FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at CENTRAL LONDON, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference	**:**	**LON/00BK/LSC/2022/0143**
Court Claim Number	**:**	**H34YY381**
HMCTS code	**:**	**Face-to-Face Hearing**
Property	**:**	**Flat 7, 154 Gloucester Terrace, London, W2 6HR**
Applicant/Claimant	**:**	**Mindmere Limited**
Representative	**:**	**Benjamin Haseldine (Counsel)**
Respondent/Defendant	**:**	**Paolo Clemente**
Representative	**:**	**In Person**
Tribunal members	**:**	**Judge Robert Latham** **Marina Krisco FRICS**
In the county court	**:**	**Judge Robert Latham**
Date of hearing	**:**	**27 February 2023**
Date of decision	**:**	**3 April 2023**

DECISION

Summary of the decisions by the Tribunal

1. Services charges of £13,406.75 are reasonable and payable for the service charge years 2018/19 to 2021/22.

2. An administration charge of £15,363 would be reasonable and payable in respect of the tribunal costs. The Tribunal would allow the Applicant to add VAT of £3,072.60 if it confirms that it is unable to recover VAT as an input tax.

3. The Respondent shall pay the Applicant £200 in respect of the tribunal fees paid by the Applicant.

4. The Tribunal makes an order under section 20C of the 1985 Act in respect of the Tribunal fees. Having determined the administration charge payable by the Respondent, it would be wrong to allow the Applicant to recover any additional sum against the Respondent through the service charge.

Summary of the decisions made by the Court

5. Interest of £2,556.77 is payable on the judgment date up to the date of the hearing, and an additional £62.44 up to the date of this determination.

6. The Court assesses the Court costs in the sum of £2,639.64. The Court would allow the Applicant to add VAT of £374.40 if it confirms that it is unable to recover VAT as an input tax.

7. The Court makes an order under section 20C of the 1985 Act in respect of the Court costs. Having determined the Court costs payable by the Respondent, it would be wrong to allow the Applicant to recover any additional sum against the Respondent through the service charge.

The Proceedings

1. The Applicant has provided a Bundle of Documents extending to 386 pages to which reference is made in this decision. The Tribunal has also been provided with a bundle of invoices extending to 530 pages. These are not relevant to the issues which we are required to determine.

2. Mindmere Limited which is the "Claimant" in the County Court and "Applicant" in the Tribunal proceedings will be referred to as the "Applicant". Mr Paolo Clemente who is the "Defendant" in the County Court and "Respondent" in the Tribunal proceedings will be referred to as the "Respondent"

3. Mindmere Limited is the freeholder of 142-168 (even) Gloucester Terrace and 9-15 (odd) Westbourne Terrace Mews, W12 ("the Estate"). The Estate

comprises 67 flats all of which are held on long leases. Each of the tenants is also a shareholder in the Mindmere Limited. Mr Paulo Clemente has been the tenant of Flat 7, 154 Gloucester Terrace since 16 July 2009. The Estate has been managed by JMW Barnard Management Limited (the "Managing Agents").

4. On 27 October 2021 (at p.6-13 of the Bundle), the Applicant issued proceedings in the County Court claiming £13,430.95 in respect of arrears of service charges and interest of £1,921.80 up to the date of the claim (and continuing). Although the pleading refers to arrears of rent, the reserved rent is only £1 per annum and this does not form art of the claim. The Applicant also claims the costs of the proceedings pursuant to CPR44.5 as being the costs claimed under paragraph 3(g) of the Fourth Schedule of the Respondent's Lease.

5. On 14 October 2021 (at p.14-19), the Respondent filed a Defence. He stated that he was unable to admit or deny the payability or reasonableness of the service charges as the Applicant had failed to provided the statutory information to which he was entitled. He suggested that work had been of an unsatisfactory quality and there may have been a breach of the statutory duty to consult both in respect of major works and qualifying long term agreements. He asked for the claim to be transferred to this tribunal pursuant to section 176A of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act").

6. On 8 April 2022 (at p.20), Deputy District Judge Le Bas, sitting in the County Court at Central London, ordered that "the claim be transferred to the First Tier Tribunal (Property Chamber)."

7. On 4 May 2022 (at p.21-24), Judge Martynski gave Directions. He set the matter down for a hearing on 3 October 2021. He recorded that the proceedings would be administered by the Tribunal. The Judge who heard the case would deal with all the issues in the case, including, interest and costs, at the same time as the tribunal decided the payability of the service charges. The Judge (sitting alone as a District Judge of the County Court) would make all necessary County Court orders. The Judge allocated the case, so far as was necessary for the purpose of the County Court proceedings, to the fast track.

8. By 20 May 2021, the Respondent was directed to give details of all the outstanding information that he required. On 20 May (at p.100-107), the Applicant made a request for extensive information.

9. By 24 June 2022, the Applicant was directed to email the Respondent: (a) a breakdown of all the charges claimed; (b) Service Charge accounts for the years in question; (c) copy demands for Service, Administration and Rent charges; and (d) any other information or documents reasonably required by the Respondent.

10. On 22 June (at p.108-110): the Applicant emailed to the Respondent some 200 pages of documents:

(a) A breakdown of the charges claimed (p.111)

(b) The Budgets for the years 2018/19 to 2021/22 (p.112-115)

(c) Service charge accounts 2018/19 to 2020/21 inclusive (p.116-174)

(d) Service charge demands sent to the Respondent for the period 6 March 2018 to the 2nd September 2021 (p.175-211).

(e) A schedule responding the Respondent's Request for Information (p.212-222).

(f) Documents to which reference is made in the above Schedule (p.223-305).

11. By 22 July 2022, the Respondent was directed to email to the Applicant his Statement of Case (which could be in the form of an attached Scott Schedule) setting out all items disputed with the reasons why they are disputed and, where applicable, any alternative sums offered by the Respondent. On 22 July 2022, the Respondent filed a Statement of Case (at p.36-38). This did not identify all the items that the Respondent sought to challenge. The Respondent rather complained of the Applicant's failure to provide either the information or the documents that he had requested. He complained that he had computer problems and undertook to submit an improved Statement of Case. This was not provided.

