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

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| **Case Reference:** | CHI/45UH/LSC/2021/0094 |
| **Property:** | 46A and 46B Gratwicke Road, Worthing BN11 4BH |
| **Applicants:** | Ms Judy Trowers<br>Mr Leigh Cobb |
| **Representative:** | Ms Judy Trowers |
| **Respondent:** | Chancery Lane Investments Ltd |
| **Representative:** | Shmuli (Paul) Simon |
| **Type of Application:** | Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002<br>(Liability to pay service charges)<br>Tenants' application for the determination of reasonableness of service charges.<br>Schedule 11 Commonhold and Leasehold Reform Act 2002<br>(Liability to pay administration charges)<br>Tenants' application for the determination of reasonableness of service charges and administration charges. |
| **Tribunal Members:** | Judge A Cresswell |
| **Date of Decision and Venue of Hearing:** | 4 April 2022 on the Papers |

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**DECISION**

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## The Applications

1. This case arises out of the Applicant tenants' applications, made on 10 October 2021, for the determination of liability to pay service charges for the years 2019 to 2022 inclusive.

## Summary Decision

2. The Tribunal has determined that the REVERSAL Insurance charge (both the £960.68 and £400.34) is not reasonably demanded of Ms Trowers and is not payable.
3. None of the demands made for the administration charges for arrears letters is payable by Ms Trowers.
4. The sum payable by each of the Applicants for Professional Fee – Insurance Revaluation Survey is half of the quoted sum of £133.33 plus VAT each and not the £1,200 sought.
5. The most that the Respondent can reasonably charge for Insurance for 2020 onwards is a total of £625.58 to be split equally between Ms Trowers and Mr Cobb.
6. The Tribunal orders the reimbursement of fees in the sum of £100 paid by the Applicant, Ms Trower.
7. The Tribunal allows the Applicants' applications under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its cost in relation to the application by way of service charge or administration charge in this or any future year.

## Preliminary Issues

8. By its Decision of 10 March 2022, the Tribunal, Judge Tildesley OBE, barred the Respondent from further participation pursuant to Rule 9 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Respondent having failed to attend the Case Management Hearing or produce a position statement prior to that hearing as requested.
9. The Respondent was required to reply to the Applicants' case by 16 February with a copy to the Tribunal.

10. Neither reply nor an application to vary Directions was received and therefore the Tribunal issued a Notice that it was minded to bar the Respondent from further participation in proceedings.
11. On 23 February 2022 the Respondent sent its statement of case to the Tribunal and copied in the Applicants. Whilst the Respondent apologised for the delay in submitting its statement of case due to a medical emergency, it appears that it had set down revised dates in accordance with the date upon which it received the "*full set of Applicants' documents*." Paragraph 4 of the Statement of Tribunal's Rules and Procedures requires that in order to amend any dates within the directions, a formal case management application needs to be made to the Tribunal.
12. Directions were issued on 23 February 2022. The Tribunal requested that the Respondent provide written evidence of the medical emergency to which he referred in the email dated that day. The Applicants were invited to make comments on both the Minded to Bar Notice and further directions dated 22 and 23 February 2022 respectively.
13. On 24 February 2022 the Respondent replied stating that in accordance with the previous directions (dated 18 January 2022) the dates for submission of documents could be changed and referred to the late submission of the Applicants' documents.
14. He stated that as an "*officer of the court*" his written submissions regarding his son's medical emergency "*should be sufficient for the Tribunal*" and cited GDPR and data protection laws, which meant he was not able to make any further disclosures.
15. A request was made by the Respondent for the directions dated 23 February 2022 to be withdrawn. No formal case management application was received in this regard (in accordance with paragraph 5.1 of the Statement of Tribunal Rules and Procedures).
16. On 25 February 2022, the Applicants responded to the Respondent's representations relating to the late submission of their documents and the issues surrounding the zipped- file in which it was sent. The Applicants stated that an automatic response mentioned in the Respondent's email dated 1 February 2022 (stating that they were unable to receive zip files) was not received. Further that a hard copy was sent "*to be received by 3rd February, one day late*." In addition, the Applicant states that *"….all necessary information was in the Respondent's receipt by 4th February 2022. Using Mr Simon's assumptive method of calculations, this would bring the cut-off date for the Respondent's submission of documents to 18th February 2022."* The Applicants

also commented that there was no agreement between the parties to alter the submission dates of documents (in accordance with paragraph 4.3 of the Statement of Tribunal Rules and Procedures)

17. As the Respondent's reply nor an application to vary Directions was received within the prerequisite time and paragraph 7 of the Tribunal's directions dated 23 February 2022 had not been complied with, the Respondent was barred from taking further part in the proceedings in accordance with Rule 9.

