FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2018/0426**
Property	**:**	**Flat 8, Portsdown House, 11-13 Randolph Avenue, London W9 1BH**
Applicant	**:**	**Apexchase Property Management Ltd**
Representative	**:**	**KDL Law**
Respondent	**:**	**Lady Hélèna McCarthy**
Type of Application	**:**	**Reasonableness of and liability to pay service and administration charges**
Tribunal Members	**:**	**Judge Nicol** **Mr C Gowman MCIEH**
Date and venue of Hearing	**:**	**24th November 2021 & 2nd February 2022** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**4th February 2022**

DECISION

---

(1) The Tribunal determines that all charges claimed by the Applicant and listed in paragraph 3 of the Reasons below are payable by the Respondent, save for (a) Charge for copy of lease (£25) and (b) Late payment interest (£13.85).

(2) The Tribunal refuses to make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The balance of the proceedings is returned to the county court for determination there.

The relevant legal provisions are set out in the Appendix to this decision.

© CROWN COPYRIGHT

The Tribunal's reasons

1. The Applicant is a lessee-owned company which purchased the freehold of the building containing the subject property in 2006. Their current agents, Qube, were introduced by the Respondent and appointed in 2010.

2. The Respondent is the lessee of the subject property, one of 10 flats in a converted terrace.

3. On 4th October 2017 the Applicant issued a claim in the county court (claim no: D68YM643) for the following sums:

(a) Charge for copy of lease		£25
(b) Late payment interest		£13.85
(c) Yearly service charge in advance 2016-17		£3,102.42
(d) Balancing charge		£179.48
(e) Yearly service charge in advance 2017-18		£3,541.79
(f) Reserve Fund (major works contribution)		£10,447.08
(g) Professional costs (for legal services)		£4,568.87
i. £1,464		
ii. £456		
iii. £984		
iv. £755		
v. £909.87 court costs		
(h) Debt referral (debt recovery services)		£525
i. £60		
ii. £95		
iii. £60		
iv. £125		
v. £125		
vi. £60		
Less credits		-£3,296.27
	Total:	<u>£19,107.22</u>

4. Two default judgments were entered but then set aside. The Respondent filed a Defence and Counterclaim challenging the reasonableness and payability of the charges. On 23rd October 2018, Deputy DJ Lawrence ordered,

   > The matter be stayed and transferred to the first tier tribunal for the charges to be determined.

5. The Tribunal (Judge Dutton) clarified, at paragraph (3) of the directions order made on 18th December 2018, that this did not include the Respondent's Counterclaim. Therefore, the Tribunal's role is to make 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 payability and reasonableness of the above charges before the balance of the case,

including the Counterclaim, goes back to the court for final resolution. In particular, Judge Dutton identified the issues as follows:

(a) The actual service charge costs for the years 2016-17 and 2017-18.
(b) Whether the Applicant has complied with the consultation requirements under s20 of the 1985 Act in respect of major works in 2017.
(c) Whether the works are within the Applicant's obligations under the Lease and whether the cost of works are payable by the Respondent under the Lease.
(d) Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee.

6. Both parties have since confirmed that these are the relevant issues save that, in relation to the actual service charge costs for the years 2016 and 2017, the Respondent has only challenged the cleaning charges and management fees. In her oral evidence to the Tribunal, the Respondent said she wanted to challenge all the charges and would be able to provide the evidence but she never followed that up. Despite having time and access to legal advice (see further below) she never sought to expand on her case or introduce further evidence.

Procedural history

7. This matter has suffered from substantial delay:

(a) The original case management conference on 18th December 2018 had been adjourned one week at the Respondent's request (she said there was a clash with work training) but she did not attend in any event (she said she had slipped, causing an ankle injury).

(b) The Respondent failed to comply with the direction to serve a reply to the Applicant's statement of case. When the Tribunal queried this, she said she had not received the directions. They were re-sent to her on 4th March 2019.

