FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/00ML/LSC/2022/0118**
Property	**:**	**Flat 5 42 Brunswick Place Hove East Sussex BN3 1NA**
Applicant	**:**	**Andrea Margaret Forde-Reynolds**
Representative	**:**	**Wannops LLP**
Respondent	**:**	**The Baron Homes Corporation Limited**
Representative	**:**	**None**
Type of application	**:**	**For the determination of the payability and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal member	**:**	**Judge H. Lumby**
Venue	**:**	**Paper determination**
Date of decision	**:**	**19 May 2023**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the amount of £250 included in the 2018 service charge in respect of health and safety is reasonable.

(2) The tribunal determines that the amount payable by the Applicant in respect of 2018 payment of £1,140 to Bensley TM Ltd is reasonable.

(3) The tribunal determines that the amount payable by the Applicant in respect of professional fees pursuant to the 2021 service charge is £114.72.

(4) The tribunal determines that the amount of £1,143.60 included in the 2020 service charge in respect of health and safety is reasonable.

(5) The tribunal determines that the amount of £1,200 included in the 2021 service charge in respect of health and safety is reasonable.

(6) The tribunal determines that the estimated service charge payable by the Applicant for the 2018 service charge year is unreasonable and that the reasonable estimated service charge payable by the Applicant for that service charge year is £1,127.81.

(7) The tribunal determines that the estimated service charge payable by the Applicant for the 2019 service charge year is unreasonable and the reasonable estimated service charge payable by the Applicant in that service charge year is £968.38.

(8) The tribunal determines that the estimated service charge payable by the Applicant for the 2020 service charge year is unreasonable and the reasonable estimated service charge payable by the Applicant in that service charge year is £1,214.95.

(9) The tribunal determines that no contribution towards the reserve fund is payable by the Applicant in the 2022 and 2023 service charge years.

(10) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant as lessee through any service charge.

(11) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under the Applicant's Lease.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2017 to 2022.

2. The Applicant challenged the following items of expenditure:

   (i) 2018 payment to Baron Homes Corp £300.00

   (ii) 2018 payment to Hensley TM Ltd £1,140.00

   (iii) 2020 payment to Baron Management £1,468.54

   (iv) 2021 Professional Fee £1,434.00

   (v) 2020 Health and Safety £1,143.60

   (vi) 2021 Health and Safety £1,200

   (vii) 2020 to date – Insurance – various amounts

   (viii) 2018 to date - Total of in advance/on account payments of estimated expenditure for each year since 2018 to date and ongoing – various amounts

   (ix) 2023-2027 Reserve fund £480.00 per annum.

3. By directions issued by the tribunal on 6th February 2023, the issues to be determined were identified as:

   (i) Are the sums claimed payable, reasonable and how are the amounts made up?

   (ii) Have demands been issued in accordance with statute and in accordance with the lease?

   (iii) Have any necessary statutory consultations been undertaken?

The background

4. The property is a one bedroom flat within a Regency terraced building of six flats.

5. The Applicant is a long leaseholder, holding her interest pursuant to a lease dated 27th March 2014 for a term of 99 years from 1 January 2014. The freehold reversion to the lease is vested in the Respondent.

The lease

6. The lease provides that the tenant is to pay by way of service charge the Tenant's Proportion of the Service Costs. The Tenant's Proportion is defined as 12% and the Service Costs are the costs listed in Part 2 of Schedule 7 of the lease.

7. The service charge is calculated by reference to the calendar year. The tenant is to pay the estimated service charge for each service charge year on 1st January and 1st July each year. Any shortfall is to be paid on demand. Paragraph 2.3 of Schedule 4 of the lease provides:

> "If, in respect of any Service Charge Year, the Landlord's estimate of the Service Charge is more than the Service Charge, the Landlord shall credit the difference against the Tenant's next instalment of the estimated Service Charge (and where the difference exceeds the next instalment then the balance of the difference shall be credited against each succeeding instalment until it is fully credited."

8. Schedule 6 of the lease contains at paragraph 4 obligations before or as soon as possible after the start of each service charge year to prepare and send the tenant an estimate of the service charge costs for that year and a statement of those estimated costs. A certificate showing the actual costs and service charge is to be prepared by the landlord and sent to the tenant as soon as reasonably practicable after the end of the relevant service charge year.

