



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

Case Reference : **CAM/00KF/LIS/2020/0016**

HMCTS : **Telephone Conference**

Property : **Flats 5 and 6 Roberts View, 1c Camper Road, Southend on Sea SS1 2YR**

Applicant (Tenants) : **Stephen Puttock (Flat 5)
Samantha Taylor (Flat 6)**

**Respondent (Landlord):
Managing Agent** : **Perseus GR Limited
Inspired Property Management**

Type of Application : **to determine the reasonableness and
payability of the Service Charges (section
27A Landlord and tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold & Leasehold Reform Act
2002)**

**to reduce or extinguish the Tenant's
liability to pay an administration charge in
respect of litigation costs (paragraph 5A of
Schedule 11 of the Commonhold and
Leasehold reform Act 2002)**

Date of Application : **17th March 2020**

Tribunal : **Judge J R Morris
Mrs M Wilcox BSc MRICS**

Date of Hearing : **18th November 2020**

Date of Decision : **30th November 2020**

DECISION

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Covid-19 Pandemic

This determination on the papers and conference telephone call has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing by telephone conference and the papers. 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 Pilot 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 telephone 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 a total Reserve Fund contribution would be £5,000 with each Flat paying a contribution of £833.00 per annum for the year in issue 2020.
2. No demand has been made for the estimated Service Charge for 2021 and therefore the Tribunal has no jurisdiction to determine it.
3. The Tribunal makes an Order extinguishing the Respondents' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.
4. The Tribunal makes no order for reimbursement of the Application or Hearing Fees.

Reasons

Introduction

5. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges to be incurred are reasonable and payable. The Applicants apply for a determination in respect of the service charge to be incurred (the estimated service charge) for the year ending 31st December 2020. The Applicants applied for a determination in respect of the Reserve Fund contribution for 2021 and subsequent years but as no contribution has been demanded this is not with the Tribunal's jurisdiction.

6. The Applicants also seek an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
7. Directions were issued on 11th May 2020.
8. The Directions noted the reasons for the Application being that the estimated service charge for 2020 had increased from about £1,500.00 per flat to over £4,000.00 without any prior consultation. The estimate demand lists a number of service charge items including a sinking fund for £13,311.00 which appears to be new.
9. The Directions also noted that the provision for payment of a service are set out in Schedule 7 of the Lease for the property including a provision in Part 2, paragraph 1(a)(vi) for a payment of an amount in respect of a reserve fund.

Issues

10. The Tribunal has identified the following matters to be determined:
 - whether the service charge costs to be incurred for the year ending 31st December 2020 are reasonable and payable;
 - whether an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should be made. The Procedural Judge noted in the Directions that the Applicant had not applied for an order for the limitation of the Landlord's costs of the proceedings under section 20C of the Landlord and Tenant Act 1985 which is the most appropriate application unless the tenant has already been threatened with costs personally and said that the Applicant may wish to seek advice on this issue. No Application has been received.
 - Whether an order for reimbursement of application and/or hearing fees should be made.
11. The Tribunal is determining whether the estimated service charge costs for the year in issue are reasonable. This does not preclude either a landlord or a tenant from seeking a further determination as to the reasonableness of the actual costs.
12. With regard to the Reserve Fund and the Service Charge costs in general these must be placed in a trust fund for the tenants.

The Law

13. The relevant law is contained in the Landlord and Tenant Act 1985 sections 18 to 27A and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as set out in Annex 2.

The Lease

14. A Copy of the Lease for the Property was provided dated 19th August 2015 between Terence James Callaghan (“the Landlord”) (1) and Peter Hubert Woodhouse (the “Tenant”) (2). The Lease is for a term of 199 years from 1st January 2014. The Leasehold to Flat 5 is registered at HM Land Registry under Title Number EX925454. The Landlord’s freehold title is registered at HM Land Registry under Title Number EX142869. A summary of the provisions of the Lease relevant to these proceedings are set out below.

15. The Lease has the following relevant definitions:
The Service Charge is the Tenant’s Proportion of the Service Costs
The Tenant’s Proportion is 1/6th
The Service Costs are the costs listed in Part 2 of Schedule 7.

16. Schedule 4 - Tenant Covenants

Paragraph 2 - Service Charge

Paragraph 2.1 for Flat 5

The Tenant shall pay the estimated Service Charge for each Service Charge Year in one instalment on each of the Rent Repayment dates, save for the tenant shall not be required to pay Service Charge for the period of four years from the date of this Lease.

Paragraph 2.1 for all the other Leases

The Tenant shall pay the estimated Service Charge for each Service Charge Year in one instalment on each of the Rent Repayment dates. The first payment thereof (other than the due proportion of buildings insurance) shall be payable on the anniversary of the date of this Lease being the proportion payable of the service charge for that calculated from that date.

Paragraph 2.3

If in respect of any Service Charge Year, the Landlord’s estimate of the Service Charge is less than the Service Charge, the Tenant shall pay the difference on demand. If, in respect of any service charge Year, the Landlords’ estimate of the Service Charge is more than the Service Charge, the Landlord shall credit the difference against the Tenant’s next instalment of the estimated Service charge and where the difference exceeds the next instalment then the balance of the difference shall be credited against each succeeding instalment until it is fully credited.

Paragraph 7 - Costs

To pay on demand the costs and expenses of the Landlord (including any solicitors’ surveyors’ or other professional’ fees, costs and expenses and VAT on them) assessed on a full indefinity basis incurred by the Landlord (both during and after the end of the Term) in connection with or in contemplation of any of the following:

(a) the enforcement of the Tenant Covenants;

17. Schedule 6 - Landlord Covenants

Paragraph 4 - Services and Service Costs

Paragraph 4.1

Subject to the Tenant paying the Service Charge, to provide the Services

18. Schedule 7 – Services and Service Costs

Part 1 – The Services

This provides a list of items (a) to (m) including cleaning, maintaining, repairing and replacing/renewing the Retained parts, the Common Parts, the lift, security and fire prevention machinery.