(c) The Respondent instructed Prince Evans solicitors who asked for an extension of the time limits in the directions. The Tribunal granted the extension by letter dated 7th March 2019, save that the hearing date was retained for 26th April 2019.

(d) At the hearing on 26th April 2019, the Tribunal decided to adjourn for the reasons set out in its written decision of 29th April 2019. In particular, the Tribunal was concerned at the Respondent's ability to present her case efficiently without legal representation and felt "she should have one last opportunity to obtain representation for the hearing of this case."

(e) A new hearing was listed for 19th and 20th August 2019. The Respondent sought to adjourn it. The Tribunal initially refused on 1st August 2019.

(f) Prince Evans then ceased to act for the Respondent and she provided further evidence from her GP that she was not fit to attend or participate in a Tribunal hearing due to her mental state. The Tribunal granted the adjournment but asked for a mental health assessment in order to ensure the hearing was not postponed indefinitely. The assessment never took place.

(g) The Applicant was frustrated at the further delay and asked the Tribunal to make further directions to progress the case. By letter dated 28th November 2019, Judge Vance adjourned the hearing until after March 2020 in order to allow the Respondent to recuperate and find alternative legal assistance.

(h) By letter dated 9th December 2019 the Applicant's solicitors complained that they could not serve a copy of the bundle for the final hearing because the Respondent refused to provide the name of the barrister representing her. By letter dated 18th December 2019 the Tribunal ordered that, unless the Respondent provided her counsel's details, then the Applicant could serve the Respondent personally. In fact, the bundle had already been provided to Prince Evans who had undertaken to forward it to the Respondent.

(i) The hearing was re-listed for 7th and 8th April 2020. Unfortunately, that had to be postponed due to the effects of the COVID-19 pandemic. On 9th June 2020 the Tribunal wrote to the parties to ask if they were ready to proceed. The Applicant said they were ready but the Respondent said there were new matters, despite the dispute relating solely to events from 2016 and 2017. The Tribunal (Judge Powell) set the case for review after 20th July 2020.

(j) Judge Powell had invited the parties for their comments on whether the hearing should be face-to-face or by video. The Applicant wanted a face-to-face hearing but was willing for it to be by video if that would expedite matters. The Respondent claimed to be unable to participate in a video hearing. By letter dated 30th July 2020 Judge Powell ordered the case to be listed for a 2-day face-to-face hearing.

(k) By letter dated 10th August 2020 the Applicant provided their dates to avoid. By email the following day, the Respondent provided hers. Apart from 2 single days, the Respondent's dates to avoid fitted precisely into the periods of the Applicant's availability so that the parties' dates did not coincide for any date between 1st September and 23rd November 2020.

(l) The Tribunal asked the parties for their dates to avoid in December 2020. The same pattern established itself, with the Respondent having more dates to avoid than the Applicant, so that there were no available dates in December.

(m) The Tribunal asked the parties for their dates to avoid in January and February 2021. Apart from one set of 2 days in the first full week of January, again the same pattern appeared up to 22nd February 2021. The Tribunal therefore listed the hearing for the earliest possible dates on 22nd and 23rd February 2021.

(n) By email dated 9th February 2021 the Respondent asked for the new listing to be adjourned too. She said she was waiting for her COVID-19 vaccine and this was having a detrimental effect on her mental health, anxiety and blood pressure. Again she said she did not have access to technology for the hearing to take place remotely. The Applicant objected strenuously. By a detailed decision dated 10th February 2021 Judge Powell granted the adjournment due to ongoing concerns with having a face-to-face hearing during the pandemic and the Respondent's professed difficulties both with the pandemic and accessing a remote hearing. He directed the parties to provide their dates to avoid for May, June and July 2021.

(o) Yet again, the Respondent had many more dates to avoid than the Applicant and they coincided with the Applicant's availability so that it would not be possible to list the hearing before 26th July 2021.