9. The services to be provided by the landlord are listed in Part 1 of Schedule 7. The Service Costs are listed in Part 2 of that schedule and include at paragraph 1(a)(vi):

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

In addition, at paragraph 1(b), the Service Costs can include:

> "the costs, fees and disbursements reasonably and properly incurred of:
>
> (a) managing agents employed by the Landlord for the carrying out and provision of the Services or, where managing agents are not employed, a management fee for the same;
>
> (b) accountants employed by the Landlord to prepare and audit the service charge accounts; and

(c) any other person reasonably and properly retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services."

10. The proportions payable by the other tenants in the building are (i) Flat 1 – 20%; (ii) Flat 2 – 22%; (iii) Flat 3 – 12%; (iv) Flat 4 – 12%; (v) – Flat 6 – 22%. Flats 2, 3 and 6 are owned by the Respondent.

Tribunal determination

11. This has been a determination on the papers. The documents that the tribunal was referred to are in a bundle of 344 pages, the contents of which the tribunal have noted. The bundle contained the application, the tribunal's directions in the case, the Applicant's statement of case and statement of fact, a copy of the lease, the Respondent's statement of case and statement of fact, the Applicant's Reply to these and the completed Scott Schedule; this all runs to 267 pages. In addition, four authorities were provided within the bundle. The decisions reached and the reasons for them are set out below.

12. Prior to consideration by the tribunal, the Applicant accepted the reasonableness of the insurance charges previously challenged by her. As a result, the tribunal did not consider these. In addition, within the Scott Schedule, the Respondent explained that the 2020 payment to Baron Management of £1,468.54 had not been included in the service charge. As a result, this invoice was not further disputed by the Applicant and has not been considered by the tribunal.

13. Having considered all of the documents provided, the tribunal has made determinations on the various outstanding issues as follows.

Issue of demands

14. The tribunal has considered the question of whether the sums demanded by the Respondent from the Applicant were properly demanded as a preliminary issue, on the basis that this could impact on whether any sums are due from the Applicant for the service charge years in question.

15. The Applicant has argued that ten invoices served on it were not payable as they did not contain either the name and address of the landlord or the prescribed notes. She has provided email copies of invoices where neither are apparent. She has further argued that the service of invoices by email is not good service and so none are payable for that reason.

16. The Respondent has replied denying this, saying that all invoices were posted and contained all the required information. No evidence of posting or receipt has been provided nor copies of the complete invoices. The Applicant has pointed to emails from her stating that she has not received the relevant invoices previously.

17. Section 47 of the Landlord and Tenant Act 1987 provides:

> (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely
> (a) the name and address of the landlord, and
> ...
>
> (2)Where
> (a) a tenant of any such premises is given such a demand, but
>
> (b) it does not contain any information required to be contained in it by virtue of subsection (1), then... any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
>
> (4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy."

This is the requirement to provide the landlord's name and address. The effect of this is that the relevant sum is not payable until those details have been provided.

18. The Applicant has referred the tribunal to two cases in relation to Section 47, both of which I have considered. The cases are *Triplerose Ltd v Grantglen Ltd and another company* [2012] UKUT 0204 (LC) and *Tedla v Cameret Court Residents Association Ltd* [2015] UKUT 221 (LC), both of which consider the reasons for the statutory provision.

19. The tribunal has considered the case of *Cain v Islington LBC [2015] UKUT 542 (LC)* in this context. This looked at the application of section 27A(4) of the Landlord and Tenant Act 1985 which provides that no application can be made pursuant to section 27A of that Act in respect of a matter (inter alia) which "has been agreed or admitted by the tenant". In that case it was held that a tribunal could infer from a series of payments made without protest that the tenant had agreed that the amount claimed was properly payable; as a result the tenant was barred by section 27A(4) from proceeding with the application.

20. In this case, all the sums questioned by the Applicant were paid without protest. The tribunal therefore determines that, even if invoices were provided without the landlord's name and address, she is debarred from questioning the payability of those ten invoices on the grounds that she has already paid them and thereby accepted or admitted them.

