



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

**IN THE COUNTY COURT MONEY
CLAIMS CENTRE AT PO BOX 527
SALFORD, M5 0BY**

Tribunal reference : **CHI/18UK/LSC/2023/0029**

Court claim number : **J70YX598**

Property : **Flat 14, Kipling Court, Kipling Terrace,
Westward Ho, Bideford. EX39 1HY**

Applicant/Claimant : **Kipling Court Management Company**

Representative : **Daniel Jones (Counsel)**

Respondent/Defendant : **Alan Victor Henderson**

Tribunal members : **Judge C A Rai and Mr M Woodrow
MRICS**

In the county court : **Judge C A Rai**

**Date and venue of the
hearing** : **2 June 2023
Barnstaple Law Courts, North Walk,
Barnstaple Devon EX31 1DX**

Date of decision : **3 July 2023**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decisions made by the Tribunal.

1. The following sums are payable by the Alan Victor Henderson to Kipling Court Management Company by 3 August 2023.
 - (i) Service charges: £2,900
 - (ii) Variable administration fees £36.00 (inc. VAT).

Summary of the decisions made by the Court.

2. The following sums are payable by the Alan Victor Henderson to Kipling Court Management Company by 3 August 2023.
 - (i) Legal costs under clause 2(6)(a) of the lease: £3,075.17
 - (ii) Fixed costs of £285.00.

The proceedings

3. Proceedings were originally issued against the Respondent on 25 August 2022 in the County Court Money Claims Centre, PO Box 527. Salford, M5 0BY under claim number J70YX598. The Respondent filed a defence dated 5 October 2022. The proceedings were then transferred to this Tribunal on 3 January 2023 by the Order of Deputy District Judge Hovington.
4. Directions were issued by the Tribunal and the matter eventually came to hearing on 2 June 2023.

The hearing

5. The Applicant freeholder, was represented by Daniel Jones of Counsel, instructed by PDC Law, solicitors and Rupert Hambly of Peninsula Management SW Limited (the Managing Agent). The Respondent leaseholder, Alan Victor Henderson appeared in person.

The background

6. The subject property is Flat 14 Kipling Court, Kipling Terrace, Westward Ho, Bideford. EX39 1HY.
7. On the same day as the Hearing, the Tribunal inspected the Property at 1030 am. It was accompanied at that inspection by its clerk Andrew Webber. The Respondent attended with Rupert Hambly and James Lethaby, who are both directors of the Managing Agent and Daniel Jones of Counsel.
8. Kipling Terrace is a terrace of five storey houses, occupying an elevated location overlooking Westward Ho. Kipling Court comprises the five houses at the eastern end of the terrace. The doors at the front of the buildings provide access only to the lower ground floor flat within each house. The ground, first, second and third floor flats in each building share the communal entrance door at the rear of each of the houses.
9. A car park at the front of the building, built out over part of the site, is supported on concrete pillars. To the east of the building are steep steps which provide access to the rear yard which contains additional car parking spaces, a bin store and drying area. The latter two areas are enclosed within brown timber fence

panels. Entry doors to both areas are fitted with combination locks. The lightwells of the lower ground floor flats are protected by painted metal railings.

10. Mr Henderson invited the Tribunal to look at the condition of the metal railings and the handrail fixed to the wall alongside the steps leading from the front car park.
11. The Tribunal, being aware that some chimney pots had been replaced, asked Mr Hambly to identify these. Due to the height of the building the Tribunal was unable to view them all. However, part of the front roof is visible from the main road so Tribunal members were able to identify the chimney pots which had been replaced.
12. The Respondent holds a long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. The landlord is a resident management company and the Respondent confirmed that he is a shareholder in the landlord. The Managing Agent is employed by the Applicant.

The issues

13. The sums claimed by the Applicant are:
 - (a) A service charge which is a fixed monthly payment “on account” for the service charge years 2020/2021 and 2021/2022 of £1,200 in each year totalling £2,400.
 - (b) Two cash calls for additional service charges of £250 each demanded on 8 July 2020 and on 23 October 2020 totalling £500.
 - (c) Two “late payment” administration fees incurred on 16 February 2021 - £60 and 26 April 2021 - £60 demanded on 24 January 2023 totalling £120.
 - (d) The Court fee of £205.
 - (e) Legal Representative’s cost £80.
 - (f) PDC Law instruction fee £250
 - (g) Unspecified contractual costs £1,680.
 - (h) Contractual costs itemised in the costs schedule totalling £4,794.80.
14. At the start of the hearing the parties identified the relevant issues to be decided. Daniel Jones spoke on behalf of the Applicant with Rupert Hambly assisting him with regard to factual matters. The issues were identified as follows:

Have any service charges claimed by the Applicant already been paid by the Respondent?

15. At the beginning of the Hearing the Respondent told the Tribunal that he is making regular service charge payments. Mr Hambly said that Mr Henderson paid £200 on 1 June 2022 and since that date has been making regular payments of £100 per month.