(p) By letter dated 23rd February 2021 Judge Powell expressed his disappointment and directed the Respondent to provide fuller details and evidence of her training course which allegedly precluded all of May and June. She provided dates, including of her barrister's availability, but claimed she needed managerial approval to provide details or evidence due to national security concerns (she had previously said she worked for DEFRA). Judge Powell said he was willing to wait for such approval but had to chase the Respondent by letters dated 12th and 15th March 2021.

(q) In the event, the Respondent provided nothing further and Judge Powell reluctantly re-listed the hearing for 28th and 29th July 2021. He stated, "Given these circumstances and the age of the proceedings, it is highly unlikely that any further postponements of the hearing will be agreed. The parties must therefore ensure that they are available to attend the hearing and/or they must make arrangements now for representation at that hearing."

(r) By email dated 29th June 2021 the Respondent stated that she had informed the Tribunal and the Applicant's solicitors on several occasions that Antony Bartholomeusz will be representing her in this matter.

(s) On 1st July 2021 the Tribunal sent the parties a Timetable and Further Directions for Trial, including provision for Judge Nicol to visit the property and for the parties to agree a Case Summary.

(t) The Applicant's solicitors sent a draft Case Summary to the Respondent and Mr Bartholomeusz. After they chased the Respondent, she replied by email dated 16th July 2021 at 16:37 stating, "I can now confirm that you will have a Summary Statement on Monday due to my solicitor's is on annual leave and Mr Batholomeusz's availability. I can also confirm that if the clerk at KDL had bothered to as me the dates of the Tribunal have been in Mr Batholomeusz's diary since they were agreed! Yet again KDL constantly want to undermine me at every juncture, included not addressing me by the correct name and title but always intimating that I am trying to cause issues for the Tribunal, when it is them that have

caused me not only upset but mental health issue due to their skullduggery at every turn."

(u) By email sent just 8 minutes later, the Applicant's solicitors asked the Respondent for details of her previously-unmentioned solicitor. The Respondent has yet to provide any such details so neither the Applicant nor the Tribunal are aware of their name or firm, let alone their contact information.

(v) By email dated 26th July 2021 the Respondent requested a yet further adjournment of the hearing on the basis that she is having to self-isolate, has no access to technology to attend a remote hearing (she said she can't use her Government-issued computer or mobile for personal matters), her unidentified solicitor is self-isolating abroad and Mr Bartholomeusz has advised her that he cannot represent her. The Applicant's solicitors emailed their objections.

(w) The Tribunal issued a reasoned decision refusing the adjournment. Amongst other matters, the Tribunal pointed out that the Respondent had not suggested she herself is ill. The Respondent replied the same evening that, in fact, she was exhibiting COVID-19 symptoms, namely a very bad cough, high temperature and severe headaches first noticed on Sunday evening.

(x) The Respondent attempted to lodge complaints about the Tribunal's refusal to adjourn but it was pointed out to her that the remedy is appeal. The Tribunal also pointed out that it remained ready to listen to any further applications for adjournment, so long as they were supported by sufficient evidence.

(y) The Tribunal queried the Respondent's alleged inability to attend the hearing remotely. By email provided on 27th July 2021 at 13:17, the Respondent mentioned for the first time that she had been a victim of a robbery on 30th April 2021. She said that, amongst other things, her personal computer was stolen. She said plenty of documentary evidence exists of these events but only provided an email from the police addressing her inability to co-operate with the officer responsible for looking into the matter. She also claimed, without evidence, that the Tribunal's questioning of her credibility had caused her to have a major panic attack and contemplate suicide.

(z) The Respondent did provide a letter dated 27th July 2021 from her GP, Dr Saul Kaufman, which stated in vague terms that "current stresses" had exacerbated her pre-existing mental health problems and asked for her anxiety and depression to be taken into account in these proceedings.

(aa) The Tribunal received a couple of mysterious emails which appeared to come from the Respondent's email address. The first stated that the author had been given access to the Respondent's account but then purported to be signed by the Respondent. The second contained an unexplained peremptory demand that the Tribunal case officer should phone an unidentified psychologist.

