FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LSC/2020/0220** **LON/00BG/LBC/2020/0049**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**167A Teviot Street, London E14 6PY**
Applicant	**:**	**Ms Sapna Tankaria**
Representative	**:**	**Mr Stephen Newman (solicitor)**
Respondent	**:**	**Poplar Housing and Regeneration Community Association Limited**
Representative	**:**	**Mr Blakeney (Counsel)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 (1) and the determination of an alleged breach of covenant (2)**
Tribunal members	**:**	**Judge H Carr** **Mr A Lewicki** **Mr O Miller**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**23rd August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not been objected 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 that I was referred to are in a bundle of 859 pages, the contents of which I have noted. A further statement plus attachments was provided for the adjourned hearing the contents of which have also been noted. Subsequent to the hearing the tenant provided an updated Scott Schedule which was responded to by the landlord. The tribunal has noted the contents of all these documents. The order made is described below.

Decisions of the tribunal

(1) The tribunal determines that there has been a breach of clauses 3(7) and 3(8) of the lease.

(2) The tribunal determines that there has been no breach of s.20B and therefore there is no bar on the payment of service charges by reason of the operation of that provision.

(3) The tribunal determines that the amount payable in respect of the invoices to Asphatic Limited in 2012 – 13 should each be limited to £250.

(4) Other than the reductions set out in (3) service charges are payable as demanded.

(5) The tribunal makes the determinations as set out under the various headings in this Decision

(6) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

The applications

1. Ms Sapna Tankaria seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by Ms Tankaria in respect of the service charge years 2012-13 to 2018-19.

2. Poplar Housing and Regeneration Community Association Ltd seeks a determination under s.168 (4) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) that Ms Tankaria is in breach of

covenants contained in her lease, specifically Clause 3(8), and Clause 3(7).

3. For the sake of comprehensibility, the parties are referred to as landlord and tenant throughout this decision.

The hearing

4. The tenant did not appear. She was represented by Mr Steven Newman, Solicitor at the hearing. Also in attendance on behalf of the tenant were Mr Tankaria who gave evidence on behalf of his wife . The landlord was represented by Mr Blakeney of Counsel and Mr Matthew Mitchell, Home Ownership Officer with the landlord was also in attendance and gave evidence.

Preliminary issues

5. The landlord raised two preliminary issues which required determination prior to the commencement of the substantive hearing:

    (i) Whether the tenant is entitled to challenge more than the five heads of expenditure identified in the Service Charge Application? The landlord maintains that the Tenant is limited to those five whilst the tenant maintains that she can challenge any and all items of expenditure.

    (ii) Whether the tenant is entitled to rely on the Reply, whether in whole or in part, filed in the Service Charge Application? The landlord considers that the tenant is not entitled at least in respect of part; the tenant argues that she is entitled to challenge all of the service charges.

6. The Landlord argues that the directions indicated that the tenant takes issue with five heads of expenditure, caretaking for the block, caretaking for the estate, management and administration, maintenance administration and refuse containers. Disclosure was limited to those five items in dispute. The landlord accepts that the directions did not expressly limit the tenant to those five issues but argues that this was the clear intention of the tribunal.

7. The landlord argues that the attempt to rely on the phrase 'specific reference' rather than 'sole reference' is a clear attempt to expand the case beyond its original scope. The landlord limited its evidence to the points which the tenant is permitted to challenge. The landlord argues that the tenant should not be allowed to challenge items beyond those original five heads.

8. The tenant argues that the tribunal should only consider the issues to be limited if there was clear directions to that effect. The directions were not clear, and it would not be in the interests of justice to restrict the issues in these circumstances.

9. The second preliminary issue identified by the Landlord is the length of the reply. The FTT Directions permits a brief supplementary reply to the landlord in respect of the application. The tenant however submitted an extensive reply running to 180 pages including exhibits. It includes 'comparable' service charges from five other properties.

10. The landlord argues that such evidence should have been included in the statement of case. The documents date back to 2018 -19 so there was no good reason for them not to be produced at the initial stage. The landlord submits that it has been deprived of a right to deal with this evidence in its own response and this has severely limited the time the landlord is able to consider those comparables.