21. If the tribunal is incorrect in this determination, the parties could give evidence and make representations to it as to whether the name and address of the landlord was provided so that the Tribunal could make a finding of fact on this matter. The Tribunal could not determine such a dispute as to fact on the papers

and so would be required to list an oral hearing which the parties and any witnesses would be required to attend.

22. However, the tribunal considers that this would be an unnecessary use of its time and the time of the parties, also incurring them cost, without providing any real benefit to either party because the determination that the sums have been accepted or admitted would remain. In addition, section 47 simply defers the obligation to pay rather than giving a tenant an exemption from payment. If there was a finding of fact that the name and address had not been provided, the Applicant could potentially request the return of the funds but the Respondent could also serve further versions of the invoices for sums the Applicant knew were being sought and, without reaching any final determination on the point, it is one likely outcome that the Applicant would not be entitled to the return of the sums or otherwise if return of any of them had been received, would then have to repay them upon receipt of the relevant details.

23. The same points set out in paragraphs 19 to 21 above apply in respect of what have been described as the prescribed notes, which the Tribunal understands to mean a Summary of Tenant's Rights and Obligations. There is no identifiable merit in repeating them. References to the Summary should be substituted for references to the name and address.

24. The lease deals with the question of service at clause 14, providing at clause 14.1:

> 14. A notice given under or in connection with this lease shall be:
>
> (a) in writing unless this lease expressly states otherwise and for the purposes of this clause a fax or an e-mail is not in writing;
>
> (b) given to the Landlord by:
>
> (i) leaving it at the Landlord's address given in clause 14.5; or
>
> (ii) sending it by pre-paid first-class post or other next working day delivery service at the Landlord's address given in clause 14.5;
>
> (c) given to the Tenant by:
>
> (i) leaving it at the Property; or
>
> (ii) sending it by pre-paid first-class post or other next working day delivery service at the Property.

It is noted in particular that service by email is not sufficient service of a notice.

25. There is a degree of dispute as to whether the invoices were served in writing or not. As with the questions of whether the invoices contained details of the landlord's name and address, the tribunal cannot make a finding of fact in relation to this without hearing from the parties. However, as with the

landlord's name and address, this would in practice to be an unnecessary use of the tribunal's time and of no real benefit to either party, for the reasons explained above.

26. Having considered this issue, the tribunal declines to list an oral hearing to determine matters which it has decided would make no difference to the outcome. The tribunal turns to the specific items questioned by the Applicant, noting that where the sums have already been paid as part of the above charges, the above determination applies to them and hence the reasonableness of specific elements is essentially academic. Nevertheless, in this instance the Tribunal addresses the items.

2018 payment of £300 to Baron Homes Corp

27. The Applicant has argued that this amount should be covered by the management fee and is in any event not reasonable in amount. The Respondent argues that this relates to regular checks on the Building to ensure that there are no hazards, testing the fire alarms and looking to see if there are any concerns or potential problems obvious from an inspection of the exterior and common parts such as the stairways.

28. The invoice in question is actually from Baron Management Limited to the Respondent and is dated 31st December 2018 and simply references "health and safety". The corresponding entry in the service charge accounts is only £250 so it appears a lower sum was charged.

29. The management agreement with Baron Management Limited has not been provided by the Respondent. This might have provided clarity as to what was included within the scope of the management fee. However, based on the statements by the parties and the tribunal's experience of management agreements, it finds on the balance of probabilities that health and safety inspections and tests are not within the scope of the management fee and so are chargeable in addition to it.

30. The Applicant has provided no evidence as to why a charge of £250 (or even £300) for this service is unreasonable. In the absence of any evidence to the contrary, the tribunal finds that a charge at this level is reasonable.

The tribunal's decision

31. The tribunal determines that the amount of £250 included in the 2018 service charge in respect of health and safety is reasonable.

2018 payment of £1,140 to Bensley TM Ltd

32. The Applicant has questioned this invoice which related to damp proofing Flat 1 due to damp creeping into the basement from the fabric of the building.