18. By email of 24 March 2022, the Respondent applied for the bar to be lifted to enable the Respondent to take part in the proceedings. It said simply this: *The reason for this application is that the Respondent believes its statement of case will be of great benefit to the Tribunal and the Applicant in resolving this matter. The Respondent believes that its statement of case ought to be given due consideration because the analysis undertaken by the Respondent, in preparation of the statement, is favourable to the Applicant. The Respondent is concerned that the bar will prevent the Learned Tribunal from considering its statement of case and the Respondent does not believe that will enable a just and equitable outcome.*

19. Again, the Respondent failed to make its application using the proper procedure. The author of the email is stated to be a solicitor so can be presumed to be aware of the proper procedures; indeed, the Statement of Tribunal Rules and Procedures was attached to the Tribunal's initial Directions and formed part of them and they have been pointed out to him in earlier communications. The application for the bar to be lifted was not made by way of formal application using the prescribed form, in contravention of paragraphs 5.1 and 5.5 of the Statement of Tribunal Rules and Procedures.

20. The Respondent's grounds for the lifting of the bar was no more than a simple request for the bar to be lifted. No proper explanation was given for its previous breach of the Tribunal's Directions.

21. Accordingly, the Respondent's application is refused.

## Inspection and Description of Property

22. The Tribunal did not inspect the property.

23. The property in question consists of 2 flats, one on each floor of a converted semi-detached house.

**Directions**

24. Directions were issued on various dates. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013.

25. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.

26. This determination is made in the light of the documentation submitted in response to those directions by the Applicants.

27. The Tribunal has regard in how it has dealt with this case to its overriding objective:

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

(a) exercises any power under these Rules; or
(b) interprets any rule or practice direction.

(4) Parties must:

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

**Ownership and Management**

28. The Respondent is the owner of the freehold. The property is managed for it by Moreland Estate Property Management Limited.

**The Lease**

29. Ms Trowers holds Flat 46B under the terms of a lease dated 24 July 2000, which was made between Mrs M Diprose as lessor and Mr A Jordan as lessee.

30. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

31. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

**Arnold v Britton and others** [2015] UKSC 36 Lord Neuberger:

15. *When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation)*

*v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.*

32. Clause 2 of the lease requires the tenant to pay *by way of further or additional rent from time to time such sums of maintenance charges as are payable in accordance with the provisions of the Fourth Schedule hereto*

33. Clause 5 of the lease

*5. THE LESSOR hereby COVENANTS with the Tenant to perform and observe the obligations set out in the Sixth Schedule hereto (subject to the payment by the Tenant of the maintenance charge hereinafter referred to)*

34. Paragraph 10 of the Fourth Schedule

*10. To keep the Lessor indemnified against one half of all costs charges and expenses which the Lessor shall incur in or in connection with the maintenance of the Building whether in carrying out his obligations set out in the Sixth Schedule hereto or in doing any other works or things for the improvement of the Building (including by way of example only and without prejudice to the generality of the foregoing):*

*(i) the fees of the managing agent or agents (if any) from time to time appointed by the Lessor to manage the Building*

*(ii) all legal and Architects and Surveyors fees*

*(iii) the VAT (if any) payable by the Lessor in respect of any such payments as Aforesaid*

35. The Sixth Schedule requires the Respondent to insure the building and at paragraph

*4. To keep proper books of account of all costs charges and expenses incurred by the Lessor in carrying out its obligations under this Schedule or in otherwise managing and administering the Building and once in each year during the said term to certify (a) the total amount of such costs charges and expenses for the period to which the certificate relates and (b) the proportionate amount due from the Tenant to the Lessor under paragraph 10 of the Fourth Schedule hereto and to send a copy of such certificate to the Tenant*

**The Law**

36. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform

Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.

37. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

38. The Tribunal has the power to decide about all aspects of liability to pay administration charges and can interpret the lease where necessary to resolve disputes or uncertainties. Administration charges are sums payable in addition to rent inter alia in respect of failure by a tenant to make a payment by the due date to the landlord. The Tribunal can decide by whom, to whom, how much and when an administration charge is payable. An administration charge is only payable insofar as it is reasonably incurred. The Tribunal therefore also determines the reasonableness of the charges.

39. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.

40. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any*

*proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

41. In **Enterprise Home Developments LLP v Adam** (2020) UKUT 151 (LC):

> *27. In Yorkbrook Investments Ltd v Batten (1986) 18 HLR 25 Wood J, giving the decision of the Court of Appeal, addressed the issue of the burden of proof on the reasonableness of service charges. At page 34 he said this:*
>
> *"Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence – of his case. No doubt discovery will need to be ordered at an early stage, but there should be no problem in each side knowing the case it has to meet, providing that the court maintains a firm hold over its procedures. If the tenant gives evidence establishing a prima facie case then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions."*
>
> *28. Much has changed since the Court of Appeal's decision in Yorkbrook v Batten but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions.*

42. "*Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the*

*case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available:* **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

43. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** [2015] UKUT 0333 (LC)).

44. In **The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** (see below), the Tribunal was faced with a three-way choice:

1) To make no reduction, thereby leaving the costs as they were;
2) To adjourn to allow the landlord to provide evidence, or
3) To adopt the **Country Trade** "robust, commonsense approach".

The first of these options would have been wrong in the light of the landlord's concession that the CCTV charges included an element designed to allow the developer to recover some of its construction costs.

The second would have imposed a disproportionate burden on the parties in the light of the relatively modest sums at issue.

The Tribunal concluded that the third was the right option to have followed. It may have been unscientific, but it was proportionate and involved the application of the Tribunal's overriding objective.

45. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost*.

46. The relevant statute law is set out in the Annex below.

**<u>REVERSAL Insurance Credit in Error</u>**

**The Applicant**

47. The Applicant, Ms Trowers, complains that a number of service charge demands from 1 January 2019 demand payment of this charge in the sum of £960.68 (demand of 1 January 2019 and 3 June 2019) and then £400.34 (demands from 2 July 2019) apparently for the period 1 January 2014 to 31 December 2018.

48. No explanation has been given for this charge, nor proper explanation of the previously stated arrears of insurance payments in a minus figure of £242.67 appearing on demands from 5 May 2015 to 1 January 2019.

**The Tribunal**

49. The Tribunal notes the series of efforts by Ms Trowers to get an explanation from the Respondent. Where there is any form of response, it is not an explanation and no documents are ever provided which could support the demands for this charge.

50. The Code says *All service charge demands should be clear, easily understandable, relate to available budget estimates or actual accounts and be served in accordance with the lease*. The Respondent has failed to meet this standard. Not only is there a singular lack of clarity and a refusal to explain, but the Respondent has also failed to comply with paragraph 4 of the Sixth Schedule to the lease detailed above.

51. There being no explanation given by the Respondent for the sums demanded, the Tribunal can only find that this charge (both the £960.68 and £400.34) is not reasonably demanded and is not payable.

**<u>Arrears Letter Charges</u>**

**The Applicant**

52. The Applicant, Ms Trowers, complains of numerous arrears letter charges in varying amounts demanded by the Respondent.

**The Tribunal**

53. The Tribunal has studied all clauses of the lease and notes that no clause of the lease permits demands for administration charges. There is no evidence before the Tribunal that the Respondent contemplated proceedings for forfeiture of the Applicant's lease or the service of a notice under section 146. As the relevant contemplation or anticipation did not exist, the indemnity covenant, in paragraph 12 of the Fourth Schedule, could not be relied upon by the Landlord to recover its costs (see **Barrett v Robinson** [2014] UKUT 0322 (LC)).

54. In any event, the Tribunal finds that these demands were not reasonably made because the service charge demands made by the Respondent were unclear and made

demands (see REVERSAL Insurance Credit above and Insurance Revaluation Survey and Insurance below) which were not justified.

55. Accordingly, none of the demands made for the administration charges for arrears letters is payable.

**Professional Fee – Insurance Revaluation Survey**

**The Applicants**

56. Both Applicants complain that the figure demanded of £600 each for this survey is way above the £133.33 plus VAT actually paid by the Respondent and way above a reasonable sum for the service.
57. Added to the actual figure charged by the company which provided the service were enquiries made by Ms Trowers of companies providing the like service, which confirmed that the charge demanded was not reasonable.
58. Mr Cobb challenged the sum charged in many items of correspondence, but received no explanation for the size of the sum charged.