(n) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.

19. Part 2 - Service Costs

Paragraph 1(a)

All the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:

(i) providing the Services

(vi) putting aside such sum as shall reasonably be considered necessary by the Landlord (whose decision shall be final as to matters of fact) to provide reserves or sinking funds for items of future expenditure to be or expected to be incurred at any time in connection with providing the Services

20. Paragraph 1(b)

the costs and disbursement reasonably and properly incurred of:

(i) managing agents...

(ii) accountants...; and

(iii) any other person retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services.

Description of the Property

21. The Tribunal did not inspect the Building in which the Properties are situated due to the regulations regarding the Coronavirus pandemic referred to in the headnote of this Decision. From the Application Form the parties' statements of Case and the Internet the Tribunal made the following finding.

22. The building in which the Properties are situated in a 3-storey purpose-built block of six flats (the "Building"). On the ground floor there are bin stores to the front behind which is an enclosed car park accessed via a vehicular roadway to the side of the Building. The entrance to the car park is controlled by an electronically operated shutter. There are two flats on each floor

accessed via an open staircase to the entrance door, operated via a door entry system, on the 1st floor. The entrance door gives access to a hallway and staircases to landings off which are the flats. The upper floors are also accessed via a lift from the hallway on the first floor. The walls of the landings are glazed on three sides.

23. Each Flat comprises two bedrooms, an open plan kitchen and living room, off which is a balcony and a bathroom.
24. The Building was constructed circa 2015. There are painted rendered elevations under a flat roof. Each flat has upvc double glazed windows. The glazing to the common parts is believed to be set in upvc frames. The balustrades to the stairs and the balconies are frameless glass. The stairs have nosings and the hall, landing and stairs are contract carpeted.
25. The condition of the Property from the Surveyors Report dated 23rd June 2020 (pages 96 – 104 of the Bundle) compiled by Mr Matthew Goodbun-Driver and commissioned by the Respondent is outlined as follows.
26. The electronic gates, walls and fences were said to be currently in working order, and the boundary walls and fences in good condition.
27. Rendering repairs were said to be required in the car park and the external walls with several areas of render having fallen off. The Tribunal noted from the photographs that there are signs of water ingress probably through the floor of the balconies showing on the undersides of the balconies. There are also signs of damp on the ceiling of the bin stores.
28. Rendering repairs were said to be needed around the gutters and downpipes where render has fallen off. The door entry system was said to be functioning. From the maintenance invoices (pages 135, 151 & 194 of the Bundle) the entrance door does not always close properly. One of the contractors was of the opinion that it had been forced back too far and might be better re-hung so that it opened inwards.
29. Internally it was said that the cleaning was satisfactory but the nosing to one of the stair treads on the staircase from the communal entrance door to the car park has come away (confirmed by the Applicants' photograph on page 34 of the Bundle). This appears to have occurred several times as noted from the maintenance invoices. The lifts were said to be functioning. There is a fire alarm system.
30. The internal décor requires attention. This is confirmed by the Applicants photographs on pages 29 – 35 of the Bundle). These showed what appeared to be water damage to the walls and paintwork around the windows on the communal staircase and hallway and on the ceiling of the car park. The photographs also confirm the need for repairs to the external render.

Accounts

31. The Parties provided the actual and estimated accounts relating to the Service Charge are as follows:

	2017 Actual	2018 Actual	2019 Estimated	2020 Estimated
	£	£	£	£
Cleaning	1,000.00	1,200.00	1,200.00	1,200.00
Window Cleaning				576.00
Refuse Collection		31.00		
General Repairs	265.00	724.00	700.00	1,580.00
Out of Hours		60.00	71.64	72.00
Electricity	1,520.00	(813.00)	1,200.00	1,200.00
Electrical Repairs		143.00		
Gate Maintenance			350.00	350.00
Lift Maintenance	780.00	519.00	720.00	400.00
Lift Telephone				144.00
Doors & Intercom		744.00		
Fire Maintenance		302.00	301.80	1,600.00
Emergency Lighting		503.00	353.40	
Fire Risk Assessment			720.00	575.00
Health & Safety	373.00	1,113.00		
Accounting Fees	600.00	600.00	690.00	420.00
Legal Fees		24.00		
Buildings Insurance	1,147.00	1,530.00	1,315.56	1,470.00
Engineering Insurance				470.00
Management Fees	1,000.00	1,404.00	1,404.00	1,440.00
Interest	4.00	3.00		
Sundry Items	72.00			
Total	6,760.00	8,087.00	9,026.40	11,497.00
Sinking Fund				13,311.00
				24,808.00

32. The Parties also provided a copy of the Long-term Maintenance Plan/Reserve Calculator which is summarised as follows:

	Time in which repair or replacement required from 2020	Anticipated Costs	Annual Contribution
	Years	£	£
Brickwork/Render	16	20,000.00	1,250.00
Building Structure	16	10,000.00	625.00
Car Park Surfacing	26	7,000.00	269.23
Carpets	6	5,000.00	833.33
Communal Aerial & Satellite	11	1,000.00	90.91
Communal Doors	6	1,500.00	250.00
Door Entry System	11	2,000.00	181.82
Electric Gates	16	7,500.00	468.75

Electrical Installation	6	1,000.00	166.67
External Redecoration	16	20,000.00	1,250.00
Fire Alarm & Emergency Lights	6	5,000.00	833.33
Fire Doors	6	2,500.00	416.67
Flat Roofs	16	20,000.00	1,250.00
Internal Decoration	3	5,000.00	1,666.67
Lifts	26	80,000.00	3,076.92
Windows & Joinery	11	7,500.00	681.82
			13,311.12

Submissions

33. A hearing was held by telephone conference on 20th November 2020 which was attended by the Applicants Mr Stephen Puttock and Ms Samantha Taylor and by Mr Cameron Stocks of Counsel and Mr Chris Peters, Senior Property Manager of Inspire Property Management, for the Respondent. Ms Cathie Cremin was also present as an observer. She is a Tenant and was referred to in the Application as an interested party although no application to be a party to the proceedings or representations were received from her.