- a. The Applicant's claim was issued on 13 September 2022, and was made in respect of the service charges due from the Respondent between 1 April 2020 and 31 March 2021 and 1 April 2021 and 31 March 2022.
- b. The Judge suggested, and Mr Hambly agreed, that the Respondent had not paid any service charges until 1 June 2022.
- c. Mr Hambly told the Tribunal that he acknowledged receipt of service charge payments from the Respondent during 2022 in his second statement in the bundle (which the Tribunal has been unable to locate).
- d. The parties agreed the current payments being made by the Respondent relate to the service charges due for the current year and that the service charges, the subject of the proceedings have not been paid by the Respondent.

Are the service charges which have been demanded reasonable both as to the amount and in respect of the services provided?

16. The Respondent claimed that many of the charges made to the service charge account are for services procured and provided by the Managing Agent or Peninsula Services SW Ltd. The Respondent said that despite having submitted a section 22 notice to the Applicant, and requested copies of receipts and invoices to evidence what the service charges are for, all he has received are the "invoices" in the bundle, the majority of which are from the two Peninsula companies. The Respondent challenged the reasonableness of the service charges because he believed that the Managing Agent cannot demonstrate the need for many of the services it provided.
17. He said that the Managing Agent has not produced copies of any receipts which prove that it has purchased the materials allegedly used by the two Peninsula companies in providing services.
18. The Respondent also challenged whether some of the services which have been invoiced by the Managing Agent or Peninsula Services SW Ltd had been carried out.
19. The Respondent mentioned that although the amount of the management fee is limited by the provisions of the Lease the Managing Agent still invoices the Respondent £600 plus VAT every month for its management fee which is an annual charge of £300 plus VAT for each flat instead of the 15% of service charges incurred, permitted by the Lease.

Are the service charges demanded reasonable?

20. The Respondent suggested that some of the charges are excessive. He claimed that the Managing Agent has undertaken and charged for unnecessary services. He said it was not focussed on using the service charges to maintain the fabric of the building and that there is no evaluation if the costs of the services provided are competitive and/or provide value for money to the lessors.

The Background

21. Following the parties disclosure of evidence, and in accordance with the Tribunal directions made by Judge Tilsdesley OBE, on 6 March 2023 and 27 March 2023 the Applicant's solicitors prepared a Scott Schedule.
22. Mr Jones had helpfully provided an updated copy of the Scott Schedule just before the Hearing which he cross referenced the invoices in the bundle to the relevant pages.
23. The Respondent informed the Tribunal that invoices issued by Peninsula (all of which include VAT) are issued by two different companies:-
 - (a) Peninsula Management SW Limited, the "Management Company" of which Rupert Hambly and James Lethaby are both directors; and
 - (b) Peninsula Services SW Ltd, the company which supplies contractors and tradesmen to carry out minor works and services (the "services company").

James Lethaby is the sole director of the services company. Mr Hambly said that there is no contractual agreement between the two companies for the provision of services.
24. The invoices listed below were referred to in the Scott Schedule and either examined during the Hearing, with the Tribunal obtaining comments from the parties, or subsequently considered by the Tribunal members prior to it making this decision.
25. The Tribunal has also considered both parties written submissions which had, for the most part, been endorsed on the Scott Schedule. There is some duplication of invoices in both the Scott Schedule and the bundle and some of the invoices in the bundle are for services provided in the 2019/2020 service charge year.
26. The Tribunal has excluded all duplicated invoices from the list and excluded those invoices which relate to the 2019/2020 service charge year. The invoices within the two service charge years to which the Applicant's claim relates are dated between 1 April 2020 and 31 March 2022

Invoice from Page no	Date	Amount £	Comment
Thomas Westcott [613]	23.12.2019	840	This relates to 2019/2020. The VAT receipt is dated 08.01.2020 but the invoice had been paid earlier.

Peninsula Services Greasing all external doors [578]	09.05.2020	52.80	The Respondent asked why this work was necessary. It is not possible to assess if there was a charge for materials such oil or grease. The Respondent described it as “fruitless work which did not preserve the fabric of the Property”. Mr Hambly could not explain what prompted this work to be done or how the charge for materials was quantified. The Tribunal told the parties it would decide if the invoice was appropriate both in relation to the charge and the amount.
Peninsula Management [579]	19.05.2020	107.40	To fit signs on bin store as required. The Respondent stated that this does not preserve fabric of building.
JME Scaffolding [476] DM Scaffolding [232] DM Scaffolding [229]	09.09.2020 21.04.2021 13.01.2022	1,350.00 2,457.50 984.00	The Respondent said that scaffolding had been erected and remained in situ for over a year. The Applicant said scaffolding company ceased trading and the scaffolding was taken down due to concerns about public liability. The costs were charged to the leaseholders.
Kipling Court Management [500] [440] [365] [369]	01.04.2020 02.11.2020 18.03.2021 15.03.2021	300.00 300.00 270.00 120.00	This is a debt collection fee relating to Flat 11. The charge was taken from the service charge account. Mr Jones could not explain why it is within the definition in the lease of a “service charge”. Mr Hambly suggested that it was later recredited to the service charge account. [Debt collection fee Flat 10] [Debt collection fee Flat 18] [Debt collection fee Flat 20]
Peninsula Services	23.11.2021 23.11.2021	321.60 122.64	The invoices refer to removal of moss and rubbish on the roof and refit of guttering to fascia board

