) of the Landlord and Tenant Act 1987 which requires the landlord to supply a summary of the accounts and allow for inspection of documents within certain time limits. Where a landlord fails without reasonable excuse to comply with either a request for a summary or to inspect supporting documents, they commit a summary offence on conviction and are liable for a fine of up to £2,500 (level 4 on the standard scale). The local housing authority, usually through the Tenancy Relations Officer, has the power to bring proceedings at the magistrates' court, or they can be brought by a leaseholder privately. Any prosecution must be presented to a magistrate within 6 months of the date of the offence.

74. The Tribunal appreciates that the Applicant is anxious to see the Statement of Account for 2019 in order to assess the reasonableness of the costs to be incurred for the year 2020, as demanded in the Estimated Service Charge. However, compliance with a notice under section 21(4) of the Landlord and Tenant Act 1987 is not within the jurisdiction of the Tribunal.
- (iii) The Service Charge Demands are not issued four times a year in accordance with the Lease*
75. The Applicant submitted that the Service Charge demands should be issued on 1<sup>st</sup> January, 1<sup>st</sup> April and 1<sup>st</sup> October as stated in the Lease. The Applicant stated that the offer to pay by 10 monthly instalments with an administration charge of £30.00 is not in accordance with the Lease.
76. Clause 6.1 of the Lease requires the tenant:  
“to pay the Estimated Service Charge to the Landlord in advance by equal quarterly payment on the Payment Days by direct debit or otherwise as the Landlord shall prescribe...”  
and of paragraph 2 of Part 3 of the Second Schedule states:  
“The Tenant shall pay the estimated Service Charge by equal instalments in advance on the payment by direct debit or otherwise as the landlord shall prescribe”.
77. The Tribunal found that the Lease requires the Tenant to *pay* the Estimated Service Charge in equal instalments on the Payment days it does not require the Landlord to demand it on those days. The Estimated Service Charge can be demanded at the beginning of the year and the Tenant then has the right under the Lease to pay it in equally quarterly instalments without charge.
78. The Tribunal found that the words “or otherwise as the landlord shall prescribe” referred to the means of paying i.e., by Direct Debit. The Tribunal is of the view that it does not mean that the Landlord, or in this case the Respondent, may prescribe the payment of the Service Charge by 10 monthly instalments at a charge of £30.00.
79. This latter means of payment is outside the Lease and is an additional means of paying under a separate contract between the Respondent and any Tenants who wish to avail themselves of this means of payment.
80. The Tribunal is of the opinion that the Respondent should make it clear in the Demands or the covering letters with the demands that payment in quarterly instalments by Direct Debit is the means specified under the Lease and may be made without charge. It can then be added that the offer to pay by 10 monthly instalments with an administration charge of £30.00 is a separate facility for payment of the Estimated Service Charge that is outside the Lease but which some Tenants may wish to do.
81. In *Leonora Investment Company Limited v Mott MacDonald Limited* [2008] EWCA Civ 857 there were two methods of paying the Service Charge, either a tenant made advance payments or a single payment at the end of the year. The issue was whether here was an obligation upon the landlord to serve a



statement of account to all tenants irrespective of whether they paid by instalments or by a lump sum. It was held that the procedure was stated in the Lease, a statement had to be served on all tenants irrespective of how they paid so that they would know what to pay.