12. On 17 August 2022, the Applicant provided its Statement in Response (at (p.39-44). On 2 September 2022, the Applicant filed a witness statement from Janet Cummings, the property manager for the Managing Agents. The Respondent did not file any witness statement.

13. 3 October 2022 had been fixed as the final hearing of the application. However, a Procedural Judge concluded that the case was not ready to proceed. It was therefore set down for a Case Management Hearing ("CMH"). The Applicant was represented by Mr Benjamin Haseldine (Counsel). The Respondent appeared in person.

14. Judge Korn gave further Directions (at p.25-29). He refixed the hearing of the claim for 27 February 2023. By 31 October 2022, the Respondent was directed to email to the Applicant a completed Scott Schedule setting out all items disputed with the reasons why they are disputed and, where applicable, any alternative sums offered by the Respondent. The Directions provided that the Respondent could also include within the Scott Schedule a focused and limited set of questions for the Applicant seeking clarification and/or a further breakdown of service charge information already supplied by the Applicant. The Scott Schedule, including any questions, must be as short and as succinct as reasonably possible and in any event should not exceed 10 pages.

15. On 1 November 2022, the Respondent provided a Scott Schedule, but this was restricted to the service charge year 2017/18 (at p.355-358). He challenged 169 items of expenditure. He stated that he had carried out a

high level review of some 2,000 pages of invoices and bank statements which did not support the service charge accounts. He suggested that only 31% of the service charges were payable. In a subsequent email (at p.359), he stated that he did not propose to perform a detailed review of the subsequent years, but would apply a 69% discount to the rest.

16. On 8 November 2022 (at p.362-3), the Applicant applied (i) to strike out the Respondent's defence to the claim in so far as it related to any service charges claimed for the period after 31 March 2018; (ii) to amend the Directions by deleting the requirement for the Applicant to respond to the Scott Schedule; (iii) to enter judgment in the sum of £12,859.29 leaving £571.66 in dispute for the service charge year 2017/18; and (iv) for the assessment of costs and interest to be determined at the hearing on 27 February.

17. On 18 November 2022 (at p.372), the Respondent applied to strike out the Applicant's claim in its entirety for failure to provide the information and documents that the Applicant had requested.

18. On 13 December 2022, these applications were listed before Judge Mohabir. Mr Fleming, a Solicitor with William Heath & Co, appeared for the Applicant. The Respondent did not appear. The Respondent was abroad and had difficulty with the video link. The CMH was therefore adjourned to 17 January 2023 (p.30-31).

19. On 17 January 2023, the CMH was listed before Judge Tagliavini. Mr Fleming appeared for the Applicant. The Respondent did not appear. The Applicant provided a 51-page hearing bundle and a skeleton argument. The Judge made the following determinations (at p.31-35):

    (i) The Tribunal dismissed the Respondent's application to strike out the Applicant's case, or any part of it. The Tribunal Judge was satisfied that the Applicant had provided sufficient disclosure to allow the Respondent to formulate his claim.

    (ii) The Tribunal debarred the Respondent from disputing any service charge arising from any period after 31 August 2018. This direction was made pursuant to Rule 9(3)(b) and 9(7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules ("the Tribunal Rules"). The Tribunal Judge found that the Respondent had failed to comply with the Directions given on 4 May and 3 October 2022 in that he had failed to state his objections to the heads of service charge for the whole of the period in dispute. The Judge found that the Respondent's case lacked clarity and was difficult to understand. He had failed to provide an overview of the heads of the service charges that he disputed or the reasons why. He had rather immersed himself in a level of detail to the extent the sense and purpose of his 'Defence' had been lost, thereby defeating the purpose for which the tribunal's Directions had been given.

    (iii) The Directions of 3 October 2022 were varied so that the Respondent was no longer required to respond to the Respondent's Scott Schedule.

(iv) The Judge declined to enter judgment for the Applicant as this was a matter for the County Court. She recorded that she was sitting in the capacity of a Tribunal Judge and that these would be a matter for the final hearing at which the Judge would be sitting in the capacity of both a Tribunal Judge and a County Court Judge.

20. The Case was listed before us on Monday, 27 February 2023. On Friday, 24 February, the tribunal received the following:

(i) An application from the Respondent to reinstate his defence.

(ii) An N260 Statement of Costs from the Applicant in which it seeks costs of £26,431.64 (including VAT of £4,119).

The Hearing

21. The Applicant was represented by Mr Haseldine, instructed by William Heath & Co. He was accompanied by Ms Janet Cummings, from the Managing Agents.

22. Mr Clemente appeared in person. He explained that he had been unable to attend the hearing on 13 December 2022 as he had been in Italy. He had been provided with a video link, but this had not worked. He had been unable to attend the hearing on 17 January as he was still in Italy. He had been due to return on 10 January, but his passport had been stolen at the airport. He needed to secure a new passport and he had been unable to return until 18 January. The position had been very stressful for him and he had been admitted that he had not notified the tribunal.

The Issues to be Determined

23. These proceedings are being administered by the Tribunal under the Deployment Pilot Scheme. Judge Latham has dealt with all the issues in the case, including interest and costs, at the same time as the Tribunal has decided the payability of the service charges. Judge Latham (sitting alone as a District Judge of the County Court) has made all necessary County Court orders. DJ Latham is required to apply the Civil Procedure Rules 1998 (the "CPR") in determining any County Court issues.

24. The following issues fall to be determined:

(i) The Respondent's application for relief from the debarring order made by Judge Tagliavini. This is a matter for the Tribunal, applying the Tribunal Rules. The Tribunal declines to grant relief from sanction.

(ii) The service charges payable for the years in dispute. This is a matter for the Tribunal. The Tribunal determines that the sum of £13,406.75 is payable and reasonable.

(iii) Interest. This is matter for DJ Latham. He determines that interest of £2,556.77 is payable (assessed at 5%).

(iv) The Applicant claims contractual costs pursuant to CPR 44.5 and paragraph 3(g) of the Fourth Schedule to the lease. This is a matter for DJ Latham, in so far as it relates to the costs incurred in the County Court and for the Tribunal in respect of the costs incurred before the Tribunal.