[623] [624]			and the replacement of tiles on the roof as required. Both refer to “labour and materials” which Mr Hambly said was a standard annotation. The Respondent said that the invoices neither prove that the work was necessary, nor that it had been carried out. He does not understand why there are two invoices if the work was done on the same date. He asked why Peninsula <u>never produce receipts for any materials used.</u>
Peninsula Services [290]	20.08.2021	97.92	Adjustment of light sensors; reset and check car park lights and repair as necessary – labour. The Respondent states that the work would not take an hour and that there is no proof that the work was necessary.
Peninsula Services [307]	05.07.2021	£165.36	To remove all moss to roof at front of building and spray - All accessible by the scaffolding. (Labour and materials). The Respondent said that there is no proof that this work was ever done .
Peninsula Management [418] [115]	02.12.2020 30.04.2022	£774.00 £420.00	Time spent dealing with Tribunal re Mr Henderson (Flat 14) arrears; Court appearance by Rupert Hambly on 17 February 2022. The Respondent complained about legal fees of “many thousands of pounds” which the Tribunal had assumed referred to the legal costs in the claim and costs schedule but which also includes the costs invoiced by the Managing Agent. The cross references to page numbers of invoices (legal costs) in the Scott Schedule refer to invoices for earlier service charge years not the two invoices now listed.
Peninsula services [123] and [626]	10.03.2022	141.30	Supply of materials for windows (month of January) There are two copies of the same invoice on different pages of the bundle. Mr Hambly said that the

			materials were obtained with other materials but there is no evidence or receipts to show what was supplied.
Peninsula Management [449] [450]	20.10.2020	201.84	Remove loose masonry and investigate general issues; investigate roof and windows. The Respondent repeated his complaint that the invoice does not prove that any work was done. He said that a good builder would take “before” and “after” photographs.
Peninsula Management [424]	26.11.2020	120	Monthly fire alarm testing. The Applicant stated that the weekly testing is invoiced monthly and the charge varies between 4 and 5 weeks. It is a statutory requirement.
Peninsula Management [413]	09.12.2020	126.74	Replace lock damage to block 6, 7, 8, 9 & 10; Labour and materials. The Respondent suggested that this was the bin store and that the replacement of the lock would take 15 minutes. Mr Hambly said it was a digilock coded door and was more expensive.
RF Johns Plumbing & Heating Ltd [125]	04.03.22	129.90	This was agreed. Mr Hambly stated it related to a leak in the Respondent’s flat (14).
Peninsula Services [127]	06.03.2022	103.44	To check all leaks in ceiling of 9; it may be balcony – repair as required.
[128]	06.03.2022	158.64	To check leak that may be coming from under 14 through to 13 and into 12. The Respondent objected to this charge as it was higher than the charge made by the plumber for repairing the leak - see RF John Invoice.

Peninsula Management [619]	12.05.2021	912.00	To organise and oversee work at the front of the building. The Respondent did not know what works this related to and asked if it was windows or painting. Mr Hambly said it was six months repairs implying that it related to windows and decoration.
Peninsula Management [386]	10.02.2021	164.40	Power wash all pavements and steps to the road area (labour). The Respondent complained that the cost was disproportionate. The Applicant said that it considered that the costs “is within reason for the work carried out and was recoverable under paragraph 1 to the fourth schedule of the Lease”.
Peninsula Management [536]	22.07.2020	165.00	To check external areas of 9 and 19; damp in rooms facing front; check for blocked pipes. The Respondent suggested that this was done on a regular basis and the charge was too much. The Applicant said it was reasonable and recoverable.
Peninsula Management [533]	30.07.2020	222.72	Unblock down pipes at high level.
Get to it Cherry Picker Hire [622]	06.08.2021	150.00	1/2 day hire of cherry picker to clean gutters front of property.
[190]	30.11.2021	150.00	1/2 day hire of cherry picker to remove decking at 23 clean paint and waterproofing.
[230]	09.01.2022	150.00	1/2 day hire of cherry picker to clean gutters at the back The Respondent stated that “they keep hiring a cherry picker for half a day”.
Peninsula Management [534]	30.07.2020	115.20	Check and unblock all drain pipes (labour). The Respondent stated that this is a recurring charge since Peninsula took over management and that they had charged more than £1,000. The Applicant stated that the charge is reasonable and recoverable as service charges.