11. The tenant says that the matters raised in its response were not new matters other than the comparables and it is in the interests of justice to allow the comparables to be considered as they provide the tribunal with a fuller understanding of the tenant's arguments.

The decision of the tribunal

12. The tribunal determined to allow all the issues raised on the tenant's schedule to be included in its determination and it determined to allow the material concerning comparative quotations from the Reply

The reasons for the decision of the tribunal

13. The tribunal considered that the directions were ambiguous and could support the arguments of both of the parties.

14. In the interests of justice, it determined that it was appropriate not to restrict the issues raised by the tenant. However, it noted that the landlord had had no opportunity to respond, as it had considered the issues fell out with the directions. It therefore determined to provide the landlord with an opportunity to comment on the issues not responded to in the schedule by providing observations in writing within 3 weeks of the hearing. Those observations are to be copied to the tenant, and the tenant will have no further right of reply.

15. The tribunal also was concerned about the proportionality of the additional issues raised and therefore set a timetable for the remains of the hearing, so that the breach of covenant issue is to be heard between 2 and 4 on 28th January and the remaining issues on the following day.

16. In relation to the Reply the tribunal determined to allow the comparative quotes because they provided it with a fuller picture of the argument in connection with reasonableness. It was mindful that the landlord had not had an opportunity to comment upon the comparables and therefore it was allowing three weeks from the hearing for the receipt of written submissions on this.

17. In the event the matter was not fully heard during the two days allocated and it was adjourned to 26th April 2021. Directions were made giving effect to the determinations above.

The background

18. The property which is the subject of this application is a self-contained flat on the first and second floor within a building which has internal and external common parts on an estate.

19. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

20. The tenant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

21. The relevant chronology is as follows:

    (i) On or about 21 March 2012, and by way of a letter from Anthony Tse Solicitors, the Landlord was given notice that the Lease had been assigned to Acqua Plus Developments Limited ("Acqua"). The assignment was confirmed and receipted by the Landlord within a week.

    (ii) The tenant in this application was the company secretary for Acqua for a number of years, and her husband Mr Raj Tankaria was its sole director.

    (iii) The landlord, who is successor in title to Tower Hamlets LB, issued service charge demands to Acqua at the office of Anthony Tse Solicitors, Ground Floor, 100 College Road, Harrow HA1 1BQ

    (iv) Payments were made to the service charge account by direct debit until around March 2015. Subsequently the landlord sent A Letter Before Action to Acqua

requiring payment of the service charge arrears. The landlord received the following in response on 7 November 2017 from Mr Tankaria as director of Acqua:

"Please note that we do not and have not owned this property and are not liable for the charges you are seeking. Your client has been made aware of this in previous years.

Accordingly we suggest that you deal with the correct party"

(v) The landlord investigated the matter and discovered that the tenant had been the registered proprietor of the Property from 8th May 2012.

(vi) The landlord exhibits correspondent form Acqua dated July 2013 which was consistent with Acqua having an interest under the lease.

(vii) The landlord sent a letter before action to the tenant on 16 February 2018. The tenant's response, through Anthony Tse Solicitors, asserted that the change in ownership had been confirmed with the Landlord on 'a number of occasions' and that:

"[The Tenant] has always maintained that once she has been supplied with all the relevant invoices and information regarding the service charges demanded she can then consider what sums are due and payable and make the relevant payments."

(viii) The landlord sent future service charge demands to the tenant but did not reissue the previous service charge demands.

The issues for the substantive hearing

22. The parties identified the relevant issues for determination as follows:

(i) Whether the tenant is in breach of Clauses 3(7) and 3(8) of her lease.

(ii) whether the service charges for the years 2012/3 to 2016/7 are payable by the tenant by reason of section 20B of the 1985 Act.

(iii) Whether the service charges demanded for the service charge years 2012/3 to 2018/9 are payable and reasonable. Particular issues are raised in connection with repairs charges.

(iv) Whether an order under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 should be made.

23. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The breach application

24. Clause 3(7) of the Lease states that the Tenant covenanted:

"Not at any time to assign … the Demised Premises or permit or suffer the same to be done unless there shall previously have been executed at the expense of the Lessee and delivered to the Lessors for retention by them a Deed expressed to be made between the Lessors of the first part the Lessee of the second part and the person or persons to whom it is proposed to assign … as aforesaid of the third part whereby the person to whom it is proposed to assign … shall have covenanted directly with the Lessors to observe and perform throughout the said term the covenants on the part of the Lessee herein contained including the covenant contained in this sub-clause … Provided Always that the Lessors shall not themselves be required to execute such a Deed" [emphasis added]

25. By clause 3(8), the tenant under the Lease covenants to (1) give notice to the landlord (the Lessor) of any transfer or assignment of the term of the Lease together with the name and address of the transferee or assignee, (2) provide the landlord or its solicitors with a copy of the transfer or assignment and (3) pay to the landlord £5 (+ VAT) for the registration of the transfer or assignment, all within 4 weeks of the transfer or assignment.

26. The tenant admits that Clause 3 (7) has been breached. Mr Tankaria argues that this was not a clause that the Landlord had in the past required compliance with and that its pursuit of proceedings on this basis is evidence of its bad faith. The tenant notes that the clause was

not referred to in correspondence from the landlord's solicitors and only formally became part of the landlord's case at the stage of directions.

27. The tenant argues that she did comply with clause 3 (8) as the notice and the assignment were posted to the landlord in May 2012. The tenant suggests that either the documents were lost in the mail or lost by the landlord following receipt.

28. In April 2018 Anthony Tse solicitors sent a letter dated 6th April 2019 on behalf of the tenant to the landlord saying that her managing agent had sent a notice of assignment and signed deed but stated that no copies of the documents were retained.

29. On 15th September 2020 the tenant sent a letter to the landlord's solicitors enclosing a letter from Jaimin Management Limited dated 10th May 2021 which said that enclosed with it was a signed deed of covenant as required by the lease and confirming that the property was transferred to the tenant by a transfer dated 23rd April 2021. The tribunal notes that the tenant's husband is a former director of Jaimin (Management) Limited.

30. Mr Tankaria explained that Anthony Tse did not act for the tenant as he was acting for Acqua. Because of that he himself, via Jaimin (Management) Limited decided to act on behalf of the tenant.

31. Mr Tankaria says that he handled the posting of the notice and the assignment himself. He says that he remembers putting a stamp on the envelope and posting the documents. However later he told the tribunal that post was collected from his desk.

32. Mr Tankaria explained that he set up the direct debit from the tenant's business account to ensure that the service charge account did not fall into arrears. Because the invoices continued to be incorrectly addressed and service charges appeared to be excessive, he decided that the tenant would have a substantial credit if the service charges being charged were reasonable therefore he decided to stop making the on account payments.

33. Mr Mitchell explained the Landlord's procedures on receipt of post. In summary, post is opened, scanned and then forwarded to relevant teams to deal with. He conceded that documents getting lost in the post was a possibility. He said that he could not say that 100% of post received by the Landlord was dealt with properly but he was confident that 99.9% was handled correctly.

34. Mr Blakeney for the Landlord cast doubt on the Tenant's account. He pointed to:

(i) The differences between the letter sent by Mr Tse confirming the transfer to Acqua and the letter sent by Jaimin confirming the transfer to the tenant. Although the letters were apparently only 2 months apart the content is quite distinct. He suggests that the letter from Jaimin is not an authentic document.

(ii) The failure of the Tenant to follow up such an important letter.

(iii) The emails sent about service charges which implied that Acqua was in ownership of the property

The tribunal's decision

35. The tribunal determines that the tenant has breached clauses 3(7) and 3(8) of the lease.

Reasons for the tribunal's decision

36. The tenant admits breach of clause 3 (7).

37. The tribunal does not accept the evidence of the tenant that a letter was sent containing the necessary documentation. If a letter had been sent then the tribunal considers that it is almost certain that it would have been received by the landlord and dealt with appropriately. It would also have been followed up by the tenant if there was no evidence of receipt of such an important letter. The tribunal also notes the significant differences between the letter sent by Anthony Tse on 21st March 2012 and the letter allegedly sent by Jaiman in April 2021. It does not find it credible that there would be such a significant difference in the documentation. Further the tribunal notes that the initial response from Anthony Tse suggested that no copy of the documentation had been retained. It seems unlikely in the light of that assertion that the necessary documentation would come to light in the way the tenant claims.