33. Section 20 of the Landlord and Tenant Act 1985 limits contributions tenants can be required to pay where the costs exceed specified levels, unless either a consultation has occurred or a dispensation has been given by the tribunal. In this case, the specified level is £250 per tenant. The cost worked out at less than £250 per flat with the exception of Flats 2 and 8, where the cost was £250.80. Both these flats are owned by the Respondent. The Respondent has accepted that this was in excess of the level that would have triggered consultation requirements and asked for dispensation from any such requirements.

34. However, it is not clear whether the two flats owned by the Respondent are actually held by it pursuant to leases (and so whether there are tenants for these flats). If they are not, they would not in any event count towards the consultation requirements and so these would not have been breached by this invoice. As a result, the Applicant would not have a right to challenge this invoice on the grounds of a failure to consult.

35. The tribunal noted the request by the Respondent in the documentation for dispensation from the consultation requirements in respect of the works covered by this invoice. However, it has not made a formal application, without which the request cannot be considered. If it wishes to pursue this, it needs to make a formal application and pay the appropriate fee, following which it will be considered by the tribunal in the usual way. However, in light of the comments in this judgment, it may consider that there is no real purpose to such an application.

36. If the Respondent is the tenant of Flats 2 and 8, a consultation or dispensation is required. Without this, the amount recoverable from each tenant is limited by section 20 to £250 per flat.

37. It is assumed that the relevant amounts were demanded as part of the 2018 service charge (this has a total of £2,707 for repairs). On this basis the Applicant's share already demanded is £136.80 (12% of £1,140). It is therefore in any event substantially lower than the £250 cap.

38. The tribunal finds the amount charged to be payable and reasonable, even though there was no consultation.

The tribunal's decision

39. The tribunal determines that the amount payable by the Applicant in respect of 2018 payment of £1,140 to Bensley TM Ltd is reasonable.

2021 payment of £1,434 professional fees

40. The Applicant has questioned the inclusion of £1,434 in professional fees in the 2021 accounts. The Respondent states that this is a 15% management charge for the major works carried out that year and that this was notified to the flat owners as part of the section 20 consultation process. It has provided evidence

of a first stage consultation dated 17th August 2021. It is noted by the tribunal that this states that:

> "Baron Management 's fee for the preparation of a specification, obtaining tenders, liaising with the various parties, issuing this together with the subsequent second stage notice, management of the contract until completion on site, and settlement of all accounts will amount to 10% of the successful contractor's final account, plus VAT"

41. The Applicant argues that no Notice of Estimates was provided or second stage consultation carried out and so the Respondent failed to comply with the consultation process under section 20 of the Landlord and Tenant Act 1985.

42. No evidence of a full consultation process has been provided. On the basis that evidence of the first stage consultation was provided but nothing further and that the management fee referred to in that consultation is substantially less than the amount claimed, the tribunal finds that on balance a full consultation was not carried out.

43. The first stage consultation referred to the management fee as being 10% of the successful contractor's final amount, plus VAT. If a full consultation had been carried out, this would have amounted to £956. The Applicant would have been liable for 12% of this, amounting to £114.72. This is the amount that should have been charged to the Applicant.

The tribunal's decision

44. The tribunal determines that the amount payable by the Applicant in respect of professional fees pursuant to the 2021 service charge is £114.72.

2020 Health and Safety payment of £1,143.60

45. This is a similar issue to the £300/£250 claim referred to above. They relate to five invoices amounting to £1,252.80 in total of which only £1,143.60 was charged, seemingly through an error by the Respondent. £450 of this related to invoices to Baron Management Limited on the same basis as above. The Respondent argues that they are reasonable and properly payable whilst the Applicant argues that these should be included within the management fee for 2020 and are not reasonable in amount.

46. The tribunal has already found that health and safety inspections are outside the scope of the management fee and so can be charged in addition to it; there is no double counting with that fee. As before, no evidence has been provided that the amounts charged are unreasonable and so the tribunal reaches the same conclusion that these costs are reasonable and payable.

The tribunal's decision

47. The tribunal determines that the amount of £1,143.60 included in the 2020 service charge in respect of health and safety is reasonable.