Peninsula Management [542]	08.07.2020	46.32	Check doorbell to 24 and repair The Respondent considers the cost excessive. The Applicant stated it to be within reason for the work carried out
Peninsula Management [552]	30.06.2020	52.20	Check and repair failed emergency lights. The Respondent claimed that this was another recurring charge which he suggested had cost many thousands of pounds over the years
Peninsula Management [569]	04.06.2020	358.82	Carry out temporary works to dormer window at front of 5. The Respondent said this was excessive for a temporary repair. The Applicant said it was reasonable.
Peninsula Management [484]	19.08.2020	27.12	Check and repair emergency light – labour and materials. [no comment from the Respondent]
Peninsula Management [485]	19.08.2020	24.00	Check for chimney leaks in attic of 10. The Respondent queried “yet another check”. The Applicant said the charge is reasonable.
Peninsula Management [486]	19.08.2020	211.20	Clean out storm drains – labour. The Respondent stated that this should be done with the cherry picker. The Applicant said the charge is reasonable.
Peninsula Management [614]	31.01.2020	51.00	Carry out 3 hour emergency light test – labour. The Respondent suggested that the current charge was £130.
Danny Stepel [191]	02.11.2021	280.00	Remedial works to three dormers. The Respondent does not challenge this charge but says Peninsula Services would have charged more .
[202]	24.10.2021	3,000.00	Demand for advance on works completed (but not specified).
Peninsula Services [118]	24.03.2022	96.00	Monthly fire alarm testing (Feb).
Peninsula Services [198]	22.11.2021	120.00	Monthly fire alarm testing (Oct).
Peninsula Management [424]	26.11.2020	120.00	Monthly fire alarm testing (Oct).

Tribunal's decision

27. Taking account of all the submissions made by Mr Jones and Mr Henderson, the Tribunal has concluded that although Mr Henderson has complained about the lack of actual evidence provided by the Respondent in relation to the service charge expenditure, he is albeit reluctantly, paying £100 per month to the Respondent towards service charges. He confirmed that he is making monthly service charge payments and Tribunal has concluded that he has been doing so, perhaps since 1 April 2022.
28. The Respondent has admitted that he made no service charge payments to the Applicant during the two service charge years, 2020/2021 and 2021/2022, which are the years to which this application relates.
29. The Tribunal has afforded Mr Henderson ample opportunity to supply bank statements to evidence all the payments he has made to the Respondent but he has not.
30. It is apparent both from the evidence in the bundle and the oral evidence of the parties that the payment of £100 per month by way of service charge was agreed with the leaseholders of the Property. The bundle contained copies of the service charge accounts for the two years ending March 2021 and March 2022. The 2021 accounts show a surplus of £12,572 which when added to the reserves totalled a surplus of £34,503 to be carried forward at the end of that year. The 2022 accounts show a deficit of £10,464 which meant that the reserves carried forward to 2023 were £24,039.
31. The Tribunal therefore is satisfied from the evidence that the amount of the current "on account" service charge payment is reasonable, based on the documented evidence of service charge expenditure in the preceding two years.
32. A further £500 on account of service charges was demanded from the Respondent during the 2020/2021 service charge year by two separate demands of £250 each. The Tribunal does not know why these sums were demanded separately as these were payments "on account" and not for specified works. The two invoices are dated 8 July 2020 [84] and 23 October 2020 [86]. The invoices refer to additional funds for external repairs and the second invoice refers to Part 2 but confusingly there is no reference to "Part 1" on the first invoice. Evidence in the bundle [583] suggest that the directors of the Applicant instructed the managing agent to commence a section 20 consultation on 14 October 2022 (in relation to urgent works related to fire safety) but that this has not happened. There is also reference to another section 20 consultation relating to external decorations. Although the demands refer to external repairs, there is no specific evidence in the bundle as to what works are proposed or any record of estimates of the cost of proposed works having been obtained by the Management Company.
33. The Tribunal is satisfied that the sums claimed have been demanded from the Respondent. He has not disputed receiving demands for the outstanding service charges claimed by the Applicant, which are £1,200 plus £1,200 (the

monthly charge) and £250 plus £250 (the cash call for works) which total £2,900.

34. Although the Respondent told the Tribunal he is currently paying the service charge, it is satisfied that he only started making regular payments after the Applicant issued its claim in the County Court on 13 September 2022. The copy of the Claim form in the hearing bundle is not signed or dated but the Notice of Issue confirmed the date [45].
35. The Tribunal determines that the service charges which are outstanding for 2020/2021 and 2021/2022 are payable by the Respondent. The sums demanded are payments on account and the annual amount of the payments has been agreed by the leaseholders.
36. The Respondent has challenged whether the expenditure sanctioned by the Management Company provides value for money. The Tribunal's jurisdiction is limited to determining the reasonableness of the charges and the reasonableness of the services provided (Sections 27A and 19 of the Act).
37. The majority of the Respondent's challenges in respect of service charges incurred, relate to services provided by the Management Company or Peninsula Services SW Ltd. The Tribunal has not seen estimates of costs preceding any of the works for which a charge has been made.
38. Debt recovery fees have been deducted from the service charge accounts notwithstanding that the Claimant was unable to refer to any provision in the Lease which would authorise this deduction. These fees are not service charges. The lease does not provide for such charges to be recoverable from the leaseholders collectively. Mr Jones suggested that paragraph 9 of the Fourth Schedule was wide enough to authorise the deduction of such payments [23]. The Tribunal does not agree.
39. Rupert Hambly told the Tribunal that these charges are repaid to the service charge account when the fees are recovered from the defaulting leaseholders. Since both the Management Company and Peninsula Services SW Ltd are VAT registered, sums recredited would have to include the VAT. No actual evidence has been included in the bundle which would support Rupert Hambly's oral submissions.
40. The Tribunal has identified invoices for debt collection fees totalling £990.00 in the bundle. The Tribunal has concluded that it is unreasonable for these "fees" to be deducted from the service charge account. It is not satisfied with Mr Hambly's explanation that the fees and the VAT are later recredited and would suggest that the freeholder investigates this itself.
41. The bundle contains no invoices for actual materials used to enable repairs and redecoration to be carried out. The invoices referring to the supply and replacement of chimneys are both from the services company and payments were made to Peninsula Services Ltd and not a third party supplier which seems unusual [126] and [222].