Are the service charges for the years 2012/3 to 2016/7 payable by the tenant by reason of section 20B of the 1985 Act.

38. The tenant argues that the charges should be disallowed by virtue of Section 20B of Landlord and Tenant Act 1985 and the failure to demand monies from the Tenant within 18 months. During the period in question the tenant says no demands for interim charges or service charges were received addressed either to her in her name or to her as 'the lessee'. The tenant says that the setting up of a generic direct debit which does not correlate to the request for payment is not evidence of notice of the demand.

39. The landlord argues that it is not precluded by way of s.20B from claiming service charges for the years 2012 – 2017.

40. It argues that the notices to Acqua were sufficient for the purposes of section 20B(1) or (2) of the 1985 Act given that they were sent to the tenant's service address and came to her attention by virtue of her being company secretary.

41. In any event, the failure to properly notify the Landlord pursuant to Clause 3(7) and 3(8) of the Lease gave rise to an estoppel in respect of section 20B 1985, which prevents the tenant from placing reliance on the same. The landlord argues that:

    (i) Acqua acquired the Property and this was recognised by the Landlord.

    (ii) Invoices were sent to Acqua, which continued to be paid into 2015, three years after Acqua acquired the Property and some 34 months after the Tenant was registered as proprietor.

    (iii) Over the years, correspondence was sent to Acqua, who continued to treat themselves as leaseholder of the Property. The Tenant and her husband, as Secretary and Director of Acqua, actively contributed to this position. There was therefore a common understanding between the parties that this was the case.

    (iv) The Landlord relied on that understanding, and continued to send invoices to Acqua based on the belief that it was the leaseholder. At no time until 7 November 2017 were they disabused of this belief.

    (v) That reliance has been to the Landlord's detriment as the Tenant now seeks to go back on the understanding and utilise section 20B of the 1985 Act to escape liability.

The tribunal's decision

42. The tribunal determines that section 20B of the 1985 Act has been complied with and therefore there is no statutory bar under the section to the payment of the service charges.

Reasons for the tribunal's decision

43. The tribunal accepts the evidence and argument of the landlord and concludes that the notices to Acqua were sufficient for the purposes of s. 20B. It also agrees that the tenant is now estopped from the common understanding that the leaseholder of the property was Acqua. Also contrary to the tenant's and Mr Tankaria's initial position that the tenant had not seen any notices, Mr Tankaria changed his oral evidence and admitted that he had discussed the demands and notices with his wife (tenant) and she proceeded to set up a direct debit, this position change occurred only after the tribunal directed Mr Tankaria to his own witness statement which stated the same.

The reasonableness and payability of service charges

44. The tribunal notes that the tenant despite raising issues at various points in the application process, at the end of the day does not mount a challenge to the following:

(i) refuse container charges

(ii) insurance charges

(iii) communal electricity charges

(iv) management fees

45. The tribunal also notes that whilst the tenant has challenged the apportionment of service charges this is a challenge made late in the day. The tribunal does not make any determinations on the apportionment charges but asks the landlord to check the apportionment and confirm the apportionment to the tenant.

46. The tribunal has considered the charges in two tranches, first the reasonableness and payability of service charges not related to repair works (which this decision describes as general challenges) and second the reasonableness and payability of service charges related to repair work (repair work challenges).

General challenges to the reasonableness of service charges

47. The tribunal outlines the tenant's challenges below.

TV Aerial Maintenance

48. The tenant challenges all the charges demanded for TV Aerial Maintenance over the years in dispute. For the year 2012 – 13 the tenant

argues that an insurance claim should have been made and the contribution of the tenant limited to the relevant % of the £250 insurance excess. For the other years for which charges are demanded the tenant says that she is not aware of what work was undertaken and therefore cannot accept that it is reasonable and payable.

49. The landlord says that the excess charge is per leaseholder and not per claim and that in any event it is not reasonable to make an insurance claim for such an amount given the time, administration costs and increase in insurance premium that result.

Block caretaking charges

50. The tenant argues that the block caretaking charges are unreasonable because the hourly rate charged is too high and that too long is spent caretaking the block. She suggests that £15.00 per hour would be a reasonable rate for this service to be provided including an allowance for materials and that 1.5 hours per week is a reasonable level of provision.