(v) The Respondent made an application for an order pursuant to section 20C of the 1985 Act. This is a matter for DJ Latham, in so far as it relates to the costs incurred in the County Court and for the Tribunal in respect of the costs incurred before the Tribunal.

The Lease

25. The Respondent's lease (at p.58-89) is dated 15 October 1982 and is for a term of 125 years from 29 September 1982. The lessee pays a nominal rent of £1 pa.

26. The service charge provisions are set out in Clause 7 of the lease. By Clause 7(a), the lessor covenants to prepare and send to the lessee an estimate of the service charge for each financial year (the financial year end is the 31st March). The sum payable under the estimate is "all costs relating to the management of the Estate including the costs expenses and outgoings and matters referred to in the Sixth Schedule hereto".

27. Clause 7(b) provides that the estimate includes both a contribution to a reserve fund and also any expenses that have been incurred prior to the commencement or after the end of the relevant year. There is no provision for a balancing charge or balancing credits. Any difference between the actual expenditure and the estimate is dealt with by a transfer to or from the reserve account.

28. By Clause 7(c), the service charges shown as due in the estimates are payable by equal quarterly payments in advance on the usual quarter days. The proportion of the service charge payable by each flat is calculated is set out in sub-clause (f) which provides "The proportion attributable to the Demised Premises will be the same proportion as the rateable value from time to time of the Demised Premises bears to the rateable value of the whole of the Estate". Sub-clause (c) also allows for "special levies" to be made during any year "if additional sums are required to enable the Lessor to perform its covenants hereunder".

29. The Respondent has queried his service charge contribution which are based on rateable values (Clause 7(f). These were computed some years ago based on the rateable values details of which were obtained from the City of Westminster (see p.293-301). The Respondent's contribution is 1.741%.

30. By Clause 3(g), the lessee covenants:

> "To pay all costs charges and expenses (including Solicitors' costs and Surveyors' fees) incurred by the Lessor for the purpose of or incidental

to the preparation and service of a notice under Section 146 and/or 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by granted by the Court"

31. By Clause 7(6), interest is payable on any arrears at the rate of 4% above the William & Glyn's Base Rate from time to time.

Issue 1: The Respondent's Application for Relief from Sanction.

32. This is an issue for the Tribunal, applying the Tribunal Rules. In *Denton v TH White* [2014] EWCA Civ 906; [2014] 1 WLR 3926, the Court of Appeal set down a three state test to be applied where a party is seeking relief from a sanction under the CPR. In *BPP Holdings v Revenue & Customs Commissioners* [2017] UKSC 55; [2017] 1 WLR 2945, the Supreme Court held that tribunals should adopt a similar test. The three stage test requires the Tribunal to:

(i) identify and assess the seriousness and significance of the failure to comply with the Directions;

(ii) consider why the default occurred; and

(iii) evaluate all the circumstances of the case, so as to enable the tribunal to deal with the application justly and in accordance with the Overriding Objectives in Rule 3 of the Tribunal Rules.

The Courts have emphasised that litigation cannot be conducted efficiently and at proportionate cost without fostering a culture of compliance.

33. The Tribunal first considers the seriousness of the Respondent's breach. This is very serious. It would not have been possible to determine the application, were the Tribunal to grant relief from sanction. Indeed, the Respondent has yet to formulate his case. Until this is done, it is impossible for the Respondent to reply to this. The case had initially been listed for hearing on 3 October 2022. This had been unable to proceed because the Respondent had failed to formulate his case.

34. This Tribunal is used to dealing with litigants in person. It gives Directions to enable each party to formulate their case so that the tribunal can determine it justly. Mr Clemente suggested that each invoice needed to specify how the sum was payable under the terms of the lease. It is incumbent on a tenant seeking to argue that service charges are not payable to plead their case. The 1985 Act does not place an onus on a tribunal to investigate the issue of reasonableness in all cases (see *32 St John's Road (Eastbourne) Management Co Ltd v Gell* [2021] EWCA Civ 789; [2021] 1 WLR 6094).

35. On 4 May 2022, the Tribunal had directed the Respondent to serve his Statement of Case giving guidance on what was required. The documents filed by the Respondent on 22 July did not comply with this Direction. Mr Clemente complained that he had computer problems and undertook to

submit an improved Statement of Case. This was not provided. On 3 October 2022, Judge Korn gave the Respondent a further opportunity to file a Scott Schedule. Mr Clemente failed to comply with this Direction. Mr Clemente has still not provided with a Scott Schedule for all the years that he now wishes to challenge. As Judge Tagliavini noted, Mr Clemente has immersed himself in a level of detail to the extent that the sense and purpose of any challenge has been lost.

36. Mr Clemente continues to blame the Applicant for his inability to provide the Scott Schedule. On the one hand, he complains that the Applicant has not provided adequate disclosure; on the other hand, he complains about the quantity of the documents that have been disclosed. It is apparent that Mr Clemente has no confidence in the manner in which his neighbours manage the Estate. He stated that he felt that if he withheld payment, this would compel the Applicant to provide the information that he wanted.

37. The Applicant has provided the service charge accounts for the years in dispute. This would normally be sufficient for a tenant to identify any service charges which he considers not to be payable or to be unreasonable. Mr Clemente has rather sought to challenge the whole basis whereby the service charge accounts have been prepared. These have been audited by Chartered Accountants. It is probable that these have been prepared on an accrual basis, which would render any attempt to reconcile the invoices against the accounts to be a pointless exercise.

38. Were the Tribunal to lift the debarring order to enable the Respondent to challenge the service charges payable for the years 2018/19 to 2021/22, it would be necessary to give yet further directions for the Respondent to serve his Statement of Case and Scott Schedule. Today's hearing could not proceed. Substantial further costs would be incurred. The Tribunal is satisfied, having regard to the Overriding Objectives, that relief from sanction should be refused.

Issue 2: The Service Charges Payable for the years 2018/19 to 2021/22

39. The Applicant seeks a money judgment in the sum of £13,430.95 for the service charges payable for the years 2018/19 to 2021/22. The Tribunal must determine whether these sums are reasonable and payable. The Applicant has provided the Mr Clemente's Running Statement at p.91-95. £8,631.04 relates to service charge contributions (p.93) whilst £4,799.91 relates to reserve contributions (see p.92).