42. The invoices in the bundle which relate to third party charges are those for cleaning, window cleaning, scaffolding, communal electricity, gardening accounting, insurance, roof repairs, carpentry, plumbing, aerial repairs, dormer window repairs, fire alarm repairs, and supplying cherry pickers. Within those items it is only the recurrent cost of obtaining cherry pickers which has been commented upon by the Respondent.
43. The Tribunal is sympathetic towards the Respondent's complaint that there is a lack of transparency regarding the service charge expenditure, particularly in relation to the supply and purchase of materials. All services provided appear to be wholly controlled by the Managing Agent. There is evidence in the bundle that monies which have not been sanctioned by the Applicant are nevertheless deducted from the service charge accounts by the Managing Agent [585].
44. The shareholders in the Applicant now appear to be concerned with how service charge expenditure has been managed by the Managing Agent but this is something which the Respondent, together with other shareholders, not the Tribunal, should address. The Tribunal has no jurisdiction to deal with such concerns in these proceedings [582 – 588]. However, it accepts that if services charges collected for maintaining the Property have been used for unnecessary services, for which no need has been established, without the authority of the freeholder it would be appropriate for any or all of the leaseholders to question that reasonableness of such charges. It would be sensible for the Respondent to engage with freeholder and instruct its agent to allocate service charge expenditure to prioritise maintenance and repair of the building rather than maintenance of locks, doorbells and railings if that is what the majority of the shareholders would prefer. The Tribunal is unable to consider whether expenditure of the type evidenced by Peninsula and the service company invoices is reasonable without an appropriate application supported by relevant evidence.
45. For all of these reasons above that the Tribunal determines that the Respondent is liable to pay the outstanding service charges of £2,400 and the outstanding cash calls of £500 to the Applicant and the total amount demanded is reasonable. Whether or not the works which are intended to be funded by the cash call are reasonable, either with regard to need or cost, is a matter which can be tested again once the works are undertaken. However, any proposed consultation might offer the parties an opportunity to investigate this properly.

Reasonableness of the Administration Fees

46. In the County Court Claim the Applicant has claimed variable administration charges of £120. The two demands for these charges in the bundle [351 and 354] are both dated 24 January 2023. These demands are both for late payment fees referred to as being dated 16.02.2021 and 26.04.2021.
47. The Tribunal has jurisdiction to determine if these charges are reasonable. Paragraph 2 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA) provides that a variable administration fee is only payable to the extent that the amount of the charge is reasonable.

48. The Respondent has stated that the charge is not reasonable and should be reduced to £15 because “banks are not permitted to charge more than that amount” for late payment fees.
49. The Applicant has stated in the particulars of claim [3] that Property Debt Collection Limited (DCA) issued letters to the Claimant requesting payment of the outstanding service charges and administration fees. That statement dated 15 August 2022, preceded the date of the demand for the administration fees.
50. In paragraph 11 of his statement dated 27 March 2023, Rupert Hambly stated that “the administration costs charged by the agent covers any administration associated with reviewing the account prior to referral to the DCA including but not limited to; any tenant details, all known addresses, telephone numbers and email addresses, claimant details, a schedule of arrears, copy of the Office Copy Entry (LR)” [105] . The Tribunal has noted that the official copy of the title to the Property shows the entries of the title registers on 15 October 2021 [9].
51. The Tribunal has concluded that the £60 administration fee charged by Peninsula Management Limited is excessive. Taking account of the Respondent’s submissions regarding the regulation of bank charges for a similar omission, it determines that a reasonable fee would be £18 inclusive of VAT.

Postscript

52. During the Hearing Mr Henderson alleged that the Claimant would not have responded to the section 22 notice if he had not complained to the RICS about the conduct of the Managing Agent. Mr Hambly denied that he had ever received any contact from the RICS. Following the Hearing Mr Henderson sent the Tribunal email correspondence with RICS dated 14 December 2022, albeit sent to a third party email address (as Mr Henderson does not have an email address) but addressed to him. The RICS stated that the “threshold for an investigation with the RICS has not been met and it has closed its file”. The evidence provided during the Hearing regarding Mr Henderson’s complaint to the RICS was dismissed by the Managing Agent because it said it had not received any contact from the RICS. This has not influenced the Tribunal’s decision. It has not sought further comment from the Claimant but acknowledges that Mr Henderson’s evidence at the Hearing has been substantiated and the “lack of contact” from the RICS explained.

Applications made under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 to The Commonhold and Leasehold Reform Act 2002

53. The Respondent indicated that he wished to make applications for these orders. The Tribunal determines that it is just and equitable to make an order under section 20C of the Act that the costs incurred by the landlord in connection with the costs of these proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charges payable by the (Respondent) tenant.