51. The landlord maintains that the sum is reasonable in the light of the nature of the building and the necessary hours to clean. It says that the sum claimed is not unreasonable for a year's maintenance.

Estate caretaking charges

52. The tenant does not consider that the caretaking charges for the estate are payable under the lease as the lease she argues does not provide for estate wide charges.

53. If the tribunal deem the charges payable then the tenant argues that the amount charged to the leaseholder is not reasonable in amount for the service provided to the tenant or the block. The tenant considers the charge too expensive and charges for the areas beyond those over which the tenant has rights should not apply.

54. The tenant considers that the charge per hour is too high and proposes £15,00 per hour as per her arguments regarding block caretaking charges.

55. The tenant also considers that the leasehold should not pay charges for the garage/commercial unit area as she does not have allocated parking or the use of a garage and these costs should be met by those who do.

56. The landlord points out that the Estate is extensive and the tenant benefits from the whole estate being maintained. The Estate charges are not limited to the areas coloured brown on the plan. The charges per year

are reasonable for a year's maintenance. The hourly rates and total charges are reasonable.

Horticultural charges

57. The tenant repeats the argument that the lease does not provide for estate wide charges. She argues that she only has a right to use the gardens within the curtilage of the building and that, as no gardens do fall within the curtilage of the building she should not pay the charges demanded.

58. If the charge is payable the tenant repeats the argument that the hourly rate is too high and the argument that too much time is spent on service provision and suggests that 3.5 hours is reasonable period per week to be charged.

59. The landlord says that horticulture is required all year round, the estate charges are not limited to areas coloured brown and the hourly rates and total charges are reasonable.

Estate repairs

60. The tenant argues that the amount is not payable or reasonable in any of the years in dispute because she has no details of the repairs undertaken.

Maintenance administration charges

61. Whilst the tenant accepts that the maintenance admin charge is technically chargeable under the lease she considers it unreasonable in amount. To charge 30% of the cost of repairs she claims is excessive. She considers that maintenance administration should be charged as part of the management fee.

62. The tribunal notes the tenant's evidence of comparable charges but also notes that this comparable evidence was not referred to by the tenant in its Scott Schedule.

63. The landlord argues its charges are reasonable considering the size of the block and the estate.

64. In relation to whether estate caretaking and gardening charges are payable it makes the following points:

    (i) The definition of 'Common Parts' includes "other areas included in the Title above referred to or comprising part of the Lessors Housing Estate and of which the building forms part provided by the

Lessors for the common use of residents in the Building". The 'Title above referred to' is the original freehold title under Title Number NGL42436 [25], out of which the Landlord's current title is derived.

(ii) Under Clause 5(5)(iii), the Landlord must repair the 'Common Parts' [36].

65. The 'Total Expenditure' which forms the basis of the service charges includes the Landlord's costs of carrying out its obligations under Clause 5(5) and the costs incurred in connection with the building.

66. The Tenant is granted the right in the Second Schedule to the Lease [48] to pass and repass by foot over the footpaths (paragraph 1(b)) and by motor vehicle (paragraph 1(c)) over the roadways, as well as the right to use gardens within the curtilage of the building (paragraph 1(d)).

67. The Tenant maintains that as the paths, roadways and gardens are not necessary to access the Property, they are not 'serving' the building and the Tenant has no need to access or use these parts [615, paragraph 33]. But that entirely misses the point – it does not matter whether the Tenant must use the roads to access the Property, or whether she must or even want to use the gardens; the fact is that she can use them under the terms of the Lease.

68. The Tenant is therefore required to contribute to the estate costs, either as costs of maintaining common parts or costs incurred in connection with the building.

The tribunal's decision

69. The tribunal determines that none of the general challenges to the service charges are sustainable and that therefore those charges demanded by the landlord are payable and reasonable.

Reasons for the tribunal's decision

70. The tribunal considers that, in relation to caretaking and gardening, whilst the tenant may disagree about the hourly charge and the number of hours of provision, there is nothing to suggest that those charges or the hours provided for are unreasonable.

71. The tribunal notes the relatively low charges for aerial maintenance and estate repairs and considers that these amounts are reasonable. There is nothing to suggest that they are not. The tribunal also notes that the tenant has had the benefit of this provision.