(bb) Mr Bartholomeusz wrote to Judge Nicol on 27th July 2021 purporting to explain that he has been unable to accept instructions on a public access basis to represent the Respondent because he had formed the view that it would be in her best interests, as well as the interests of justice, to be represented by a solicitor in these proceedings. At Judge Nicol's request, he clarified by email later the same day that he had informed the Respondent of this on 22nd July 2021 and, although the dates had been diarised by his clerks as a courtesy, he had never accepted instructions to represent her at the hearing.

(cc) Ahead of the commencement of the hearing on 28th July 2021, the Respondent emailed the Tribunal with two electronic messages, one showing that she had been admitted to St Mary's Hospital at 4:06am and the other showing that her home COVID-19 testing kit had been due to arrive on the morning of 27th July 2021.

(dd) The hearing on 28th July 2021 was attended by Mr Edward Blakeney, counsel for the Applicant, and Mr Andrew Harding, a director of Qube and the Applicant's witness. Mr Blakeney submitted that the hearing could proceed in the Applicant's absence but, on this occasion, there was sufficient evidence to establish that the Respondent's absence was involuntary. In the circumstances, the Tribunal decided to adjourn the hearing yet again but warned that there would be no further adjournments, at the very least unless any request for another adjournment were supported by sufficient evidence.

Inspection

8. The hearing of this matter was re-listed for 24th and 25th November 2021, on the same timetable as previously directed. In accordance with those directions, Judge Nicol attended at the property at 10:30am on the first day for an inspection. Despite having been told at least twice in Judge Nicol's directions that the inspection would be at 10:30am, the Respondent claimed that she had phoned the Tribunal the day before and an un-named person had said it would take place at 10am. Inspections, when they are directed, are routinely listed for 10:30am so the Tribunal knows of no reason why any case officer would have given any other time.

9. Mr Blakeney also attended the inspection on behalf of the Applicant. Both he and Judge Nicol were a little early for the scheduled inspection and the Respondent let them into the building via the entryphone at 10:25am. The Respondent met them at the door of her flat on the second floor and proceeded to show them around the building.

10. Judge Nicol observed two mid-terrace houses converted into flats. They have 6 storeys, including a basement and a mansard addition. The exterior was painted in a cream colour, in the same style as most of the residential buildings in the locality. The Respondent invited Judge Nicol to compare the exterior decorative state of the subject property with the rest of the terrace on either side, suggesting there would be clear evidence of very poor workmanship, given that the neighbouring

properties were subject to exterior works at around the same time in 2017. However, Judge Nicol could not see any significant difference. There were some marks to window sills indicating rainwater run-off, a little bubbling on one corner of one pillar of the front portico which might have indicated inadequate preparation before it had been painted and a sizable chipped area to the other pillar which looked like impact damage. None of these constituted evidence of the kind of poor workmanship the Respondent suggested.

11. The front door is accessed up 3 steps and leads into a narrow hallway with a tiled floor and some letterboxes on the wall. There was a carpeted staircase leading up to the second floor and a lift, small enough that it would normally take no more than two people. At each of the upper floors, there was a short, narrow corridor, lit by two low-power lights, providing access to the front doors of the flats. The communal areas were clean save that the Respondent had builders in and there was some brown debris on the carpet outside her door. Judge Nicol also noted a little dust on one dado rail in the ground floor hall.

12. The Respondent pointed to the bannister, particularly the ball-like feature at the top of one, and alleged that it was "filthy". Again, Judge Nicol could not see anything which could possibly be described in this way. The ball-like feature had a slight discolouration in parts but not that would appear to have been caused by any inadequacy in the cleaning.

13. There were some scuff marks on the walls outside the Respondent's flat. During the hearing later that day, the Respondent claimed that previous cleaners had been able to keep such areas completely free of scuff marks but this is not credible. The corridors are so narrow that contact with the walls on a regular basis must be virtually inevitable.

14. The Respondent also pointed to an electrical socket in the hall outside her flat which she said had only just been repaired and done poorly. Judge Nicol observed a small gap around the socket which requires finishing but nothing which would affect the functionality of the socket.