40. The breakdown of these sums between the four years is provided in the Schedule at p.305: 2018/19: £2,436.88; 2019/20: £2,593.76; 2020/21: £2,886.44; 2021/22 (3 quarters): £2,302.26; 7 April 2018 major works levy: £4,016.61. This totals £14,235.95. From this, charges of £805 were cancelled, giving a total of £13,430.95.

41. The Respondent is debarred from challenging the payability and reasonableness of these charges. The Tribunal therefore finds that these

sums are reasonable and payable having regard to the Landlord and Tenant Act 1985 ("the 1985 Act").

42. The Respondent has filed a Scott Schedule in respect of the year 2017/18. This lists some 169 items. In his Schedule, he suggests that it is "highly unlikely" that a number of items have been spent on the Estate. He suggests that it is "highly unlikely" that other items are chargeable under the lease. He suggests that some items have been duplicated. A fourth category is works for which there was no statutory consultation. However, no such works have been identified. Mr Clemente faces two insuperable problems. First, this is not a service charge year which is subject to the Applicant's claim. He has paid the service charges for the year. Secondly, he has not provided any witness statement to support his challenges. Any such statement should have been filed by 9 September 2022. The Respondent has not satisfied that any adjustment needs to be paid in respect of the service charges payable for this year.

43. Mr Clemente challenged his 1.741% contribution towards the service charge. He has analysed Westminster's Valuation List in force from 1 April 1973 to 31 March 1990. He has noted that three rateable units were excluded namely three pram stores at (i) 144 Gloucester Terrace: £16 (p.295); (ii) 148 Gloucester Terrace: £8 (p.296) and (iii) 154 Gloucester Terrace: £8 (p.298). It is not entirely clear whether these are demised to a lessee or are retained by the Applicant Company. However, if these three items were included, this would reduce the Respondent's apportionment from 1.741 to 1.738%, a reduction of 0.003%. This is de minimis. Such a minor error would not require a recalculation of all the service charges. However, the Applicant is willing to give the Respondent a credit of £24.20 in respect of this.

44. The Tribunal therefore concludes that service charges of £13,406.75 (£13,430.95 less £24.20) are payable for the years 2018/9 to 2021/22. The claim does not include the service charge year 2017/18.

Issue 3: Interest (decision of DJ Latham)

45. The Applicant initially claimed interest at 8%, the money judgment rate. The lease provided for interest to be payable on any arrears at the rate of 4% above the William & Glyn's Base Rate from time to time. Williams and Glyn is now part of the Royal Bank of Scotland. DJ Latham concluded that the appropriate rate of interest is 5%. The interest payable is £2,556.77

Issue 4 – Costs (decision DJ Latham)

46. On Friday, 24 February 2023, the Applicant has served a Form N260 Statement of Costs (Summary Assessment) claiming costs in the sum of £26,431.64 (including VAT of £4,119). The hearing was on the Monday. CPR PD 9.5(4)(a) required the Applicant to serve the Form N260 two clear days before the hearing. This requirement is particularly important when a landlord is dealing with a litigant in person.

47. All the work has been carried by a Grade A Solicitor at a rate of £250 per hour. The solicitors are based in Sussex Gardens, W2. Under the guideline rates, this would be London 3 Band and the hourly rate for a Grade A fee earner would be £282. The following costs are claimed:

Solicitors' costs	£13,720.00
Counsel's Fees	4,250.00
Managing Agent's fees	3,375.00
Court Fees	967.64
VAT on solicitors and counsel's fees	3,444.00
VAT on other expenses	675.00
Total:	**£26,431.64**

48. At the end of the hearing, DJ Latham indicated to the parties that the Tribunal had found that service charges of £13,406.75 were reasonable and payable and that DJ Latham had assessed interest to the date of the hearing in the sum of £2,556.77. The parties were informed that the reasons for these findings would be confirmed in its final determination.

49. The Applicant made no application for costs pursuant to Rule 13 of the Tribunal Rules. This was not surprising given the high threshold which has been set for an award of costs on grounds of unreasonable conduct under Rule 13(1)(b) (see *Willow Court Management v Alexander* [2016] UKUT 290 (LC); [2016] L&TR 34). Had such an application been made, his would have been a matter for the Tribunal.

50. DJ Latham directed the parties to make written submissions on costs. By 13 March, the Respondent was directed to serve his submissions, and by 20 March, the Applicant was directed to serve its submissions in response. DJ Latham pointed out that the Tribunal is normally a “no costs” jurisdiction” and that this was an issue that the parties should address in their submissions. The parties were asked to have regard to the decision in *Khan v LB Tower Hamlets* [2022] EWCA Civ 831; [2022] HLR 41 ("*Khan*").

51. On 9 March, the Respondent submitted his submissions on costs. He seeks to raise points relating to his liability to pay service charges. This has been determined by the Tribunal and is not relevant to the issue of costs. He relies on the fact that this Tribunal is normally a no-costs jurisdiction. He suggests that a claim for costs of £26,432 is wholly disproportionate to the claim for arrears of service charges which the Tribunal has assessed in the sum of £13,431. Mr Clemente questions the contractual relationship between the Applicant and their Solicitors. However, Mr Fleming has signed the "indemnity statement" on the Form N260 which confirms that the Applicant is contractually bound to pay the sums claimed. He also challenges the sums claimed by the Managing Agents. The Respondent

complains that no costs budget was filed. However, this case was allocated to the fast track, so budgets were not required.

52. On 15 March, the Applicant's Solicitor filed its submissions. He has provided three authorities: (i) *Khan*; (ii) *Chaplair Ltd v Kumari* [2015] EWCA Civ 798; [2015] HLR 39 ("*Chaplair*") and (iii) *Kensquare Ltd v Boake* [2021] EWCA Civ 1725; [2022] HLR 26 ("*Kensquare*"). The Applicant asserts that the Form N260 was not served late, counting that the form served on the Friday before a hearing on the Monday, was served "3 days before the hearing". The Court does not accept this. Applying CRP 2.8, the Tribunal is satisfied that two clear days' notice was required and that Saturday and Sunday are excluded. This should therefore have been served no later than the previous Wednesday.