54. It has also decided that it is just and equitable to make an order under paragraph 5A of schedule 11 to CLARA extinguishing the Respondent's liability to pay an administration charge in respect of litigation costs.
55. It has made both orders because of the Applicant claimed contractual costs in the County Court. It explained to both parties during the Hearing that it wanted to ensure that there could be no double recovery of costs by the Applicant.

County Court issues

56. After the proceedings were sent to the Tribunal offices, the Tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.
57. I therefore sat alone as a Judge of the County Court exercising the jurisdiction of a District Judge and heard those matters that fall within the jurisdiction of the Court.
58. Taking into account the rules of natural justice, I asked that both parties address me in relation to those points that they wished me to consider in making my decision.
59. The Defendant was not represented throughout these proceedings. He has hearing difficulties but declined the use of a hearing loop, although this was offered to him. He was ably assisted by Mr Hambly to locate pages in the bundle throughout the Hearing.
60. It was important in the interest of natural justice to offer the Defendant an opportunity to explain why he had not paid the service charges demanded and his reasons for defending the claim.
61. I was grateful to both parties for their co-operation with each other and for Counsel's assistance during the Hearing.

Decision and Reasons

62. Documents in the hearing bundle are referred to by their page number, so that [1] refers to page 1.
63. The Claimant claimed:
 - (a) Service charges demanded (on account) for service charge years 2020/2021 and 2021/2022 and two cash calls demanded during 2020/2021 £2,900
 - (b) Court issue fee - £205
 - (c) Legal representative's costs - £80
 - (d) Administration charges - £120
 - (e) PDC Law Instruction Fee - £250
 - (f) Contractual costs - £1,680 [35]plus, Contractual costs recoverable under the lease [5]

64. In these proceedings the Claimant is the successful party in respect of its claim for unpaid service charges for 2020/2021 and 2021/2022 (the disputed years).
65. Although I agree with the FTT's findings that the Claimant has demonstrated a lack of transparency by not providing actual evidence of expenditure on materials used to provide services and by repeatedly deducting substantial debt collection charges from the service charge account when the lease does not authorise this deduction, this does not prevent the landlord Claimant from pursuing a lessor Respondent who has not paid his service charges.

Service charges, Administration Charges and Fixed and Court Costs

66. The FTT has determined that the "on account" service charges demanded are reasonable for the service charge years 2020/2021 2021/2022 Therefore, the Claimant succeeds with its claim for service charges of £2,900.
67. The Claimant has succeeded in part with its claim for administration charges. The FTT accepted that the Claimant demanded payment of administration charges of £120 from the Defendant in the service charge year 2019/2020 but determined that the amount demanded was unreasonable. The FTT decided that it was reasonable for the Claimant to recover £36.00 (inc. VAT).
68. The Claimant has also claimed fixed costs and Court fees and Contractual Costs. Notice of allocation of the claim to the small claims track was given in paragraph 9 of the Tribunals Directions dated 6 March 2023 [52].
69. **CPR 27.14** contains provisions about the costs which may be ordered to be paid by one party to another.
70. The total shown on the Claim Form is £5,235.00.
71. The Claimant is therefore entitled to recover the Court Issue Fee of £205 and fixed costs of £80 in respect of the issue of the proceedings [1].
72. Paragraph 9 of the particulars of claim attached to the Claim Form refers to the sum of £370 as administration fees incurred by the Claimant for its instruction but Counsel said at the hearing that £250 was the PDC Law instruction fee and not an administration fee. I believe he might have said this because he was aware that no demand for an administration fee of £250 has been produced to the Court.
73. In paragraph 12 of the particulars of claim, the Claimant has asked for an additional £1,680 as contractual costs incurred prior to the issue of the County Court Claim [4] and in paragraph 12 the Claimant seeks a determination that its costs incurred of £1,680 are payable by the Defendant[5].

74. Mr Hambly’s witness statement dated 17 April 2023 referred to the outstanding balance of £5,235.00 which he breaks down in the subsequent paragraphs as being:- Administration Fees £120, the sum of £250 in respect of the DCA’s instruction fee charged for the review of the file and the drafting of the first letter of claim [105]. He seeks further judgement in respect of fixed legal costs in the sum of £1,400 plus VAT (£1,680) and stated “that figure represents a fixed fee charged by PDC Law to the Claimant in respect of work undertaken up to and including the issue of proceedings” [105].
75. When I asked Counsel to refer me to an invoice or details of the PDC Law fees of £250 and £1,680 he was unable to do so, and I have been unable to find any evidence in the bundle that these fees have been invoiced to the Respondent by PDC Law. What I was able to establish is that the fees are not included in the costs schedule but have been claimed as **additional fees**.
76. The statement of claim stated that the Claimant is entitled to these fees as contractual costs. However, these costs should have been itemised and included within the costs schedule, and they have not been, therefore I have made no award.
77. I therefore determine that the Defendant is liable to pay the following sums to the Claimant:-

	£
Service charges	2,900.00
Fixed legal costs	80.00
Court fee	205.00
Administration charges	<u>36.00</u>
Total	3,221.00

Contractual Costs

78. The Claimant has also claimed its contractual costs and submitted a Statement of Costs to the Court in form N260 prior to the hearing in accordance with the Court’s directions. The Defendant had been sent a copy of the Statement of Costs before the Hearing.
79. **CPR 44** governs the Court’s discretion as to costs. The general rule is that if the Court decides to make an order about costs, the unsuccessful party will be ordered to pay the costs of the successful party.
80. Mr Jones submitted that the Claimant, if successful, is entitled to its contractual costs pursuant to Clause 2(6)(a) of the lease by which the tenant covenants with the lessor:-

“To pay unto the lessor all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 by the lessor incurred in or in contemplation of proceedings under sections 146 or 147 of that Act notwithstanding forfeiture may be avoided otherwise than by relief granted by the court” [14].