15. The Respondent took Judge Nicol and Mr Blakeney into her flat, most of which had been temporarily re-arranged for the benefit of her builders. She pointed to the bottom of the doors onto her terrace/balcony which showed some deterioration and which she said was evidence of poor workmanship in 2017. She also pointed to the window next to the door which had some paint splashes on it. Judge Nicol took photos of these to show to Mr Gowman. In the Tribunal's opinion, the works were too long ago to be sure that poor workmanship was responsible for the state of the door. The paint splashes do indicate sloppy workmanship at that point but Mr Blakeney later pointed out in the hearing that they would have been long gone if the Respondent had complied with her obligation in her lease to clean her windows regularly.

16. Judge Nicol left the property at 10:45am.

Hearing on 24th November 2021

17. In accordance with the Tribunal's directions, the hearing was due to start at 1pm. At around 12:30, the Respondent phoned to say that her builders had not yet left and she would be late, for which she apologised. Judge Nicol decided that, given the previous delays and the Tribunal's clear and repeated directions, the hearing would start on time whether the Respondent was there or not. This was conveyed to the Respondent.

18. In the event, the hearing did not start until 1:15pm due to difficulties with the connection for Mr Gowman who was attending by remote video conference. By that time, the Respondent had reached the Tribunal building and the Tribunal waited until she was ready to come into the hearing room.

19. Again, Mr Blakeney and Mr Harding attended for the Applicant. The Respondent was accompanied by a man identified only as Steve and "a dear friend". The Respondent had not brought her papers and so used the Tribunal's copy. In the event, Steve's help was invaluable, including helping the Respondent to use the bundle.

20. The documents before the Tribunal consisted of a bundle in 5 parts, plus a Supplemental Bundle. Tabs 1 and 6 had twice previously been updated to take account of the delays. They were further updated for this hearing but the Respondent claimed not to have received them. Mr Blakeney passed her another copy but she did not ask for an adjournment or any time to read them. The Tribunal decided to continue on the basis that, if any reference needed to be made to those documents, a decision would be made on what to do at that point. In the event, those documents were not referred to.

21. Mr Blakeney had also provided a Re-Updated Skeleton Argument. The Respondent protested that it had been provided at the last minute but the Tribunal decided not to exclude it since it only reduced to writing what Mr Blakeney would be entitled to say to the Tribunal anyway.

22. The Respondent was able to participate fully in the hearing, including cross-examining Mr Harding when he gave his evidence, save for a toilet break at one time which was partly to allow her to recover her composure at that point. However, at around 4pm, during Mr Blakeney's cross-examination (when Judge Nicol was asking some questions), the Respondent suffered an anxiety attack. She could not breathe properly and even fell off her chair. Medical assistance was called and Judge Nicol suspended the hearing.

23. Mr Blakeney asked if the hearing could continue the next day, as listed, but the Tribunal refused on the basis that it could not be sure that the Respondent would have recovered sufficiently in time. However, Mr Blakeney indicated that he had nearly completed his cross-examination

and only submissions from each party remained. In the circumstances, the Tribunal wrote to the parties asking whether they would be content for the remainder of the case to be dealt with by written submissions.

24. The Respondent was not so content and so the Tribunal re-listed the case for one further day on 2nd February 2022. On 1st February 2022, at 5pm, the Respondent emailed the Tribunal to say that she could not attend the hearing the following day because she was suffering from an iron deficiency requiring an intravenous drip, shingles and breathlessness. She attached a letter from her GP, Dr Julia Miller, who said she saw the Respondent on 1st February 2022 but described different symptoms, namely diarrhoea and breathlessness, and said the Respondent did not feel fit to attend the Tribunal. Dr Miller did not give her opinion on the Respondent's ability to attend the hearing.