2021 Health and Safety payment of £1,200

48. This is a similar issue to the two health and safety claims referred to above. In 2021 major repair works were ongoing and the amounts incurred on health and safety that year cover two invoices from Baron Management Limited amounting to £1,200.00 in total. The Respondent argues that they are reasonable and properly payable whilst the Applicant argues that these should be included within the management fee for 2021 and are not reasonable in amount.

49. The tribunal has already determined that the charges could be made outside the management fee and so there is no double counting with that fee. As before, no evidence has been provided that the amounts charged are unreasonable and so the tribunal reaches the same conclusion that these costs are reasonable and payable.

The tribunal's decision

50. The tribunal determines that the amount of £1,200 included in the 2021 service charge in respect of health and safety is reasonable.

On account and reserve fund payments 2018 to 2022

51. The Applicant has questioned the level of the on account payments demanded over this period, compared to the levels of actual cost, and the treatment of this excess. She has also been required to contribute towards a reserve fund levied on the whole building at the rate of £4,000 per year.

52. The relevant amounts collected by way of estimated service charge and the amounts actually incurred for the years 2018 to 2021 is as follows:

(i) 2018 – estimate £21,534.38, expenditure £7,398.41

(ii) 2019 – estimate £17,187.00, expenditure £6,069.96

(iii) 2020 – estimate £17,187.00, expenditure £8,124.58

(iv) 2021 – estimate £17,187.00, expenditure £25,161.32

53. The estimated service charge each year included the £4,000 contribution towards the reserve fund; this was effectively utilised in 2021 to pay for the repair works, which cost £16,284.74 according to the accounts for that year.

54. No excess in any year was credited against further payments and instead an increasing surplus built up, as follows:

    (i) 2018 - £19,932.42

    (ii) 2019 - £31,038.46

    (iii) 2020 - £40,110.88

    (iv) 2021 - £32,136.56

    The Respondent has stated that the surplus at the end of 2022 is likely to be at a similar level to 2021.

55. The Applicant argues that this annual excess over expenditure is unreasonable and excessive. She has asked for the excess to be credited back and/or the reserve fund contributions reduced to reflect the excess.

56. The Respondent does not accept this argument, arguing instead that this is good, sensible and prudent management. It means that, whenever substantial works need to be undertaken, the flat owners are not hit with one-off demands for significant sums of money. The Respondent understands that the other flat owners are more than content with that and the accounting is intended to promote and protect the landlord-tenant relationship.

57. The Respondent also argues that no sums are being ringfenced for future expenditure and so all surplus is just allowed to build up, effectively all becoming the reserve fund. It is noted that this is inconsistent with the comment in the email dated 21st July 2022 from Nazila Blencowe of the Respondent to the Applicant's representative saying:

> "1-This is a listed building and in conservation area. We have to decorate every 5 years the external facade of the building and cost of scaffolding, render repairs and decoration just for the front is around £20,000 - £4000 reserve is justified
> 2 ·[] is a reserve fund and not part of the day to day expenditure"

58. The lease allows the collection of sums in advance of costs being incurred, as referred to above. Section 19(2) of the Landlord and Tenant Act 1985 provides that these sums should be reasonable, stating:

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

59. The lease provides that where the actual costs are less than the estimate, the excess shall be applied against future instalments of service charge, as stated above.

60. In this case, there has been in the three years from 2018 a large surplus. None of this was credited against future service charge, instead being rolled up into what is clearly viewed by the Respondent as a reserve fund.

61. The lease does allow the creation of a reserve fund, as referred to above, permitting "putting aside such sum as shall reasonably be considered necessary by the Landlord (whose decision shall be final as to questions of fact) to provide reserves or sinking funds for items of future expenditure to be or expected to be incurred at any time in connection with providing the Services".

62. The Respondent has made provision in each year within the estimated service charge for £4,000 to be collected for that fund.

63. It should be considered whether the sum of £4,000 per annum for a reserve fund is reasonable. The Respondent has talked about a five yearly repair cycle and this has not been questioned by the Applicant. The works in 2021 cost £16,284.74, with management fees making this potentially higher. A reserve of £20,000 every five years in this context is reasonable and so the collection of that amount during the years 2018 to 2021 would seem reasonable.