81. Mr Jones said that the fact that the Claimant had considered forfeiture proceedings was indicated by the Claimant seeking a section 81 determination and he referred me to paragraph 13 of the Particulars of Claim [5]. He said that a section 81 determination would necessarily precede the service of a section 146 notice. Therefore, he said the Claimant had informed the Defendant of the consequences of non-payment of the debt.
82. The evidence I have found in the bundles, which supports Mr Jones submissions, is the Letter of Claim dated 15 October 2021 pursuant to The Pre-Action Protocol for Debt Claims which referred to the risk of the Defendant losing his home by failing to make payment [44]. That letter was sent both to the Property [43] and to the Defendant at his Paignton address [45].
83. I am satisfied that clause 2(6) of the lease provides the Claimant with a contractual entitlement to recover all its legal costs from the Defendant. The Letter of Claim contained a clear warning to the Defendant that the Claimant would consider taking proceedings to forfeit the lease. Clause 2(6) is similar in construction to the clause considered in the case of **Freeholders of 69 Marina, St Leonards-on-Sea v Oram EWCA Civ 1258**. That Court of Appeal case is authority for the fact that costs incurred in relation to a tribunal hearing were incidental to the preparation of the s.146 notice and were recoverable from the defendants under the provisions of their leases.
84. The Applicant's statement of case specifically refers to clause 2.6 of the lease [74].
85. Relying on the content of the Letter of Claim, I am satisfied that the Claimant made the Defendant aware that his failure to pay the sums referred to in the claim might result in it pursuing a claim for forfeiture and his losing the right to occupy the flat.
86. As stated by Sir Andrew Morritt **Freeholders of 69 Marina, St Leonards-on-Sea v Oram EWCA Civ 1258** Section 81 of the Housing Act 1996 recognises that a notice under section 146 of the Law of Property Act 1925 cannot be served on a tenant for failure to pay a service charge (even if reserved as rent) which is so in the lease, unless it is finally determined by a leasehold valuation tribunal [FTT] that the amount of the service charge is payable (or that the tenant admits it is payable). He went on to say that "in short the enforcement of the liability of the tenants required (in that case) first the determination of the tribunal and second a section 146 notice". This resulted in the Court of Appeal dismissing the tenants appeal against the County Court's judgement that the costs incurred by the landlord were incidental to the service of the section 146 notice and recoverable from the tenant.
87. Mr Jones referred me to the content of the costs statement suggesting that the hourly rates were reasonable and reflected the use of the correct grade of lawyer for the complexity of the case. He said it would have taken the lawyers a considerable amount of time to prepare the Scott Schedule.
88. When I questioned Mr Jones about the amount of costs claimed at the date of the issue of the claim and suggested it was disproportionate to the outstanding service charges claimed and asked him why there was no evidence of what PDC

Law had invoiced prior to the issue of the claim, he suggested that I might seek to ignore the PDC Law costs of £1,680 but award the whole of contractual costs claim of £4,794.80 itemised in the statement of costs including his fees for attending the hearing.

89. The Defendant made no submissions to me regarding the Claimant's costs during the Hearing. However, he asked why Mr Hambly had incurred legal costs instead of representing the Applicant at the Hearing. He also referred to the further amounts the Managing Agent had charged the leaseholders for preparing and attending the previous Tribunal proceedings [115, 418].
90. The overriding objective in **CPR1** requires that I deal with a case justly ensuring as far as practicable that the parties are on an equal footing and can participate fully in the proceedings so I must, and I have, taken account of the fact that the Defendant is unrepresented.
91. The Defendant told me that he is not computer literate and does not use email. He said that has been unable to rely upon assistance from his daughter as she lives in Ireland. Therefore, he has provided handwritten statements. I was also made aware, that notwithstanding that the Defendant had challenged the basis of the Managing Agent's charge, which was not a matter which I had to consider since the FTT found the service charges demanded reasonable, the Claimant accepted that the Defendant's criticism was correct but had not either advised the Defendant or agreed to reflect this in its future calculation of the Defendant's service charge liability.
92. Recovery of contractual costs is governed by **CPR 44.5** which provides that:
 - (1) 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 the 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 the circumstances where the court may do otherwise.
 - (3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party
93. The effect of **CPR 44.5** is to shift the burden of proof from the Claimant to the Defendant. If the Defendant is not satisfied that the costs are reasonable in amount or were reasonably incurred, he must demonstrate why he believes the Court should depart from the rule.
94. Although the proportionality test does not apply in relation to contractual costs, the presumption that the costs have been reasonably incurred and are reasonable in amount is still rebuttable, and a Defendant who is not satisfied

that the costs are reasonable in amount or were reasonably incurred must be given an opportunity to tell the Court why he believes that it should depart from the rule.