82. In the present case under the Lease there is no choice, all tenants are to pay the Estimated Service Charge in advance by equal quarterly instalments on the Payment Days. At the end of the year a Statement setting out the Service Charge for that year certified by a qualified Accountant is provided whereupon the surplus shall be refunded or carried forward and any shortfall shall be made good by the Tenant. This cannot occur until the Statement is produced and there is no evidence that the Respondent attempted to demand a shortfall prior to the end of year Statement.
83. The Tribunal finds that an Estimated Service Charge was produced at the beginning of 2019. It is payable in advance by equal quarterly instalments on the Payment Days. No shortfall is due until an end of year Statement has been provided which was included in the Bundle. An Estimated Service Charge has been produced for 2020 and this also is payable in advance by equal quarterly instalments on the Payment Days.
- (iv) The Budget does not fulfil the requirements of the Estimated Service Charge as stated in the Lease*
84. The Applicant submitted that the Estimated Service Charge does not identify the Residential and Estate Charges and the Tenant's Portion separately as required by the Lease. An aggregate percentage apportionment is made by the Respondent of the Residential Charges of 0.852% Estate Charges of 0.780% resulting in a charge of 0.816%. The Applicant submits that this is not in accordance with the Lease and the amounts should be shown and charged separately divided. The percentages in the Lease are Residential Charges, 0.852% and Estate Charges, 0.780%.
85. The Respondent submitted that it had a broad contractual power within Clause 10.2 to vary the Lease in any circumstances it deems "relevant". As a result, the Respondent applies what is a lower overall percentage of 0.77%.
86. The Tribunal finds that that the Lease is unequivocal in its requirement regarding the Tenant's Proportion of the Estate and Residential Service Charge. From Mr Flude's explanation it appears that the Service Charge is divided between Estate heads of expenditure and Residential heads of expenditure in the appropriate proportions and then the various parties to the Development negotiate between one another what proportion each should pay of the costs. However, there is no evidence of this in any of the Service Charge accounts. Whereas the overall figure of 0.77% appears to be a lesser percentage it is not known how this is calculated. It appears that the difference between the respective apportionments of the Residential Charge of 0.852% and Estate Charge of 0.780% is made up by the contribution from the other stakeholders. If this is the case it needs to be clear, not least because the apportionment of the Lease is a differential between the Tenants who are parties to the Lease not the other stakeholders who are not.

87. If this is the case the Tribunal finds that it is not the correct approach so far as the Lease is concerned. The Tribunal finds that the process should follow three stages. First at the end of the year the accounts for the whole Development should be produced. These will be the gross costs. Secondly any apportionment between the stake holders should take place. This should produce a set of accounts certain costs of which will have been reduced as a result of the contribution of the stakeholders. These will be the net costs which brings the process to the third stage when these costs are apportioned between the Tenants of Ocean Island and One Fletcher Gate.
88. The apportionment accordingly to the Lease will require identifying those heads of expenditure that come within the estate and those that come under Residential. Some will clearly come within one or the other whereas some may overlap with a part being attributed to Estate and part to the Residential. The end of year accounts should therefore be in two parts as required by the Lease of 1 Estate and 2 Residential.
89. It is accepted that this may be a particularly complex arrangement because of the number of stakeholders nevertheless it occurs where grounds are shared by several blocks of flats which are in different management. The managers will liaise with the landscape contractor collectively to apportion the cost of work to the respective blocks which is then recharged to the Tenants in the proportions as set out in their respective leases.
90. The Tribunal is of the opinion that no distinction should be drawn between the Estimated Accounts and the end of year accounts in respect of the apportionment. No distinction is drawn in the Lease therefore both should be apportioned.
91. With regard to Clause 10.2 the Tribunal considered its terms as follows;  
“The Landlord shall have power to reasonably vary the Tenant’s Proportion in consequence of any alteration or addition to the Building or Estate or any other relevant circumstances”
92. The Tribunal finds that apart from any alteration and addition, “any other relevant circumstances” are those that make the Tenant’s Proportion unreasonable or unfair. There must be some justification for the variation. The Proportion cannot be varied from year to year based on the convenience of management or how the negotiations went with the stakeholders. No evidence was adduced to show that there had been any justification for the variation or any comparison undertaken between one method of apportionment with another.
93. Notwithstanding the statement by Mr Flude that the Service Charge was apportioned in accordance with the Lease the Tribunal could not find that evidenced in the Estimated Service Charges for 2019, 2020 and 2021 or the end of year Statement for the years 2019 which is where the Tenants would expect to find it. Therefore, the Tribunal determines that the Applicant’s share of the Service Charge is not payable until it is apportioned in accordance with the Lease.

(v) *The Respondent is not entitled to establish a reserve or sinking fund and if it is the amount demanded is not reasonable.*

94. The Applicant submitted that the wording of paragraph 1.6 of Part 3 of Schedule 2 does not extend to the establishment of a general and unspecified reserve or sinking fund saying that the clause did not correspond to the typical precedents.
95. The Tribunal finds that wording appears clear that a reserve or sinking fund can be created for any Service Charge purpose. The Tribunal did not find anything in the wording which vitiated against the establishment of a general service charge reserve fund.
96. The Tribunal taking into account the size, construction and facilities of the Development, a contribution of £250.00 per flat based on the number of flats is a reasonable contribution the reserve fund.