64. Part of the service charge surplus each year is in fact that £4,000 collected as a reserve fund but not differentiated from the general surplus. That £4,000 should be deducted from the excess of income over expenditure to give the proper surplus. This is the excess above the amount which the Respondent as landlord is entitled to put aside as a reserve fund. This proper surplus should be credited against future instalments of the service charge in accordance with paragraph 2.3 of Schedule 4 of the lease.

65. Applying this to the years with a surplus, the excess in each year (ie after deducting the reserve fund) is:

    (i) 2018 - £10,135.97

    (ii) 2019 - £7,117.04

    (iii) 2020 - £5,062.42

    There was no surplus in 2021. The total excess is therefore £22,315.43. The shortfall in 2021 should not be deducted from this as the Respondent has stated that this was funded from the reserve fund.

66. The Applicant has argued that, in accordance with section 19(2) referred to above, the estimated service charges for the years 2018 to 2022 are unreasonable, given that the expenditure is so much less than the amounts collected. In considering this, I have looked at the surplus figures referred to in the paragraph above, ie after taking into account the reserve fund payments. When setting a service charge budget, a prudent landlord will allow a cushion to allow for unforeseen costs. The need for this (and so the size of any cushion) is reduced where there is also a large reserve fund, as is the case here. It is suggested that an excess of £2,000 per annum would be reasonable headroom. The estimated service charges for the three years from 2018 are all well in excess of this and so are unreasonable.

67. Applying this £2,000 would give a reasonable estimate in each of the three years from 2018 as follows (with the Applicant's proportion in brackets):

    (i) 2018 –£9,398.41 (£1,127.81)

    (ii) 2019 –£8,069.96 (£968.38)

    (iii) 2020 –£10,124.58 (£1,214.95)

    As there was a shortfall in 2021, that year's estimated service charge is found to be reasonable.

68. The impact of any excess would have been reduced if the Respondent had credited the proper surplus against future expenditure, but instead it has compounded the issue by holding onto the excess. Alternatively, it could have mitigated the position by reducing the amount put into the reserve fund each year. As it has done neither, the amount in the reserve fund is now at a level in excess of what is needed. If it is accepted that £20,000 is still an appropriate figure for the round of works due in 2026 (five years after 2021) and given that there is approximately £32,000 in the reserve fund at present, there is already a substantial surplus held. On that basis, it is unreasonable to make further collections towards the reserve fund for the time being. As a result, no reserve fund contributions should be made by the Applicant for 2022 and 2023. After that it is for the landlord to review the reserve fund and consider whether any contribution is reasonable.

69. For the above reasons, the tribunal makes the following determinations

The tribunal's decision

70. The tribunal determines that the estimated service charge payable by the Applicant for the 2018 service charge year is unreasonable and that the reasonable estimated service charge payable by the Applicant for that service charge year is £1,127.81.

71. The tribunal determines that the estimated service charge payable by the Applicant for the 2019 service charge year is unreasonable and the reasonable estimated service charge payable by the Applicant in that service charge year is £968.38.

72. The tribunal determines that the estimated service charge payable by the Applicant for the 2020 service charge year is unreasonable and the reasonable estimated service charge payable by the Applicant in that service charge year is £1,214.95.

73. The tribunal determines that no contribution towards the reserve fund is payable by the Applicant in the 2022 and 2023 service charge years.

Applications under s.20C and paragraph 5A

74. The Applicant has applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("Section 20C") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("Paragraph 5A").

75. The relevant part of Section 20C reads as follows:-

> (1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant…".

76. The relevant part of Paragraph 5A reads as follows:-

> "A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

77. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicants or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicant as an administration charge under the Lease.

78. In this case, the Applicant has been successful on the biggest substantive issues, being the questions of estimated service charge, the size of the reserve fund payments and the crediting of excess payments against future interim payments. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The tribunal therefore make an order in favour of the

Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

79. For the same reasons as stated above in relation to the Section 20C cost application, the Applicant should not have to pay any of the Respondent's costs in opposing the application. The tribunal therefore makes an order in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under the Lease.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

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

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