95. The Court of Appeal reviewed the law and set out the principles which the Court should apply in **Chaplain Ltd v Kumari [2015] EWCA Civ 793**. The principles relevant to my determination of this case are that:
- (a) An order for payment of costs of proceeding by one party to another party is always a discretionary order (s. 51 of the Senior Courts Act).
 - (b) Where there is a contractual right the discretion should ordinarily be exercised so as to reflect that contractual right.
84. In these proceedings I am satisfied that the Claimant has shown that Defendant failed, without justifiable excuse, to pay the service charges demanded for the disputed years. The finding by the FTT as to the reasonableness of some of the actual service charges and the administration charges has not influenced my assessment of the costs.
85. I have started with the premise that the costs, are recoverable on an indemnity basis (in accordance with the Defendant's contractual obligation). In this case clause 2(6) of the lease refers to an obligation on the part of the lessee "to pay all expenses including solicitors costs....." [53]. I may still exercise my discretion to assess these, notwithstanding that ordinarily in so doing, I will take account of the contractual right of the Claimant to recover the costs.
86. I have examined the hourly rates applied by the Claimant's solicitors and referred to in the costs schedule. Mr Jones suggested, and I am minded to agree with him, that the rates quoted are reasonable and that the grade of fee earner used was appropriate.
87. However, this dispute was not complicated and it should not have been difficult to collate all the evidence in an orderly fashion. In fact, the invoices in the bundle have been collated in a haphazard fashion, are not in date order and in several instances have either been duplicated or related to previous service charge years. In one instance, information about unrelated bank transfer has been included in the bundle [412].
88. I was told by the Defendant, which was not disputed by the Claimant, that it took the Applicant five months to supply the Defendant with the copy invoices in the bundle. As already mentioned, some of these were duplicated and some are for works or services provided in earlier service charge years.
89. The other item which I have examined is Counsel's fee for attending the Hearing. This is because I do not believe that it was either necessary or desirable for the Applicant, to employ Counsel to act on its behalf in relation to a dispute of this type. I am not suggesting, nor indeed do I consider, that Counsel has charged an unreasonable amount for a day's attendance at the Hearing. However, there was nothing complicated about this claim. The value of the claim and the complexity, or rather lack of complexity, does not, in my view, justify the use of Counsel at all. The Applicant's Managing Agent could and should have dealt with the hearing himself. He has demonstrated, by his

able involvement in the proceedings, that he was perfectly capable of so doing. The cost of his time for attending the previous hearing was charged to the Applicant. His attendance at the hearing of these proceedings had been rehearsed. The bundle contains evidence that the Claimant was invoiced £1,194 [115, 418] by its Managing Agent for the time spent on dealing with the previous county court claim and such costs are in addition to the legal costs claimed from the Defendant. I therefore believe I should assume that the Managing Agent intends to invoice the Applicant in respect of his time for attending the Hearing.

90. In all of those circumstances I find it appropriate to allow recovery of 67% of the costs claimed. Before those costs are calculated it is necessary to deduct the Court fees (£205 + £80) from the total of £4,794.80. I have already awarded those sums. That leaves the sum of £4,589.80, 67% of which sum is £3,075.17.

91. I find that the Claimant is entitled to recover contractual costs of £3,075.17.

Applications made under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 to The Commonhold and Leasehold Reform Act 2002

92. The Respondent indicated that he wished to make these applications, and I agree that it is just and equitable to make an order under section 20C of the Act that the costs incurred by the landlord in connection with the costs of these proceedings before the Court are not to be regarded as relevant costs to be taken into account in determining the amount of service charges payable by the (Respondent) tenant.

93. I have also decided that it is just and equitable to make an order under paragraph 5A of schedule 11 to CLARA extinguishing the Respondent’s liability to pay an administration charge in respect of litigation costs.

94. I made both orders because of the Applicant claimed contractual costs and I have awarded it these costs as the successful party. I therefore find it just and equitable to ensure there cannot be any further recovery of legal costs by the Applicant. In my view this would and should encompass the time spent by the managing agent attending this hearing because it appears that he is solely responsible for the decision to appoint Counsel.

Conclusion

95. The Defendant is ordered to pay to the Claimant the outstanding service charges, the administration charges, the fixed costs, the Court Fee and the contractual costs as set out below.

Service charges	2,900.00	
Fixed costs	80.00	
Court Fee	205.00	
Administration charges	36.00	3,221.00
Contractual costs		<u>3,075.17</u>
Total		<u>£6,296.17</u>

96. The sum of £6,463.35 is to be paid within 28 days of the date of this decision.

97. I have drawn a form of judgment that will be submitted with these reasons to the County Court Money Claims Centre PO Box 527 Salford M5 0BY to be entered in the Court's records.

Name: Judge C A Rai

Date: 3 July 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 office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the 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 a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

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 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 office within 28 days after the date this decision is sent to the parties;

5. 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.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.
7. 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 decisions of the Judge in his/her capacity as a Judge of the County Court

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