Applicants' Case

34. The two Applicants, Mr Stephen Puttock and Ms Samantha Taylor both made written Statements of Case before the hearing which are paraphrased and précised below.
35. **Mr Stephen Puttock** said in his Statement of Case that there were a number of longstanding maintenance issues, including carpeting having come loose from the stairs within the building, creating a potentially hazardous situation. In addition, the render is falling from the underside of the balcony on Mr Puttock's flat which was reported last Summer. As a result, he did not feel that he was getting value for money from the 2019 service charge.
36. Mr Puttock attached examples of service charges from properties within the area.
37. The Service Charge for the Building for this year which has been increased by the addition of a sinking fund contribution of £13,000 has resulted in an annual charge for each Tenant of over £4,000 which Mr Puttock said was unaffordable. He added that the Building is only 5 years old and ought to be covered by an NHBC (Buildmark) warranty, which he thought should cover some of the items on the Reserve Fund Schedule. He also questioned the need for collecting for works that would not need to be carried out until 2022 or beyond.
38. He said that he considered the estimated 2019 Service Charge of £1,504.00 to be reasonable but that he felt the necessary maintenance had not taken place appropriate to the charges.

39. At the hearing Mr Puttock confirmed his statement. He said that he felt it was very informative to compare properties as it indicated what value for money the comparable properties were getting compared with what the Tenants at this Building were receiving. He said the long-standing issues had not been addressed and yet he had been paying a service charge of £1,504.00. He felt that there was a back log of works which meant they were now trying to catch up on maintenance with an unreasonably high Reserve Fund contribution.
40. With regard to the Long-term Maintenance Plan/Reserve Calculator Mr Puttock stated that it was unrealistic in that it sought to cover the replacement cost of the building for over 20 years. He submitted that it was only reasonable to collect for works in sequence.
41. **Ms Taylor** said in her Statement of Case that she had purchased the Lease to Flat 6 on 18th December 2019. She had looked at properties which had charges of between £1,500 and £2,500. The latter had gardens in addition to lifts. She said that she therefore had not anticipated the annual estimated service charge demand for £4,134.68.
42. She said that she had received demands for historical charges. It was apparent that a number of charges had been significantly increased particularly the contribution to the sinking fund. Ms Taylor provided a copy of the Budget Notes from the Respondent's Agent which outlined the purpose of the charges.
43. In particular she questioned the following items which were not included in previous service charges or were increased amounts:
- £470.00 for Engineering Insurance (£78.33 per Tenant)
 - £576 for Window Cleaning (£96.00 per Tenant)
 - £880 increase for General Repairs and Maintenance (£146.67 per Tenant)
 - £1,298.20 for Fire Maintenance (£216.37 per Tenant)
44. Ms Taylor understood Fire Maintenance to be a long-term agreement to which the section 20 consultation Procedure applied. She questioned the benefits of the Engineering Insurance. She considered there to be an overlap between General maintenance and items on the Reserve Fund Schedule of External Redecoration, Internal Redecoration and Carpets.
45. With regard to the sinking fund Ms Taylor said that the way the anticipated cost had been calculated was by the remaining lifespan and not by the total lifespan therefore she was paying for years when she had not been a tenant. In addition, the anticipated costs calculated seem to be excessive for the age and nature of the Building and the types of work detailed.
46. She also submitted that the costs in relation to replacement of certain items such as the lift are in effect covered by annual budget such as Lift Maintenance Contract and Repair which she said was a duplication of charges. Ms Taylor also said that it was not clear what amounted to Electrical Installation.

47. Ms Taylor said that she considered the level of service very poor. She was concerned that the sums demanded were being used to pay off company debts rather than provide services.
48. At the hearing Ms Taylor confirmed her Statement of Case. She said that she had been working from home for the last months and had not noticed her windows being cleaned and asked what the arrangement was for this service.
49. With particular regard to the Reserve Fund she said that it appeared that the tenants were having to pay for the failure of the previous agents to establish a Reserve Fund in 2015 and to collect adequate funds over the past 5 years. She said that the current demand appeared to be an attempt to catch up on funds that should have been collected and works that should have been put in hand earlier.
50. Ms Taylor said that she had looked at the accounts and seen that the Service Charge fund stood at about £7,000. She asked why this money was not attributed to the Reserve Fund.

Respondent's Case

51. The Respondent made a written Statement of Case and Mr Chris Peters gave a Witness Statement for the Managing Agent before the hearing which are paraphrased and précised below.
52. The Respondent said in its Statement of Case that the Reserve Fund was based upon estimates of future expenditure based on properties of similar size but was confident that if compared to a costed capital expenditure plan over the same period would not be outside normal variables. To obtain such a plan would cost upwards of £5,000.
53. It was said that the previous agent, Rylands Associates went in to administration and the handover funds on 1st September 2019 were £123.93. However, on investigation, due to accounting errors there were other debtors of £3,376.35 and outstanding creditors of £3,181. therefore, the Building Service Charge fund is starting from a position close to zero.
54. As a result, the Budget has been set at a level to enable the Landlord to meet its obligations under the Lease.
55. The Respondent doubted whether the NHBC (Buildmark) warranty would be helpful as it covers structural and inherent defects and would not provide cover for maintaining the building.
56. The Respondent referred to Schedule 7 Part 2 Paragraph 1(vi) which expressly allows a Reserve or Sinking Fund to be collected as part of the Service Charge.
57. No alternate quotes or other documents have been provided in support of the Applicants claim.