53. The Applicant claims its costs pursuant to the terms of the Respondent's lease. Costs are therefore sought on an indemnity basis. The Court is referred to CPR 44.3 which provides that the requirement of proportionality does not apply where costs are payable on the indemnity basis as opposed to the standard basis. Relying on *Kensquare,* the Applicant contends that it is entitled to its costs before the Tribunal.

54. At [13], the Applicant/Claimant states:

> "In order to conclude the litigation, the Claimant would ask that the tribunal summarily assesses the costs in accordance with the schedule submitted. In the alternative the costs should be subject to a detailed assessment on the indemnity basis."

55. The Tribunal has no jurisdiction to assess the costs in County Court proceedings under the CPR. This is a matter for DJ Latham sitting as a judge in the County Court. Contractual costs have always been an important part of the Applicant's pleaded case in the County Court. The costs sought are often being substantially higher than the arrears of service charges. In such circumstances, the Court expects a landlord to formulate its claim for costs so that the Court can summarily assess costs. To defer the application for a detailed assessment would merely add to the costs that the Applicant seeks to pass onto the Respondent through his lease. However, the claim for costs does raise a number of issues which DJ Latham is required to address.

4.1 Is the Applicant entitled to its costs pursuant to the Respondent's Lease (decision of DJ Latham)?

56. The Applicant relies on Clause 3(g) of the lease under which the Respondent covenants (emphasis added):

> "To pay all costs charges and expenses (including Solicitors' costs and Surveyors' fees) incurred by the Lessor for the purpose of or incidental

to the preparation and service of a notice under Section 146 and/or 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by granted by the Court"

57. On 7 October 2021 (at p.90-98), the Applicant's Solicitor sent a pre-action letter in respect of the outstanding arrears of £13,431.05. The letter stated that proceedings would be issued if the sum demanded was not paid within 7 days. The letter further stated:

> "We confirm we are instructed with a view to serving a notice under section 146 Law of Property Act 1925 and you are accordingly liable for our clients' costs under the relevant provision of your lease".

58. The Particulars of Claim are at p.6-13. At paragraph 5, the Applicant pleads:

> "The Claimant further claims the costs of these proceedings pursuant to CPR44.5 as being costs claimed under a contract namely paragraph 3(g) of the Fourth Schedule to the Lease under which the Defendant is liable to pay costs incurred by the Claimant for the purpose of or incidental to the preparation and service of a notice under section 146 Law of Property Act 1925"

59. In *Khan*, the tenant covenanted to

> "pay to the Lessors all costs charges and expenses including Solicitors' Counsels' and Surveyors' costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such costs charges and expenses of and incidental to the preparation and service of a notice under the said Sections and of and incidental to the inspection of the Demised Premises and the drawing up of Schedules of Dilapidations such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court."

60. The Court of Appeal (Macur, Newey and Nugee LJJ) held that the costs incurred by the claimant landlord in the Tribunal proceedings were too remote from "the preparation and service of a notice under s.146, Law of Property Act 1925", to be said to be "incidental to" the preparation and service of such a notice. However, at the county court hearing, the landlord had not argued that the costs of the Tribunal proceedings were "in contemplation" of service of a s.146 notice. The Court of Appeal was not willing to permit the landlord to raise this argument on appeal. The Court gave no indication as to what the outcome would have been had the landlord been able to rely on this element of the clause.

61. The Applicant rather seeks to rely on *Kensquare*, in which the tenant covenanted to pay:

> "To pay all costs charges and expenses (including Solicitors' costs and Surveyors' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court and to pay all expenses incurred by the Lessor incidental to the preparation and service of a Schedule of Dilapidations at the expiration or sooner determination of the term hereby granted"

62. The Court of Appeal (Newey, Stuart-Smith and Andrews LLJJ) held that the landlord was entitled to recover all costs incurred for the purpose of service of a notice under section 146 Law of Property Act 1925. The landlord had to bring proceedings in the Tribunal before serving a s.146 notice and was therefore entitled to recover the costs of the 2017 proceedings.

63. Newey LJ gave the lead judgment in each of these cases. At [45] in *Khan* he noted:

> "In *Kensquare*, I said at paragraph 42 that "comparison with leases which have featured in other cases does not provide a reliable guide to how Ms Boakye's lease is to be construed". In that connection, I quoted among other things the observation of His Honour Judge Bridge, sitting in the UT, in *Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd* [2016] UKUT 317 (LC), at paragraph 21, "Each case is fact-specific, in the sense that what must be construed is the particular clause in the particular lease of the particular property, and conclusions arrived at by previous courts or tribunals in relation to other clauses in other leases of other property are unlikely to be of much assistance". The point has a resonance in the present context. It cannot be taken for granted from the fact that one clause has been held to allow, or not to allow, a landlord to recover a particular category of costs that the same will be true of a differently worded clause."

64. The Applicant notes that the terms of Clause 3(g) in the Respondent's lease are identical to the terms of the lease *Kensquare*. In both the pre-action letter and the Particulars of Claim, the Applicant has made its intention clear, namely that these proceedings are "for the purpose of or incidental to the preparation and service" of a Section 146 Notice. In *Kensquare*, the Court of Appeal held that the landlord was entitled to recover its contractual costs. There is no justification for DJ Latham to depart from this decision.

4.2 The Assessment of Costs (Decision of DJ Latham)

65. Neither party has had regard to the following passage from the judgment of Newey LJ in *Khan* (emphasis added):

> "76. For my part, I find Mr Rodger's reasoning and conclusions convincing. I agree with him that, where part of proceedings has been transferred from the County Court to the FTT (in the present case, under section 176A of the 2002 Act), the County Court has no jurisdiction to make any order for costs in respect of the FTT proceedings. It follows that the District Judge had no power to order Mr Khan to pay the Council's costs of the FTT stage of this litigation."

66. Newey LJ was highlighting an issue which has caused some uncertainty over recent years. As the most recent decision of the Court of Appeal, it is something to which DJ Latham must give careful consideration, albeit that this part of the judgment is strictly "obiter" (i.e. not a essential part of the reasoning to the substantive decision). Newey LJ has identified two distinct and separate jurisdictions. One cannot use section 51 of the of the Senior Courts Act 1981 and the County Court costs jurisdiction to recover the Tribunal (FTT) element and vice versa.