25. The White Book details the guidance given by the higher courts on procedural issues. Although aimed at court, not Tribunal, procedure, the following guidance, at section 3.1.3, is still relevant:

> Where a litigant in person requests an adjournment on the ground of ill-health the court should be slow to refuse, provided that it is their first request and their case has some prospect of success: *Fox v Graham Group Ltd*, *The Times*, 3 August 2001, Neuberger J. It is to be noted that the court had evidence to show real grounds for thinking that the application for an adjournment was genuinely based.
>
> The principles upon which a court should proceed when faced with an application to adjourn on medical grounds are helpfully rehearsed in the decision of Warby J in *Decker v Hopcraft* [2015] EWHC 1170 (QB). The court must carefully scrutinise the medical evidence in support of an application to adjourn.
>
>> "Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case)." per Norris J, in Levy v Ellis-Carr [2012] EWHC 63 (Ch).

26. As described above, this is far from the Respondent's first request for an adjournment on medical grounds. As can be seen from the analysis in this decision, the Respondent's case lacks much merit. Her supporting medical evidence has almost none of the elements listed by Warby J in *Decker v Hopcraft*.

27. Further, in her email of 1st February 2022, the Respondent said she had instructed a barrister. Since the only part left to the hearing was to hear the parties' submissions, the barrister could have represented her adequately without her attendance, as Mr Blakeney did on behalf of but without any attendance from the Applicant. If she had instructed a barrister, that would have meant they had been booked to attend the hearing. The Respondent provided no explanation as to why that booking was not fulfilled.

28. Yet further, the Tribunal had previously directed that the parties could submit a skeleton argument and, as mentioned above, make written submissions instead of attending. The Respondent had the example of Mr Blakeney submitting a skeleton argument and then re-submitting it twice more with updating amendments. She did not take the opportunity to provide anything in writing.

29. The Respondent said in her email that, if she had been able to attend, she would have sought to introduce new evidence. However, the time for new evidence has long passed. She has had plenty of time to submit it but did not attempt to do so. It is inconceivable that the Tribunal would have allowed her to introduce new evidence this late in the proceedings.

30. Mr Blakeney told the Tribunal that the frequent delays have been the principal contributor to legal costs which now exceed an estimated £90,000. Given the history of the case, this is unsurprising, albeit unwelcome. None of the delays are the fault of the Applicant and it would subject them to further injustice if there were to be more unjustified delay.

31. In the circumstances, the Tribunal decided to proceed with the remainder of the hearing in the Respondent's absence.

The lease

32. The Respondent's lease was granted to her in 1993, since when she has lived at the property. It contains terms to the following effect:

- Clause 4 requires the Respondent to pay a "Maintenance Contribution" in advance on 25th March each year.
- Clause 6 requires the Applicant to apply the Maintenance Fund to carry out their obligations under the Sixth Schedule.
- Clause 8 is a standard re-entry clause for failure to pay the Maintenance Contribution.

- Paragraphs 12 and 13 of the Fourth Schedule contain rights of the Applicant to enter the subject property.
- Paragraph 14 of the Fourth Schedule requires the Respondent to pay the Applicant's costs incurred "under or in contemplation of any proceedings in respect of the [subject property] under Section 146 and 147 of the Law of Property Act 1925 or in the preparation or service of any notice thereunder respectively".
- Paragraph 5 of the Fifth Schedule requires the Respondent to pay a contribution to any of the Applicant's expenses not covered by the Maintenance Fund.
- The Respondent's Maintenance Contribution is set at 7% of the relevant expenses. Following the enfranchisement in 2006, it was agreed that the Respondent would pay:
    - 7% of external expenditure
    - 10% of internal expenditure
    - 11.67% of lift repair and maintenance

33. The Tribunal now considers the various charges and issues in turn.

Charge for copy of lease and Late payment interest

34. The Applicant has conceded that these two charges are not payable.

Service charges

35. In paragraph (4) of its directions order made on 18th December 2018, the Tribunal pointed out that the final accounts are now available for the two years in dispute and so, at the final hearing, the Tribunal should deal with the actual costs incurred rather than the original estimate.

36. According to the service charge accounts for the year ended 31st March 2017, the Applicant budgeted to spend a total of £38,805 for the year but actually spent £190,040.22.