58. At the hearing Mr Stocks confirmed the Respondent's statement of case. In particular he drew attention to the lack of maintenance that had been carried out on the Building to date and that there were no funds available to carry out works now needed. He said that the Managing Agent had only been appointed from the 1st September 2019 on the previous Agent being put into administration. It said by Mr Peters that the accounts for the year ending 31st December 2019 were delayed due to the difficulty in the handover.
59. Mr Stocks said that some continuity had been maintained in that Mr Matthew Goodbun-Driver, whose report on the condition of the Building had been referred to above, had been the property manager with the previous managing agent.
60. A Witness Statement was provided by Mr Chris Peters. He said that a healthy and substantial sinking fund was in the interests of good estate management and is for the benefit of the Tenants. He referred to Schedule 7 Part 1 paragraph 1(n) of the Lease for the authority to establish a Reserve Fund.
61. He said he agreed with Mr Puttock that there are "long standing maintenance issues" which are confirmed by Mr Puttock's photographs and the invoices for General Maintenance which were provided. It was submitted that the invoices also showed that the Managing Agent has been addressing these issues.
62. Mr Peters said that the photographs showed defects which would need major works to remediate and which would need to be funded through the Reserve Fund to prevent the need for one off levies. It was said that the cracking and delaminating of the concrete is allowing water ingress and a surveyor attended on 16th October 2020 to review the matter in full and provide solutions and indicative costs for required works.
63. The render falling from the balconies is a consequence of the dilapidation. The Reserve Fund contribution will enable these works to be carried out and the Long-term Maintenance Plan/Reserve Calculator provided shows the basis of the calculation for the Reserve Fund contribution demanded.
64. The Long-term Maintenance Plan/Reserve Calculator is one that is provided by ARMA (Association of Residential Managing Agents). Mr Peters said that the specific sums inserted into the calculator were taken from Mr Peter's knowledge and experience. It was intended to have a professional planned maintenance cost report the expense for which it was said was within Schedule 7, part 1, paragraph 1(n) and Part 2 1(b)(iii).
65. Mr Peters said that the periodic loosening for the stair nosing identified in one of Mr Puttock's photographs and referred to in Mr Goobun-Driver's report is due to the ingress of water and therefore the ingress of water needs to be prevented to address the stair nosing displacement.
66. Mr Peters referred to Mr Puttock's view that some of the dilapidations may be covered by the NHBC (Buildmark) warranty however the benefit of the policy rests with the Leaseholder not the Landlord.

67. Mr Peters provided a number of invoices for the year up to August 2020 and a comparison between the Actual amounts and the Budget on page 95 of the Bundle:

	Actual	Budget	Variance
	£	£	£
Cleaning	488.33	1,200.00	711.67
Window Cleaning	288.00	576.00	288.00
General Repairs	2,506.22	1,580.00	926.22
Out of Hours	-	72.00	72.-00
Electricity	-1,012.63	1,200.00	2,212.63
Gate Maintenance	450.00	350.00	100.00
Lift Maintenance	177.87	400.00	222.13
Lift Telephone		144.00	144.00
Doors & Intercom			
Fire Maintenance		1,600.00	1,600.00
Emergency Lighting			
Fire, Health & Safety Risk Assessment		575.00	575.00
Accounting Fees	420.00	420.00	
Buildings Insurance	1,411.75	1,470.00	58.25
Engineering Insurance	1,277.26	470.00	807.26
Management Fees	960.00	1,440.00	480.00
Interest	-0.73		0.73
Total	6,966.07	11,497.00	4530.20
Sinking Fund	8,874.00	13,311.00	4,437.00
	15,840.07	24,808.00	8,967.93

68. At the hearing Mr Peters replied to the matters raised by Ms Taylor. He stated that the Engineering Insurance was for the repair and replacement of the lift, it did not cover the electronic garage door. He said that although there was a maintenance contract that was to ensure that the lift was in good working order and was inspected regularly to meet legal requirements. If the lift broke down this could be very expensive and the insurance was there to cover such an eventuality. £470.00 had been budgeted for the premium but the actual cost was £519.12.
69. The Window Cleaning was for a quarterly external clean of all the windows, both common parts and the flats. It was noted that the staircase and landings at second and third floor level had glass to three sides. He said that if Tenants believed their windows had not been cleaned, they should contact the Property Manager who would contact the contractor and find out whether it had been done and when.
70. The actual cost of the General Repairs and Maintenance to date had been more than the budget and reference was made to the invoices. The Applicants did not question any particular invoice.
71. The Tribunal commented that the Fire Maintenance estimate of £1,600.00 seemed high when there were no automatic smoke vents and probably few fire

doors considering the size of the Building. Mr Peters said that the total costs so far had been £809.00 to fit intumescent strips to the fire doors (£461.00) and to replace electrical components in the fire alarm system following its inspection. Mr Peters confirmed that the Fire Maintenance Agreement was not a long-term qualifying agreement being for a period of 12 months only.

72. With regard to the £7,000.00 in the Service Charge fund it was stated that this amount was, at the time of Ms Taylor's viewing, the balance from the payments that had been made in response to the estimated Service Charge demand. This was not the balance in the Reserve Fund. These funds would be applied to the costs being incurred in the course of 2020.
73. The Tribunal suggested that whereas the Respondent's Long-term Maintenance Plan/Reserve Calculator is a useful guide for both cyclical planning of major repairs and upon which an estimate of the likely future costs may be based nevertheless it seemed to be over ambitious in the present circumstances.
74. Mr Peters reaffirmed his view that in the absence of any provision and a willingness for the Tenants to pay for a professionally planned maintenance cost report tailored specifically for the building, it was the best that could be done. The Long-term Maintenance Plan/Reserve Calculator was the Managing Agent's default position with regard to what contribution is needed for the Reserve Fund.
75. The Tribunal identified Render Repairs, External Re-decoration, Internal Re-decoration, the Flat Roof, Lift and Electric Gates as items that required a long-term maintenance plan upon which to build a Reserve Fund. However, the cost of maintaining and repairing certain items such as Carpets, Communal Aerial & Satellite System, Door Entry System, Electrical Installation would be met through the annual General Maintenance.
76. The Tribunal questioned the justification for demanding a Reserve Fund contribution that doubled the Service Charge notwithstanding that a shortfall in funds for major works would need to be met from the Tenants' own resources.
77. Mr Stocks said that the ability to demand payment for major works on the implementation of the section 20 procedure did not detract from the necessity of having a Reserve Fund. A shortfall in funds from the Reserve Fund might require a very significant single demand from Tenants, whereas regular payments into the Reserve Fund would mitigate or even negate such a payment.
78. Mr Peters added that to ensure contractual obligations are met the Respondent must have sufficient monies before engaging a contractor, so it was important to have a good Reserve Fund to expedite works.
79. Mr Peters went on to say that he had offered to engage a Chartered Surveyor to complete an independent planned maintenance cost plan for the Building

and that he submitted that Schedule 7 of Part 1, paragraph 1(n) and Part 2 1(b)(iii) of the Lease enabled this to be a Service Charge cost. He said that he was of the opinion that the future works required for the Building would be in accordance with his own assessment. He said he had obtained an informal costing for works that would be required which was between £62,000 and £100,000.