**The Tribunal**

59. The Tribunal notes the lack of response to the Applicants to numerous queries of the cost of this demand from the Respondent.
60. The Applicants have provided evidence of the charge for a desktop survey in the sum of £133.33 plus VAT from the RICS company used by the Respondent, and, in the absence of any explanation from the Respondent as to the demand in a much higher sum, finds that the sum payable by each of the Applicants is half of the quoted sum of £133.33 plus VAT and not the £1,200 sought.

**Insurance from and including 2020**

**The Applicants**

61. Both Applicants complain that the huge increase in insurance from £340.75 for Ms Trowers in 2019 to £600 in 2020 cannot be reasonable.
62. Ms Trowers provides an example of insurance she was able to secure for another property at a much lower rate.
63. She sought explanations from the Respondent. On 25 August 2020, Mr Shmuli Simon said that he would get back to her within 7 days; he has yet to do so.
64. Mr Cobb made numerous written enquiries of the Respondent, but was given no satisfactory explanation for the huge rise in costs save for the following:

*"The insurance has increased as a result of the survey. The insurance valuation survey is required every five years by our bank & our insurance company to ascertain the total rebuild value of the property if it was destroyed in any way. Having this value ensures that the building is insured to the correct value & not underinsured in anyway. We changed insurance company because the excesses were a lot higher with the previous company."*

**The Tribunal**

65. The Tribunal notes that Ms Trowers' lease requires her to pay half of the relevant costs and yet also notices that for the year 2019, this cost is £284.83 for Mr Cobb and £340.75 for Ms Trowers. This immediately can be seen to be incorrect and worrying.
66. The sums charged in 2019 add up to £625.58, which figure appears to the Tribunal to be in excess of what can be found in the market to the knowledge of the Tribunal. Ms Trowers was able to obtain a quotation for a 3-storey Victorian Town House in the sum of £432.23 exclusive of a renewal fee.
67. The most that the Respondent can reasonably charge for 2020 onwards, in the absence of a proper examination of the sums charged in 2019 (which could be done on a future application), is a total of £625.58 to be split equally between Ms Trowers and Mr Cobb.
68. If in future years, from 2023, the Respondent wishes to demand a higher sum for insurance, it will need to satisfy the tenants that the insurance cover obtained represents fair value for money. The tenants should not be used as a cash cow by their landlord.

**<u>Section 20c and Rule 13 Costs and Paragraph 5A Application</u>**

69. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.
70. The relevant law is detailed below:

***Section 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 … … leasehold valuation tribunal, ….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.*

*The … tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

**Commonhold and Leasehold Reform Act 2002 Schedule 11 Paragraph 5A Limitation of administration charges: costs of proceedings**

(2) 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.

(3) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(4) 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.

***Proceedings to which costs relate***

First-tier Tribunal proceedings

***"The relevant court or tribunal"***

The First-tier Tribunal

**Section 20C**

71. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. It follows a similar course when considering administration charges. *"Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust*

*that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."* (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000).

72. "*An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*

*"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order…;*

*"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".*

(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."* (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

73. The Applicants submitted that it had been necessary for them to apply to the Tribunal for a determination.

74. The Tribunal has weighed up the relevant factors here. It notes that the Applicants were wholly successful in their challenge to the demands made of them. The conduct of the managing agent, Moreland Estate Property Management Limited, and its representatives, has been very poor indeed. This matter could have easily been resolved long ago without the need for the Applicants to engage in fruitless correspondence with the Respondent's representatives and all of the upset that that necessarily entailed, including the Respondent chasing debts which did not validly exist.

75. Because the Applicants appear to have been forced before the Tribunal by the landlord's reluctance to respond to reasonable requests for information, the Tribunal has no hesitation in allowing their application under Section 20c of the Landlord and

Tenant Act 1985. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

**Paragraph 5A**

76. For the same reasons the Tribunal allows the Applicants' application under Section 20C above, the Tribunal allows their application under Paragraph 5A, so that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicants in this or any future year.

**Fees**

77. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*

> *"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."*

78. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondent to reimburse the Applicants with the fees paid by them. There appears to the Tribunal to have been no other viable option open to the Applicants to resolve the issues save by making their application to the Tribunal. The Respondent is ordered to pay the sum of £100 to the Applicant, Ms Trower, in reimbursement of fees.

**RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX

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

**18 Meaning of "service charge" and "relevant costs"**

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
(a) which is payable, directly or indirectly, for services, repairs, maintenance, 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.

**19 Limitation of service charges: reasonableness**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

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

**27A Liability to pay service charges: jurisdiction**

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

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

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

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration
agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.