37. According to the service charge accounts for the year ended 31st March 2018, the Applicant budgeted to spend a total of £45,055 for the year but actually spent £45,463.17. A balancing charge of £80.98 is due but was not raised until after the commencement of the county court claim and so is not included in the items in dispute before the Tribunal.

38. In her court Defence, the Respondent asserted that she had not received £3,000-worth of services without making a specific challenge to any of the service charges. She complained of poor service, namely there being no communal lighting for 3 months and ongoing damage arising from a leak and contractor action, but failed to give any details, particularly as to which charges these complaints related to, if any.

39. It is a common mistake that tenant applicants make in thinking that the Tribunal can remedy a poor service – a charge for a poor service may be entirely reasonable if it is low enough. For example, the Applicant

points out that works in relation to the bin store had to be re-consulted on because the contractors had been given the wrong specification. However, the expenses incurred by this were not passed on through the service charges, i.e. there was no charge for this and so nothing for the Tribunal to consider.

40. The Respondent claims that, between 2007 and 2012, she had an agreement with the Applicant's then board of directors to be responsible for cleaning services but that she was never fully compensated for her work and expenses. By letter dated 13th June 2011 Qube refused to pay the sums set out in spreadsheets provided by the Respondent without supporting invoices or receipts. The Respondent has never provided any.

41. There are about 20 heads of expenditure in the service charge accounts. The Respondent challenges two: Management fees and Cleaning. She alleges that the cleaning service has been poor but her main objection is that the contracts for both items were long-term qualifying agreements which were subject to consultation in accordance with section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

42. The Tribunal is satisfied that the agreements for management and cleaning do not constitute LTQAs. An LTQA is one lasting a minimum period of 12 months but this does not include arrangements which happen to roll on for longer than that. Both agreements were terminable within 12 months. The management agreement specifically defined its term as 12 months less one day.

43. Even if that conclusion were incorrect, the Applicant warned the Respondent in their Reply that they would seek dispensation from the consultation requirements, if required. At no time did the Respondent seek to suggest that she had suffered any prejudice as a result of the lack of consultation in accordance with the principles laid down by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854. Since the managers, Qube, were her suggestion, it is difficult to see how there could have been any prejudice.

44. The cleaning contractors, Donningtons, attend the building once a week to carry out what the Applicant's witness, Mr Andrew Harding of Qube, characterised as a fairly basic level of cleaning to the internal common parts. During the relevant years, the charges were £2,880.31 for 2016-17 and £2,943.09 for 2017-18.

45. In her witness statement dated 10th April 2019, the Respondent referred to some photos she said she took of poor cleaning in the last 4 weeks. When, in cross-examination, it was pointed out that this was outside the period under consideration, she claimed that she had taken photos continuously and they were in fact from 2017. She also said she could produce more photos but has not attempted to do so.

46. In any event, the photos do not show what she thinks they show. For the price charged, and given the age of the property, it is not reasonable to expect any standards higher than those achieved. As already set out above in relation to the inspection, the Tribunal does not accept the Respondent's characterisation of the condition of the property.

47. In the circumstances, the Tribunal is satisfied that the cleaning charges are reasonable and payable.

Major works

48. On 15th February 2016 the Applicant's agents sent to all lessees a notice of intention to carry out external repair and redecoration works. EBW Consultancy Ltd were appointed as contract administrators and they prepared a specification of works. The specification was put out to tender and EBW's tender analysis identified Elite Contracts as having submitted the most competitive tender.

49. On 29th June 2016 the Applicant's agents sent to all lessees a statement of estimates and the tender analysis. Unfortunately, this information omitted Qube's 2% administration and management charge and EBW's 12.5% contract administration charge. Therefore, it was corrected and sent out again on 30th June 2016.

50. On 17th August 2016 the Applicant's agents notified all lessees that the contract would be placed with Elite and demanded payment of each lessee's share of the costs not already covered by monies held in the reserve fund.