80. Mr Stocks reiterated a point made by the Tribunal that the money collected from the estimated Service Charge was paid into a trust fund out of which was paid the Service Charge costs for the year. The Reserve Fund contributions are also paid into a trust fund and are there to be used for the benefit of the Tenants. He said considering the present condition of the Building it was reasonable that within the next 12 months to 2 years funds will be needed to carry out remedial work the cost of which is likely to exceed the amount currently demanded over that period which is £26,000.00. He said, whether or not the Tenants take the opportunity to pay into the Reserve Fund will not change the position but the Reserve Fund has the ability to ease the situation.
81. In response to the Applicants statement that the high contribution to the Reserve Fund set by the Managing Agent was to 'catch up' for there being no contribution for the past 5 years Mr Stocks referred the Tribunal to Paragraph 2.1 of Schedule 4 of the Lease for Flat 5 which had been provided to the Tribunal. This stated that "The Tenant shall pay the estimated Service Charge for each Service Charge Year in one instalment on each of the Rent Repayment dates, *save for the tenant shall not be required to pay Service Charge for the period of four years from the date of this Lease*". Mr Stocks said that the passage identified in italics was exclusive to the Lease of Flat 5 and that all the other Leases stated: "The Tenant shall pay the estimated Service Charge for each Service Charge Year in one instalment on each of the Rent Repayment dates. The first payment thereof (other than the due proportion of buildings insurance) shall be payable on the anniversary of the date of this Lease being the proportion payable of the service charge for that calculated from that date".
82. So far as the Respondent and the current Managing Agent knew, a service charge had in the past been raised for the other 5 flats but that no contribution to a Reserve Fund had been requested.

Paragraph 5A of Schedule 11

83. Mr Puttock on the Application Form responded "No" to the question "If you are a tenant do you wish to make a section 20C" of the Landlord and Tenant Act 1985 but "Yes" to the question "Do you want to make an application under Paragraph 5A of Schedule 11" of the Commonhold and leasehold Reform Act 2002. In the Directions issued 11th May 202 it was stated the "This is a surprising omission, as a section 20C order is the most appropriate application unless the tenant has already been threatened with costs personally. The Applicant may wish to seek advice on this issue"
84. In his email to the Tribunal copy to the Managing Agent, dated 9th June 2020 Mr Puttock merely confirmed that he wished to apply for an order under

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

85. At the hearing Mr Puttock asked the Tribunal what was the difference between the two provisions and their respective orders.
86. The Tribunal stated that leases may contain two types of provision which enable a landlord to obtain the costs of proceedings. The one is through the service charge and the other is directly from the tenant as party to the proceedings. The difference between these two types of provisions was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258. The provision enabling the landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other lessees as part of the service charge. The provision enabling the landlord to claim its costs directly from the tenant might be seen as an individual liability, whereby the tenant alone bears the landlord's costs of the proceedings. Where the lease contains these provisions, the costs of the proceedings could be claimed by the Respondent under either Lease provision but not both.
87. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicant.
88. Mr Stocks referred the tribunal to two provisions in the Lease. The one was paragraph 1(b) of Part 2 of Schedule 7 which states:
- that the Service Costs are the total of ... the costs and disbursement reasonably and properly incurred of:*
- (i) managing agents...*
 - (ii) accountants...; and*
 - (iii) any other person retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services.*
89. He submitted that this allowed the Respondent to claim the cost of employing a solicitor or counsel to act in respect of proceedings such as the present case through the Service Charge.
90. The Tribunal was in agreement with this view but as no application has been made in respect of an order for section 20C the Tribunal makes no further finding or determination.
91. Mr Stocks then referred the Tribunal to Paragraph 7 (a) of Schedule 4 of the Lease which states:

Costs

To pay on demand the costs and expenses of the Landlord (including any solicitors' surveyors' or other professional' fees, costs and expenses and VAT on them) assessed on a full indefinity basis incurred by the Landlord (both

during and after the end of the Term) in connection with or in contemplation of any of the following:

(a) the enforcement of the Tenant Covenants;

92. The Tribunal expressed doubt with regard to the submission that the present proceedings were an enforcement of the Tenant Covenants in that it did not appear that the Applicants had refused to pay or withheld payment of the Service Charge payments.
93. Mr Stocks said that he understood they had withheld payment and that if so, the bringing of proceedings as to reasonableness under section 27A was not a bar upon the Landlord bringing an action for non-payment under the terms of the Lease. The Tribunal suggested at the time that there was a statutory limitation on this but agree with Mr Stocks, this is not so.
94. Mr Peters said that the Applicants were in arrears with the Service Charge and referred to their account which he said had outstanding payments.
95. Ms Taylor referred to her Statement of Case in which she said that she had received an invoice on 9th March 2020 for the first six months of the service charge for £2,067.34, the total charge for the year being £4,134.68. She said that she had questioned the amount in her email dated 14th March 2020 as she had not received any prior notification that the amount would be significantly higher than that which she had been informed was the charge for the previous year of circa £1,500.00. She said she received a reply on 14th March 2020 and although concerned about the amount of the Service Charge subsequently paid the charge on 18th May 2020. She said that she had received a demand for payment of the second instalment on 1st July 2020 but was waiting to hear the decision of the Tribunal before making payment.
96. Mr Puttock said that he made agreed monthly payments and was not in arrears.
97. Following the submissions as to the authority under the Lease for the costs to be charged directly to the Tenant the parties made submissions with regard to whether, if Paragraph 7 (a) of Schedule 4 was applicable, an order should be made under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
98. Both parties submitted that an attempt had been made to resolve the matter before the Tribunal hearing and a copy of the email correspondence was provided on pages 106 to 114 of the Bundle.
99. A summary of the emails in chronological order is as follows (some communication, e.g. by telephone, is not recorded):