67. In *John Romans Park Homes Ltd* (Claim No.C00WY133, 2 December 2019, Unreported), Martin Rodger KC, the Deputy Chamber President, sitting as a County Court Judge, had observed:

> "46. If the tribunal stages of the proceedings are properly regarded as involving proceedings in the First-tier Tribunal and in the Upper Tribunal, then the issue of which forum has jurisdiction over costs incurred in the tribunals becomes clear. Section 51(1) [Senior Courts Act 1981] is expressed to be 'subject to the provisions of this or any other enactment'. Where costs are incurred in proceedings in the FTT or the Upper Tribunal 'full power to determine by whom and to what extent the costs are to be paid' vests in those tribunals by section 29(2) [Tribunals, Courts and Enforcement Act 2007]. To treat costs incurred at those stages as falling within the discretion of the court under section 51(1) would be contrary to the express terms of section 29(2), and would ignore the direction that section 51(1) is subject to the provisions of any other enactment."

68. Martin Rodger KC concluded that there are two hermetically sealed boxes one labelled "County Court" and the other "Tribunal". There can be no seepage between the two. The Tribunal Rules do not permit a landlord to recover their Tribunal costs, absent unreasonable behaviour. However, the higher courts have not provided any guidance as to how a landlord, with a contractual right to his costs, enforce that right.

69. The Applicant relies on *Chaplair*, in which the Court of Appeal (Arden, Patten and Christopher Clarke LJJ) upheld the County Court judge who made an order for the payment of costs on an indemnity basis under the

terms of the lease notwithstanding that under the CPR the claim in the County Court was allocated to the small claims track ("SCT").

70. Arden LJ provided the following analysis:

> "37. In my judgment, it follows that the judge had power to make an award of costs having regard to the terms of the lease. Moreover, in the present case the judge went on to exercise that discretion. He was entitled to take into account the costs before the LVT because they formed part of the costs covered by the contractual right. He was also entitled to take into account the costs occurred in pursuing the claim on the SCT. Because Chaplair had a right to all its costs, it was not restricted to the fixed costs which can be awarded under the CPR in a case on SCT."

71. The Court was thereby recognising the right of the landlord to rely on his contractual remedy and that these carried significant weight in the County Court. Thus, in relation to the Tribunal element of costs, the landlord would need to fall back on a purely contractual claim, in essence claiming to the Court/Tribunal that he had a contractual right to his costs. In failing to pay these costs, the lessee is in breach of contract and the landlord is entitled to damages for this breach, the quantum being the costs incurred in the proceedings. In short this is not a claim for costs, it is a claim for breach of covenant that just happen to be legal costs.

72. However, if the claim is framed this way, it becomes subject to the limitations upon the recoverability of "service charges" under the 1985 Act and the corresponding provisions in relation to "administration charges" which are contained in Schedule 11 of the 2002 Act.

73. This problem had been identified by the Upper Tribunal (Holgate J and HHJ Hodge QC) in *Avon Ground Rents Ltd v Child* [2018] UKUT 204 (LC); [2018] HLR 44 (emphasis added):

> "35. Para. 2 of Sch.11 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable. By para. 4(1) a demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges; and by para. 4(3) a tenant may withhold payment of an administration charge which has been demanded from him if para. 4(1) is not complied with in relation to the demand. Para. 5(1) enables an application to be made to the FTT for a determination whether an administration charge is payable and, if it is, as to (amongst other things) the amount which is payable (see also para. 2). But by para. 5(4)(c) no such application may be made in respect of a matter which has been the subject of a determination by a court. An agreement by a tenant is rendered void by para. 5(6) insofar as it purports to provide for a determination in a

particular manner or on particular evidence of any question which could be the subject of an application under para. 5(1).

36. Sch.11, para. 5A (inserted with effect from 6 April 2017 by section 131 of the Housing and Planning Act 2016 and corresponding to s.20C of the 1985 Act in relation to service charges) enables a tenant of a dwelling in England to apply to "the relevant court or tribunal" (as explained in the table to para. 5(3)(b)) for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs incurred or to be incurred. By para. 5(2) the relevant court or tribunal may make "whatever order on the application it considers to be just and equitable".

74. Having identified the potential problems, the Upper Tribunal ducked the issue:

"44. We would add that it may be appropriate for the courts (or for this Tribunal) to consider the relationship between, on the one hand, s.51 of the 1981 Act and the decision in *Chaplair* and, on the other, paras. 2 and 5(6) of Sch.11 to the 2002 Act (see para. 35 above). In view of the ouster clause in para. 5(6), is such a contractual right subject to the control contained in para. 2? If so, would it be relevant for the court to have regard to the rules governing costs in the FTT (to which service charge disputes have been entrusted by the legislation) when exercising the discretionary power under s. 51 of the 1981 Act? These potentially difficult issues were not the subject of argument in these appeals and so we say no more about them here. Any argument about these points will have to await another case where it is appropriate for them to be raised."

75. DJ Latham has concluded that the following approach is the proportionate approach to adopt, having regard to the Overriding Objectives in both the CPR and the Tribunal Rules:

(i) DJ Latham will assess the contractual costs to which the Applicant is entitled in respect of the proceedings before the County Court. These will be assessed on an indemnity basis under section 51 of the Supreme Court Act 1981.

(ii) The Tribunal will assess the contractual costs to which the Applicant is entitled in respect of the proceedings before the Tribunal. The correct approach would be for the Applicant to demand them as an administration charge, accompanied by the requisite Summary of Rights and Obligations. However, the Respondent is entitled to a determination as to whether they would be payable were they to be demanded. The Applicant has indicated the administration charge that it would seek to levy. The Respondent has challenged the reasonableness of the sum demanded. This is sufficient to engage the Tribunal's jurisdiction under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. These are "litigation costs"

and the Tribunal is entitled to make whatever order on the application it considers to be "just and equitable". The Tribunal is satisfied that it would not be proportionate to adjourn the application for (i) the Applicant to make a formal demand for an administration charge in respect of these costs and (ii) the Respondent to make a formal application under paragraph 5A. This would merely increase costs.