### **3. Reasonableness of the Estimated Service Charge**

#### ***Applicant's Case***

97. In his Application the Applicant said all the items of the Estimated Service Charge for the period 15<sup>th</sup> November 2019 to 31<sup>st</sup> December 2019 and the years, 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2020 and 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2021 were in issue but then only stated that the Respondent was operating outside the law and that the Service Charge demands issued were invalid. No items of heads of expenditure of the Service Charge were put in issue.
98. Following the Directions of 17<sup>th</sup> December 2020 (the compliance times of which were extended by the second Directions on 22<sup>nd</sup> February 2021) the Applicant provided a Statement of Case which only raised the issues regarding the validity of the Service Charge demands. Following the third Directions on the request by the Respondent for the Estimated Service Charge for 2021 to be considered by the Tribunal the Applicant referred to the heads of expenditure of Service Charge Collection and Management Fees in the Service Charge in support of his objection to the £30 Administration Fee for payment by instalments. He had only stated that these charges were “already on the high side”.
99. At the hearing the Tribunal did not agree to the Applicant raising these as separate issues because they had not been identified as being in issue in the Application or the Statement of Case in answer to the Direction of 22<sup>nd</sup> December 2020. They were only referred to in answer to the Directions of 9<sup>th</sup> March 2021.

#### ***Respondent's Case***

100. At the hearing Counsel for the Respondent said that with regard to the reasonableness of the Estimated Service Charges for the years in issue the

Applicant had only stated that the charges were unreasonable but had not adduced any evidence regarding any specific heads of expenditure.

### **3. Tribunal's Decision re Reasonableness of the Estimated Service Charge**

101. The Tribunal noted the Applicant's reference to the reasonableness of the cost of the Service Charge Collection and the Management Fees and found that these items were not put in dispute following the Directions of 17<sup>th</sup> December 2020. By the Tribunal making this decision the Applicant is not deprived of a remedy. The Application and Decision only relates to the Estimated Service Charges for 2019, 2020 and 2021 i.e., to be incurred. Although the end of year Service Charge for 2019 became available just prior to the hearing it was not produced before the Application was made or the Applicant had an opportunity to examine it. Therefore, if the Applicant wishes to question the reasonableness of the costs actually incurred for the Service Charge for 2019, 2020 or 2021 or the Respondent wishes to seek a determination that the costs actually incurred are reasonable then they are free to do so.

#### **Summary of Tribunal's Decision**

102. In the absence of evidence to the contrary the Tribunal determines that the costs to be incurred in the Estimated Service Charges for the period 15<sup>th</sup> November 2019 to 31<sup>st</sup> December 2019 and the years, 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2020 and 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2021 ("the years in issue") are reasonable.
103. In the absence of evidence to the contrary the Tribunal determines that the Estimated Service Charge for each of the years in issue is payable by the Applicant to the Respondent when apportioned 0.852% in relation to the Residential Charges and 0.780% in relation to the Estate Charges in accordance with the Lease

#### **Section 20C**

104. The Applicant has also applied for an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.
105. At the hearing Counsel for the Respondent said that paragraph 1.5 of Part 3 of the Second Schedule enabled the Respondent to claim its legal costs through the Service Charge. Counsel referred the Tribunal to *Conway v Jam Factory Freehold Limited* [2013] UKUT 0592. He said the question was whether it is just and equitable to make an order and that the most usual occasion is where the tenant has been successful but would nevertheless have to contribute to the landlord's legal costs. He said the default position is that the tenant will have to contribute to the costs under the lease through the service charge. In addition, the respondent in this case is a resident owned entity with no form of income other than that which it derives from its service charge demands.

106. At the hearing the Applicant said that there was no provision in the Lease for the Respondent to re-charge its legal costs to the Service Charge. He said that paragraph 1.5 of Part 3 of the Second Schedule referred to calculating the Service charge. There is no reference to legal costs. Clause 6.1.7 of the Lease is with specific reference to section 146 Notices which is not the case here. If the Respondent could unilaterally claim legal costs under the Lease, it would state so specifically.