9th June 2020 Mr Puttock to Mr Peters – refers to:

- The service charge has risen from £1,504.00 to £4,134.67
- Offer by Mr Peters to discuss reduction in the service charge

- Increase communicated by invoice without prior consultation or justification
- Photographic evidence of maintenance issues attached
- Comparison with other service charges
- Property only 5 years old and could be covered by NHBC
- Want to agree a reasonable and affordable service charge.

30th July 2020 Mr Puttock to Mr Peters – refers to:

- A proposal made to increase the 2019 service charge to £2,000 for 2020 from which the sinking fund could be taken.
- Extended for a 5-year fixed period until 2025 after which time if any work that needs to be carried out could be funded by the leaseholder on providing 3 estimates.

11th August 2020 Mr Puttock to Mr Peters – refers to:

- Agreement to a Chartered Surveyor identifying essential maintenance work required for the building up to and including 2025.

21st August 2020 Mr Peters to Mr Puttock – states:

- If the estimated service charge was set at £2,000 the actual costs can and would still have to be recovered from the Tenants if they exceeded £2,000 for 2020 (Paragraph 1(n) of Part 1 of Schedule 7). The Landlord could not agree to pay any shortfall.
- If a surveyor were employed those costs can and would also need to be charged to the Service Charge if the total exceeded the estimate of £2,000 (paragraph 1(b) of Part 2 of Schedule 7).
- The Landlord could not agree to maintaining the Service Charge to a level of £2,000 until 2025.
- A proposal that: The Service Charge is capped at £2,000 per Tenant including £503.00 Reserve Fund Contribution. The Reserve Fund would be capped at £503.00 plus inflation year on year from 2021 to 2025 unless otherwise agreed by the Tenants at the time.

24th August 2020 - Mr Puttock to Mr Peters – states:

- Agree to proposals in principle but asks will the Reserve Fund increase with the bank of England inflation rate?
- Summary of agreed proposals per flat:
2020 - £2,000 + £83.00
2021 - £2,000 + £83.00 + inflation
2022 – 2015 - £2,000 + £83.00 + inflation

25th August 2020 - Mr Puttock to Mr Peters – states:

- Managing Agent's proposals not accepted because the agent cannot accept a cap of £2,000 per annum on the Service Charge from 2020 to 2025.

100. The Applicants submit that they tried to negotiate but found the Respondent and Managing Agent's proposals were not sufficiently definite to confirm their loss of confidence following the way in which the Service Charge was increased by the Reserve Fund contribution for 2020.

101. Respondent and Managing Agent submitted that they had done their best to arrive at a settlement without going to the Tribunal.

Decision

102. The Tribunal considered all the evidence adduced. Having read the Applicants' Statements of Case, heard their submissions and read the emails seeking to negotiate a settlement, the Tribunal was not convinced that they fully understood the way the day to day Service Charge, as opposed to the Reserve or Sinking Fund operated and appeared new to the concept.
103. The Tribunal gives a brief outline of the day to day Service Charge here for their benefit as it is relevant to its decision.
104. The Applicants appeared to be aware that under the Lease (Schedule 7) the Landlord is obliged to carry out services such as cleaning of common parts, window cleaning, maintenance of the lift and electronic gates, internal and external decoration etc. and to insure the Building. These services are for the benefit of the Tenants both with regard to day to day living, the long-term maintenance of the Building and the protection of their investment and under the Lease the Tenants pay for these services through the Service Charge.
105. What the Applicants appeared to be less clear about is that under the Service Charge the Tenants pay the *actual* cost of providing the services, no more and no less.
106. In this Lease, as is common in most leases, the Landlord or its Agent are able at the beginning of the year to demand an advance payment of the Service Charge based on a reasonable estimate of the costs to be incurred. This is held in a service charge trust fund and used to pay for the services as they are performed by contractors. At the end of the year if the trust fund is in credit this is put towards next years' service costs. If it is in debit, because the services cost more than was estimated, then the Tenants must pay the balance. It is the actual cost that is charged.
107. It appears that the Applicants mistakenly think that the Landlord, through its Agent, charges a fee at the beginning of the year out of which it pays for the services irrespective of their actual cost. Their attempt to limit the estimated service charge to £2,000 per annum indicates that they believe that if the fee is high the Landlord obtains a profit at the end of the year.
108. Both estimate and actual costs must be reasonable. Estimates that do not cover the actual costs lead to high balancing payments. Estimates that more than cover the actual costs lead to large accruals, which may or may not be justified but must always be held in the trust fund for the Tenants' benefit. Where either estimates or actual costs are considered to be too high by Tenants and the matter cannot be settled between the Landlord and Tenant, then either may apply to the Tribunal for a determination as to what is reasonable.

109. In addition to the day to day Service Charge the Lease authorises the Landlord to set aside an amount in a Reserve or Sinking Fund in anticipation of future expenses, particularly for major works, with a view to reducing the burden of a large Service Charge demand. Like the day to day Service Charge this amount must be reasonable.
110. The Tribunal firstly considered the reasonableness of the day to day Service Charge without the Reserve Fund contribution and secondly the reasonableness of the Reserve Fund contribution.