76. DJ Latham has noted that the Applicant has not complied with CPR PD 9.5(4)(a) in that the Form N260 was not served two clear days before the hearing. The Judge is entitled to take this into account in determining what costs to award. He is satisfied that the appropriate for the Applicant to be able to claim any costs in respect of the written representations (ie any costs incurred after the hearing on 27 February.

4.3 The Apportionment of the County Court Costs (Decision of DJ Latham)

77. The Applicant has not apportioned its costs between the County Court and the Tribunal. It has therefore been necessary for DJ Latham to do so.

Apportionment of Costs		
	County Court	**Tribunal**
Solicitor's Costs	£1,372	£12,348
Counsel's Fees	£500	£3,750
Managing Agent	-	£3,375
Court Fees	£767.64	£200
Total:	£2,639.64	£19,673
VAT	£374.40	£3,894.60

78. On 8 April, DDJ Le Bas transferred the County Court claim to the Tribunal. Thereafter, the case was administered by the Tribunal which gave case management directions and imposed sanctions pursuant to the Tribunal Rules. The Tribunal determined the payability of the service charges pursuant to the Tribunal Rules. The jurisdiction only passed back to the County Court when DJ Latham was required to determine interest and the County Court costs. The assessment of the Tribunal costs was a matter for the Tribunal.

79. In apportioning the costs, DJ Latham has had regard to the following:

(i) The solicitors are claiming £8,760 in respect of their work on documents. Of this, only £541.66 (6%) related to work prior to the transfer.

The Court has decided to split the solicitor's costs 10% to County Court and 90% to Tribunal.

(ii) Counsel's fee is £2,750 for the hearing. The Court apportions £500 towards the arguments on interest and costs. This was only a minor part of the hearing. Counsel claims additional fees of £1,500 for work when this matter was before the Tribunal.

(iii) The costs claimed by the Managing Agent all relates to the period when the proceedings were before the Tribunal.

(iv) The Applicant paid County Court fees of £767.64 and a Tribunal hearing fee of £200.

4.4 Assessment of the County Court Costs (Decision of DJ Latham)

80. These costs are claimed pursuant to the lease. DJ Latham must assess these having regard to CRR 44.5 which provides:

> "(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—
>
> (a) have been reasonably incurred; and
> (b) are reasonable in amount,
>
> and the court will assess them accordingly.
>
> (2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44—General rules about costs sets out circumstances where the court may order otherwise.
>
> (3) Paragraph (1) does not apply where the contract is between a solicitor and client."

81. In *Chaplair, Arden LJ* provided useful guidance. An order for the payment of costs by one party to another is always a discretion under section 51 of the Senior Courts Act 1981. However, where there is a contractual right to the costs, the discretion should ordinarily be exercised so as to reflect the contractual right.

82. The Applicant has succeeded in its claim. The County Court element of the costs is relatively modest. DJ Latham is satisfied that these are reasonable. He therefore assesses the County Court costs in the sum of £2,639.64.

83. The Applicant also claims VAT. CPR PD 44.2.3 provides that "VAT should not be included in a claim for costs if the receiving party is able to recover VAT as an input tax". The Court only allows the Applicant to add VAT of £374.40 if it confirms that it is unable to recover VAT as an input tax.

84. DJ Latham makes an order under section 20C of the 1985 Act in respect of the Court fees. Having determined the costs payable by the Respondent, it would be wrong to allow the Applicant to recover any additional sum against the Respondent through the service charge.

4.4 Assessment of the Tribunal Court Costs (Decision of the Tribunal)

85. These costs are also claimed pursuant to the lease. The correct approach would be for the Applicant to demand them as an administration charge accompanied by the requisite Summary of Rights and Obligations. However, the Respondent is entitled to a determination as to whether they would be payable were they to be demanded. He has challenged the reasonableness of the sums claimed, thereby invoking paragraph 5A, Schedule 11 of the 2002 Act. DJ has apportioned £19,673 as the costs relating to the Tribunal proceedings.

86. Schedule 11 of 2002 Act relates to the reasonableness of administration charges. By paragraph 5, an applicant may apply to the tribunal for a determination as to whether any administration charge is reasonable. By paragraph 2, an administration charge is payable "only to the extent that the amount of the charge is reasonable". Paragraph 5A was inserted by section 131 of the Housing and Planning Act 2016. A tenant may apply to this tribunal "for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs". The tribunal may make "whatever order on the application it considers to be just and equitable".

87. In assessing the Respondent's liability to pay the administration charge of £19,673, the Tribunal has regard to the following factors:

(i) The Applicant has a contractual right to claim costs. These would normally be assessed on an indemnity basis. It has succeeded in its claim against the Respondent.

(ii) The Tribunal must not only consider whether they are "reasonable" under paragraph 2; it has a wider discretion to make such further order on the application it considers to be "just and equitable". This affords the Tribunal a wider discretion than what is reasonable. The Tribunal would be entitled is consider the proportionality of the costs claimed. It would also be entitled to have regard to the fact that it is normally a "no costs" jurisdiction where legal representation should not be necessary.

(iii) The Tribunal has regard to the conduct of the Respondent. Despite the Directions given by the Tribunal, he has failed to formulate his case with any precision. He has immersed himself in a level of detail to the extent that he has lost the sense and purpose of any challenge. He has insisted on the disclosure of numerous invoices merely because he was on a "fishing expedition". This has required the Tribunal to give Directions on a number of occasions and to vacate the hearing date fixed for 3 October 2022. The Tribunal has debarred him from defending the service charges which are claimed because of his failure to comply with Directions.

(iv) The Applicant Company is owned and controlled by the lessees. The Company (and ultimately) the lessees will be liable for any costs not recovered through the service charge account. Mr Clemente suggests that the costs could not be passed on to the other lessees through the service charge account because of the duty to consult under section 20 of the 1985 Act. He is wrong, as legal costs would not be "qualifying works".