### **Decision re Section 20C**

107. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.
108. The provision enabling a landlord to claim its costs through the service charge is collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.
109. The provision enabling a landlord to claim its costs directly from a tenant is an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from a tenant.
110. First the Tribunal considered whether there was a term in the Lease which permitted the Respondent to re-charge its costs of these proceedings to the tenants through the Service Charge. The Tribunal agrees that paragraph 1.5 of Part 3 of the Second Schedule of the Lease is sufficiently broad to include legal costs relating to the collection of the Service Charge. Clause 6.1.7 on the other hand is specific to legal costs incurred in respect of enforcement proceedings under section 146 of the Law of Property Act 1925 or similar which is not the case here. Therefore, the Applicant cannot be held directly liable for the Respondent's costs incurred in these proceedings.
111. The Tribunal also took account of *Plantation Wharf Management Ltd v Fairman & Ors* [2019] UKUT 236 (LC) in which it was held that any order would only apply to the Applicant and to any other Tenant.
112. Secondly the Tribunal considered whether to make an order under Section 20C of the Landlord and Tenant Act 1985. The Tribunal considered the conduct of the parties and the outcome.

113. The Tribunal found that there was no merit in the Applicant's arguments that the Respondent is not entitled to issue Service Charge Demands. The Tribunal understood the Applicant's irritation but an Application under section 27A of the Landlord and Tenant act 1985 was not the correct form of Application for the contentions that were submitted.
114. Also, the arguments with regard to the payability of the Estimated Service Charge demands were with one exception also not well founded. The one exception to this is with regard to the apportionment. This is not clear in either the estimated or the end of year accounts where it would be expected. If this had been the only issue it might have been settled without recourse to the Tribunal.
115. Therefore, the Tribunal finds that it would not be just and equitable to exempt the Applicant from paying a share of legal costs included in a Service Charge which result from these proceedings.
116. The Tribunal therefore makes no order under either Section 20C of the Landlord and Tenant Act 1985.

**Application under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**

117. Both parties made an application under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
118. Counsel for the Respondent asked that the parties be permitted to submit statements in support of the Application after the Decision had been made as there was 'without prejudice' correspondence, to which the parties intended to refer, which it was considered would not be appropriate to be made known to the Tribunal until the decision on all other issues had been made.
119. The Applicant said that he left the matter of costs to the Tribunal and referred the Tribunal to *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC).
120. The Applicant also sought reimbursement of his Tribunal Fees under Rule 13(2) which states:  
*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*
121. The Applicant referred the Tribunal to *Cannon & Another v 38 Lambs Conduit LLP* [2016] UKUT 371 (LC) which held that such reimbursement was not subject to the unreasonableness of a party.

### **Decision and Directions re Rule 13**

122. The Tribunal did not consider that either party would be prejudiced by making written submissions after the hearing following the Decision on all other matters in issue. Therefore, the Tribunal Directs that:
- 1) Each party shall make a written submission regarding their respective Applications under rule 13 which will be served on each other and the Tribunal by 28<sup>th</sup> June 2021.
  - 2) Each party may then make a reply which will be served on each other and the Tribunal by 12<sup>th</sup> July 2021.
123. The Tribunal will then make its decision on or after 12<sup>th</sup> July 2021. When making its decision with regard to Rule 13 the Tribunal will also make a decision with regard to the Application under Rule 13(2) for the reimbursement of fees.

**Judge JR Morris**

#### **ANNEX 1 - 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.

## ANNEX 2 - THE LAW

### **Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002**

1. Section 18 Meaning of “service charge” 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, improvement 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 of which the service charge is payable.
  - (3) for this purpose
    - (a) costs include 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 period
  
2. Section 19 Limitation of service charges: reasonableness
  - (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.
  
3. Section 27A Liability to pay service charges: jurisdiction
  - (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.
  - (3) An application may also be made to a leasehold valuation 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.
- (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 of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

#### 4. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (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 leasehold valuation tribunal or the First-tier 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 the county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or,

- if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
- (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.