72. With regard to the charges levied for the estate the tribunal accepts the argument of the landlord.

73. The tribunal notes that the tenant does in part appear to rely on the evidence of comparable charges. For the avoidance of doubt the tribunal notes that it was not persuaded of the value of the comparable evidence provided.

Repairs charges

74. The tenant raised issues with repairs charges from 2012 – 2013 – 2018 - 2019.

75. The tenant identified a number of invoices relating to roof works and leaks to the roof all issued by Asphatic Limited in 2012 – 13 which should have been the subject of statutory consultation.

76. The landlord had no records of having carried out consultation. The tribunal offered the landlord an opportunity to apply for dispensation particularly bearing in mind that the invoices complained of are for works carried out almost ten years ago. After the hearing the landlord informed the tribunal that in the interests of proportionality it had decided not to pursue the dispensation process.

77. The other works challenged by the tenant are:

(i) a check to a leaking boiler in 2012 – 13 , which she suggests should not be charged to the service charge as there are no communal boilers,

(ii) various works over the years in dispute attending to blocked drains and blocked chutes which she argues should take place no more frequently than once a year,

(iii) various tests of water and fire alarms which she suggests are not payable as there is no fire alarm and no communal water in the block,

(iv) an item of £129.68 in 2013- 14 and £128.33 for which no details have been provided and which therefore the tenant says are not payable,

(v) charges for leaks to cupboards in 2013 -14 and 2017 -18 which the tenant says should have been the subject of an insurance claim,

(vi) a charge for a blocked gulley which the tenant says should not have occurred as she is charged for sweeping the estate every day,

(vii) a charge for a blocked bath in 2015 – 16 which the tenant says should not be charged to the service charge,

(viii) charges for electrical inspections which the tenant says are only required once every five years so she is only prepared to pay for the inspection and upgrade undertaken in 2014-15.

78. The landlord argues that the repair charges are payable and reasonable, and that none of the charges are as a result of misuse of items. It also says that decisions about frequency of inspections etc are those of the landlord and its decisions have been reasonable. It also makes reference to the proportionality of the challenges raised.

The tribunal's decision

79. The tribunal determines that the amount payable in respect of the invoices to Asphatic Limited in 2012 – 13 should each be limited to £250

80. The tribunal determines that the remainder of the charges for repairs are payable and reasonable.

Reasons for the tribunal's decision

81. The landlord conceded in respect of the Asphatic invoices that as it had no paperwork from the time it could not demonstrate that the proper consultation had taken place. It decided not to take up the tribunal's offer to hear an application for dispensation as it would not be proportionate. The Tribunal would have granted dispensation had the Landlord pursued the same.

82. The tribunal has taken a global view of the repair charges for the years in dispute. It appears to it, and it is an expert tribunal, that the costs of repairs for those years is well within normal expectations. The tribunal considers that the tenant cannot benefit from ownership of the property without expecting to pay repairs costs for the period of her ownership.

83. The tribunal notes that not only did the applicant cancel her direct debit for service charges but she also received repayments of those payments she had made previously from her bank. She cannot have expected that no repair work had been carried out during the time of her ownership. At the same time she received the benefit of the repair work that was

carried out. The fact that she failed to pay attention to the charges for whatever reason, and raise questions at the time about those she is now challenging cannot mean that she can expect the landlord at this stage to provide the level of detail she is requesting to justify expenditure that she has benefitted from.

84. The tribunal also notes that several of these challenges were not identified at the time of the application. The tribunal is reluctant to allow the tenant to benefit from what appears to have been a fishing expedition. It notes that the tenant and Mr Tankaria manage leasehold properties and are therefore familiar with service charge demand and collection and would have been fully aware that they should expect to pay service charges for services provided.

Application under s.20C and refund of fees

85. In the application form the tenant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines not to make such an order. The only findings that benefit the tenant are those in relation to the roof invoices. Those findings are the result of the landlord deciding for the sake of proportionality not to pursue an application for dispensation. In the opinion of the tribunal that is insufficient to justify an order under s.20C.

Name: Judge H Carr **Date:** August 23rd 2021

Rights of appeal

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

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number),

state the grounds of appeal and state the result the party making the application is seeking.

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