88. The Tribunal has decided that the following costs are reasonable (having regard to the extended discretion afforded by paragraph 5A):

(i) Solicitor's Costs of £11,113. The Tribunal makes a 10% reduction to the sum claimed. We are satisfied that Mr Fleming's charge out rate of £250 per hour is reasonable. We also accept that significant extra work was required as a result of the manner in which the Respondent has approached this claim. However, we question whether it was necessary for a Grade A fee earner to do all the work.

(ii) Counsel's Fees: We allow £3,250 (in addition to the £500 allowed in respect of the Court costs). We make a reduction of £500. We note that maximum allowed by CPR 45.38 for a fast track trial where the sum claimed is more than £15,000 is £1,650. Counsel is claiming a fee of £2,750 for the hearing, in addition to £1,500 for his previous involvement in the case.

(iii) Managing Agent's Fees: We allow £1,000. A total of £3,375 is claimed, namely 25 hours work at £135 per hour. Five hours is claimed for collating documents, witness statements and liaising with solicitors, two hours for pre-hearing meetings with counsel and 18 hours for attending two tribunal hearings. Thus 10 hours is claimed for each of two tribunal hearings for a firm based in W8. We are satisfied that this is manifestly excessive. If managing agents feel unable to handle tribunal proceedings and instruct solicitors, any duplication of work must be avoided. Ms Cummings provided a short statement (four pages) and was a witness of fact. The Tribunal accepts that considerable work was involved in providing all the documents and information that Mr Clemente required. The Tribunal allows £500 for this. We allow £250 for each of the attendances at the tribunal.

89. The Tribunal fees of £200 are not an administration fee. The Tribunal rather makes an order that the Respondent should refund the Applicant these fees pursuant to Rule 13(2) of the Tribunal Rules.

90. The Tribunal allow a total of (i) £11,113; (ii) £3,250; and (iii) £1,000, a total of £15,363. The Tribunal allows the Applicant to add VAT of £3,072.60 if it confirms that it is unable to recover VAT as an input tax.

91. The Tribunal makes an order under section 20C of the 1985 Act in respect of the Tribunal fees. Having determined the administration charge payable by the Respondent, it would be wrong to allow the Applicant to recover any additional sum against the Respondent through the service charge.

Conclusions

92. The Tribunal has made the following findings:

(i) Services charges of £13,426.25 are reasonable and payable for the service charge years 20189/ to 2021/22.

(ii) An administration charge of £15,563 would be reasonable and payable in respect of the tribunal costs. The Tribunal would allow the Applicant to add VAT of £3,072.60 if it confirms that it is unable to recover VAT as an input tax.

(iii) The Respondent shall pay the Applicant £200 in respect of the tribunal fees paid by the Applicant.

(iv) The Tribunal makes an order under section 20C of the 1985 Act in respect of the Tribunal fees. Having determined the administration charge payable by the Respondent, it would be wrong to allow the Applicant to recover any additional sum against the Respondent through the service charge.

93. District Judge Latham has made the following findings:

(i) Interest of £2,556.77 is payable on the judgement date up to the date of the hearing, and an additional £62.44 up to the date of this determination.

(ii) The Court assesses the Court costs in the sum of £2,639.64. The Court would allow the Applicant to add VAT of £374.40 if it confirms that it is unable to recover VAT as an input tax.

(iii) The Court makes an order under section 20C of the 1985 Act in respect of the Tribunal fees. Having determined the Court costs payable by the Respondent, it would be wrong to allow the Applicant to recover any additional sum against the Respondent through the service charge.

Judge Robert Latham
3 April 2023

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration by the decision maker of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

5. The application for permission to appeal the decision maker's decision must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. Upon the receipt of the decision maker's decision on an application for permission to appeal, if a party wishes to pursue an appeal, the time to do so is extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 21 days after the date the refusal of permission decision is sent to the parties.

7. If no application to the decision maker is made for permission to appeal, any application for permission must be made to an appeal court/centre within 42 days of the hand-down date on an Appellant's Notice.

8. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.

General Form of Judgment or Order

In the County Court at Central London sitting at 10 Alfred Place, London WC1E 7LR	
Claim Number	H34YY381
Date	3 April 2023

Mindmere Limited	**Claimant** **Ref: DMF/17472.2.2**
Paolo Clemente	**Defendant** **Ref**

BEFORE Tribunal Judge Latham, sitting as a Judge of the County Court (District Judge) at 10 Alfred Place, London WC1E 7LR

UPON the claim having been transferred to the First-tier Tribunal for administration on 22 March 2022 by order of Deputy District Judge Le Bas sitting at the County Court at Central London;

AND UPON hearing Mr Benjamin Haseldine (Counsel) for the Claimant and the Defendant appearing in person;

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time;

AND UPON the Tribunal having found that service charges of £13,406.75 are payable;

AND UPON the Tribunal having found that an administration charge of £15,363 would be payable in respect of the tribunal costs (an additional sum of £3,072.60 being payable in respect of VAT if the Claimant confirms that it is unable to recover VAT as an input tax);

AND UPON the Tribunal ordering the Defendant to pay the Claimant £200 in respect of tribunal fees;

AND UPON the Tribunal making an order under section 20C of the Landlord and Tenant Act 1985 in respect of the Tribunal fees.

IT IS ORDERED THAT:

1. The Defendant shall pay to the Claimant by 15 May 2023 the sum of £31,588.96, namely service charges of £13,406.75, interest of £2,619.21, an administration charge of £15,363 in respect of tribunal costs, and tribunal fees of £200.

2. The Defendant shall pay to the Claimant by 15 May 2023 the sum of £2,639.64 in respect of the Claimant's summarily assessed costs.

3. The Defendant shall pay to the Claimant by 15 May 2023 the additional sum of £3,447 in respect of VAT if the Claimant confirms that it is unable to recover VAT as an input tax.

4. The Court makes an order under Section 20C of the Landlord and Tenant Act 1985 so that none of the Claimant's costs of these proceedings may be passed to the Respondent through any service charge.

5. The reasons for the making of this Order are set out in the combined decision of the court and the First-tier Tribunal (Property Chamber) dated 3 April 2023 under case reference LON/00BK/LSC/2022/0143.

6. The Rights of Appeal are annexed to the written decision accompanying this Order.

Dated: 3 April 2023