Service Charge without Reserve Fund Contribution

111. The Applicants did not put in issue the specific estimated costs for Cleaning, Out of Hours Calls, Electricity, Gate and Lift Maintenance. Lift Telephone, Doors and Intercom, Emergency Lighting, Fire Risk Assessment and Accounting and Management Fees.
112. Ms Taylor questioned the estimated charge for Window Cleaning, General Repairs, Engineering Insurance and Fire Maintenance. The Tribunal found that based upon the invoices supplied and as shown on the Managing Agent's table at page 95 of the Bundle for the costs already incurred, the estimated costs were reasonable.
113. The Tribunal compared the actual costs for the past years of 2017 and 2018 and the estimated costs for 2019 and 2020 and found as follows:
 - Cleaning for all years was the same or similar and determined to be reasonable.
 - Window Cleaning was a new item but taking into account the quantity of glass this was found to be a reasonable addition and the estimated cost determined to be reasonable.
 - General Repairs had been increasing each year which was understandable as the Building aged, although the rate of deterioration was of concern to both parties. The estimated cost was determined to be reasonable.
 - Out of hours, Electricity and Lift Maintenance was the same as previous years and determined to be reasonable.
 - Gate Maintenance was a new item but in the Tribunal's knowledge and experience found to be a reasonable addition and the estimated cost determined to be reasonable
 - Fire Maintenance included Emergency Lighting which were separate items in previous years. Taking this into account the estimated cost was commensurate with previous years and determined to be reasonable.
 - Fire Risk Assessment was new for 2019. Estimated amount determined to be reasonable.
 - Accountancy was less than previous years and determined to be reasonable Management Fees were in line with previous years. Estimated amount determined to be reasonable.
 - Engineering Insurance for lift breakdown was a new item. Estimated cost determined to be reasonable.

114. Having determined the estimated cost of each item reasonable, the Tribunal considered the overall cost. Although the estimate was higher than in previous years it was noted that it included some additional items and whereas the cost of some items may be under budget, the General Repairs were likely to exceed the estimate. Therefore, the Tribunal determined that the Estimated Service Charge cost excluding the Reserve Fund contribution was reasonable and payable.
115. The Tribunal found that a general comparison of service charges between properties is not reliable evidence. Individual tenant contributions vary considerably depending on a range of factors, such as, the number of flats in a block, the services provided, the construction of the block etc. Some specific comparisons may be made in some circumstances if supported by detailed information but this was not present here.

Reserve Fund

116. The Tribunal recognises that the Lease enables the landlord to require the Tenants to pay a contribution to a Reserve or Sinking Fund. It also notes that the Royal Institute of Chartered Surveyors in its guidance to Residential Managers commends the establishment of a Reserve Fund. Where major works are required it benefits both landlords and tenants to have a fund out of which deposits can be paid and from which the tenants' contribution to the full cost of the work under the service charge can be off-set in part or in full.
117. In determining what would be a reasonable contribution to the Reserve Fund as part of the estimated Service Charge the Tribunal considered the case of *Garside and Anson v RFYC Ltd* [2011] UKUT 367 (LC) where a number of cases were referred to giving guidance on what the tribunal needs to consider.

In *Forcelux v Sweetman* [2001] 2 EGLR 173 (Mr P R Francis FRICS) at [40] it was stated that two distinctly separate matters have to be considered.

“Firstly, the evidence, and from that whether the landlord’s actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence...”

In *Veena SA v Cheong* [2003] 1 EGLR 175 (Mr P H Clarke FRICS) at [103] it was stated:

“...The question is not solely whether costs are ‘reasonable’ but whether they were ‘reasonably incurred’, that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable.”

In *Ashworth Frazer Ltd v Gloucester City Council* [2001] 1 WLR 2180 the meaning of ‘reasonable’ was considered. Lord Bingham said this at [5]:

“I would respectfully endorse the observation of Viscount Dunedin in *Viscount Tredegar v Harwood* [1929] AC 72, 78 that one ‘should read reasonableness in the general sense.’ There are few expressions more routinely used by British lawyers than ‘reasonable’, and the expression should be given a broad, common sense meaning in this context as in others.”

Lord Rodger also dealt with the meaning of “reasonable” at [67]:

“The test of reasonableness is to be found in many areas of the law and the concept has been found useful precisely because it prevents the law becoming unduly rigid. In effect, it allows the law to respond appropriately to different situations as they arise...it is in each case a question of fact, depending upon all the circumstances”.

On considering the above cases Her Honour Judge Alice Robinson sated at [14] “that the expression “reasonable”” should be given “a broad, common sense meaning in accordance with *Ashworth Frazer*”

118. In assessing a reasonable contribution to a reserve or sinking fund the managing agent, and here, the Tribunal will need to take into account a range of considerations. The Tribunal had in mind the Application which is to determine a reasonable Reserve Fund contribution for 2020. The estimated demand for 2021 has not yet been produced and therefore the Tribunal is not able to make a determination in respect of it. The parties agree there are works currently required but these are not in issue because neither their extent nor their cost has been assessed. The Respondent’s proposed Reserve Fund contribution for 2020, which is what is in issue, is based on the Long-term Maintenance Plan/Reserve Calculator not the cost of the outstanding works.
119. Firstly, the Tribunal considered the evidence as provided by the parties of: a) the Long-term Maintenance Plan/Reserve Calculator taking into account the day to day management and structure of the Building and b) other evidence e.g. description of the Building and management.

Long-term Maintenance Plan/Reserve Calculator

120. The amount of the Reserve Fund contribution was based on the Long-term Maintenance Plan/Reserve Calculator. This provided a substantial list of items which were attributed periods of longevity and associated estimated costs of replacement. Whereas it is not sensible to ringfence funds, it is prudent to identify specific items appropriate to a particular building which will require repair, replacement and maintenance. The Tribunal noted that the Long-term Maintenance Plan/Reserve Calculator applied in this instance is essentially generic. The Tribunal considered this to be helpful but it should have been adapted more to the specific building. Account also needed to be taken of general day to day repairs, maintenance contracts and insurance claims, which vary from property to property and may significantly reduce the cost or increase the time within which an item might require replacement.