51. Unfortunately, not all lessees paid their contribution and the start of the works had to be delayed. They eventually commenced on or around 18th April 2017 and were due for completion in August. Elite finally charged £103,490.18 plus VAT, less than their tender, partly due to the exclusion of bin store works which were to be dealt with separately.

52. The Respondent does not dispute that the works come within the lease. In relation to consultation, the Tribunal could not identify any failure to comply with the requirements under the aforementioned the Service Charges (Consultation Requirements) (England) Regulations 2003.

53. The Respondent objects to the charge for the works on the basis that the work was not carried out to a good standard and the contractors damaged some of her belongings. In particular, she alleges that there is a pipe which continues to block, possibly due to a failure to take up her suggestion of putting mesh over the pipe, and the replacement roof tiles are not tidy and look unprofessional. However, again, she was not able to provide any or any sufficient evidence to support her claims.

54. Therefore, the Tribunal is satisfied that the Respondent's contribution to the major works is reasonable and payable.

Legal costs

55. The Respondent has failed to pay not only the sums in dispute in these proceedings but previous charges as well. According to their solicitors' letter dated 6th July 2018, her mortgagee, Southern Pacific Mortage Ltd, has paid the Applicant the following sums in order to avoid the possible forfeiture of their security:

- 27th September 2011 £13,382.57
- 19th November 2012 £9,695.34
- 1st July 2013 £2,710
- 24th September 2014 £2,708
- 18th August 2015 £3,536.31
- 1st December 2016 £2,767.82

56. The Respondent has not taken any legal action to challenge the payability of any of these charges.

57. The mortgagee also paid in respect of the current disputed sums but the Applicant returned the money in order to preserve their forfeiture rights. The Respondent claims that the court ordered the Applicant to return the money but it had no power to do so and there is no such order in the papers before the Tribunal.

58. There have also been allegations that the Respondent has caused a nuisance to her neighbours and has failed to allow the Applicant's agents to inspect her property as part of an investigation into leaks into the building. The legal costs have been incurred when the Applicant has had advice and assistance in dealing with the Respondent's alleged defaults.

59. On 20th May 2016 the Applicant's solicitors wrote a letter before action in relation to a failure to provide access, followed by a further letter dated 8th July 2016. A letter dated 28th July 2016 referred to alleged disturbance while the Respondent was inebriated, necessitating police attendance.

60. The Applicant asserts that the legal costs in relation to these matters are recoverable under paragraph 14 of the Fourth Schedule to the lease. A section 146 notice dated 31st July 2018 was served on the Respondent. In correspondence, the Applicant expressly stated that the costs were incurred in contemplation of forfeiture.

61. The Respondent accepts, and the Tribunal agrees, that the lease provides for the Applicant to recover legal fees. Rather, she is aggrieved that her own complaints are not dealt with and that the agents have allegedly made negative comments about her to her neighbours. This does not constitute a defence to these charges, even if the Respondent had presented sufficient supporting evidence to found her complaints.

62. The Tribunal is satisfied that the legal costs have been incurred and are payable under the terms of the Respondent's lease.

Debt recovery costs

63. The Debt Referral charges are standard charges imposed by the Applicant's agents for carrying out credit control work prior to and to assist referral to debt recovery agents, Chase Legal. Given the Respondent's persistent and chronic failures to pay the charges asked from her (see paragraph 55 above), it is entirely understandable that such charges have been incurred.

Costs

64. The Tribunal has the power under section 20C of the 1985 Act to order that the Applicant's costs may not be added to the service charge. However, the only part of the Applicant's claim on which they did not succeed are the two small items they conceded. The Tribunal must also give due weight to the fact that the lease entitles the Applicant to recover such costs. In the circumstances, the Tribunal declines to make a section 20C order.

Name: Judge Nicol **Date:** 4th February 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

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

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

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

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 (a) the person by whom it is payable,
 (b) the person to whom it is payable,
 (c) the amount which is payable,
 (d) the date at or by which it is payable, and
 (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

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

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
 (a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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