121. Mr Peters proposed instructing a Chartered Surveyor to draw up a long-term property specific plan. However, taking into account the condition of the Building as agreed by the parties, it might first be more appropriate to engage a surveyor to assess the current dilapidations with a view to obtaining estimates for repair.
122. From the items listed in the Long-term Maintenance Plan/Reserve Calculator the Tribunal found that the repair and renewal of the communal aerial and satellite, communal doors, door entry system, electrical installation (lights) and fire doors are within the annual general maintenance. electric gates, fire alarm and emergency lighting, and lifts are the subject of annual maintenance contracts and there is an insurance policy against lift breakdown. Allowance for this should be made when considering a reasonable Reserve Fund contribution.
123. However, balanced against the day to day provisions which might increase the longevity and reduce the cost of some items, there are others which will require major works in the long or shorter term. The Building has a flat roof which in the Tribunal's knowledge and experience has a life span from new of between 20 and 30 years (which is broadly in line with the Long-term Maintenance Plan/Reserve Calculator). In addition, the Building has painted render to all elevations which the Long-term Maintenance Plan/Reserve Calculator puts at 20 years from new. Both of these items will require scaffolding. A further allowance is needed for internal decoration.

Other Evidence

124. The Building is relatively small and so the costs are apportioned amongst only 6 Tenants. There are no restrictions as to the age of the occupants of the Building. The Building is situated near the sea which means the building may be more exposed to the vagaries of the weather. It is not situated in one of the high value areas of Southend on Sea. The parties agreed upon the description of the property and that there were works required as described earlier. It was agreed that there had been no Reserve Fund contributions prior to 2020.
125. Secondly the Tribunal considered what, based upon the evidence, would be a reasonable contribution to the Reserve Fund.
126. The Tribunal found that it was reasonable to make long-term provision for the replacement of the flat roof, external repair and decoration of the rendered and painted elevations and internal decoration. Notwithstanding the repair and maintenance arrangements for the lift and gate some allowance should be made for their replacement as well. The Tribunal noted the amounts that had been stated on the Long-term Maintenance Plan/Reserve Calculator.
127. In determining a contribution, the Tribunal took into account a range of matters including the number of contributors, the location, quality and type of Building. The amount is what the Tribunal determines to be a reasonable Reserve Fund contribution for the years in issue and one upon which could be based future contributions, taking into account the considerations above. The Tribunal took into account the need to engage a surveyor to make an

assessment of the more immediate repairs identified by the parties and which are likely to be required in the next few years, notwithstanding that their cost is not yet known. The Tribunal also took into account that it is necessary to start to build up the Reserve Fund as no contribution had been made to date.

128. The Tribunal determined that a total Reserve Fund contribution would be £5,000 with each Flat paying a contribution of £833.00 per annum for the year in issue, 2020. The estimated demand for 2021 has not yet been produced and therefore the Tribunal is not able to make a determination in respect of it. However, it would be anticipated that a similar Reserve Fund contribution would be reasonable.

Decision re Section 20C & Paragraph 5A of Schedule 11

129. The Applicants applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
130. The Tribunal therefore only considered the personal liability of the two Applicants under the Lease. In doing so it found that the only provision applicable was Paragraph 7 (a) of Schedule 4 as identified by Mr Stocks.
131. Under this clause a Tenant is liable to pay the costs and expenses of the Landlord in connection with or in contemplation of a number of matters but in particular, the enforcement of the Tenant Covenants. Mr Stocks submitted that this was applicable in this case as the Applicants had refused or withheld payment of their Service Charge.
132. The Tribunal does not agree. The Tribunal found that Mr Puttock had paid the Service Charge monthly in accordance with an agreement with Respondent or its Agent. Ms Taylor was not due to pay the second instalment of her Service Charge until after she had commenced proceedings and therefore these proceedings were not to enforce a covenant for non-payment against either Tenant.
133. The proceedings were commenced by the Tenants for a determination of the Service Charge they were not proceedings commenced by the Respondent to enforce a Tenant Covenant.
134. Notwithstanding this decision, for the avoidance of doubt, the Tribunal considered whether it is just and equitable in the circumstances to grant an order. In doing so it considered the conduct of the parties and the outcome and nature of the proceedings.
135. With regard to the conduct of the parties, the Tribunal considered that neither had acted unreasonably. Both had attempted to engage with a process of settling the issues prior to the hearing.
136. However, the Tribunal considered that the Managing Agents on behalf of the Respondent should have explained the rationale of the Reserve Fund and

forewarned the Applicants of the very substantial demand for the Reserve Fund contribution. It was not unreasonable for the Applicants to apply to the Tribunal for a determination promptly on receiving the demand without some explanation. The information provided with the budget did not address what was bound to be the Applicants' main concern of the demand of over £2,000 per flat towards the reserve which doubled the Service Charge.

137. With regard to the outcome, the estimated Service Charge has been found reasonable although the Reserve Fund contribution has been significantly reduced. The outcome is beneficial for both parties. Therefore, the Tribunal is satisfied it is just and equitable to make an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 extinguishing the tenant's liability to pay the Respondent's costs in connection with these proceedings.
138. The Applicant had applied for the reimbursement of the Application and Hearing Fees. The Tribunal was of the opinion that its determination is not so much in favour of the Applicants that their costs should be met by the Respondent. The Tribunal makes no order for reimbursement of the Application or Hearing Fees.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
 - (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
3. Section 19 Landlord and Tenant Act 1985
 - (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.
4. Section 20B Limitation of Service Charges: time limit on making demands
 - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
 - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Section 21B Notice to accompany demands for service charges
 - (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
 - (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
 - (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
 - (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
 - (5) Regulations under subsection (2) may make different provision for different purposes.
 - (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Section 27A Landlord and Tenant Act 1985
 - (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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

7. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250. The section also applies to qualifying contracts which are for more than 12 months and the relevant contribution of any tenant is more than £100.

8. 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.

9. Schedule 11 Commonhold and Leasehold Reform Act 2002
 5 A Limitation of administration charges: costs of proceedings
 - (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
 - (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
 - (3) In this paragraph—

- (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
- (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.