FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/LIS/2023/0001**
HMCTS	**:**	**V: CLOUD VIDEO PLATFORM (VHS)**
Property	**:**	**502 Devonshire House, 40 Great Charles Street Queensway, Birmingham, B3 2LX**
Applicant	**:**	**Mr S Clough**
Respondent	**:**	**FDI Limited**
Representative	**:**	**Counsel – Miss R Ackerley, instructed by J B Leitch Solicitors**
Type of Application	**:**	**Applications under sections 27A and 20C of the Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for the liability to pay administration charges**
Tribunal Members	**:**	**Judge M K Gandham** **Mr G S Freckelton FRICS**
Date of Hearing	**:**	**7 December 2023**
Date of Decision	**:**	**23 January 2024**

DECISION

Introduction

1. On 23 December 2022, the Tribunal received an application from Mr Stephen Clough of 16 The Cloisters, Ampthill, Bedfordshire, MK45 2UJ ('the Applicant') under section 27A of the Landlord and Tenant Act 1985 ('the Act') to determine whether certain service charges were payable and, if payable, whether they were reasonable, in respect of the leasehold property known as 502 Devonshire House, 40 Great Charles Street Queensway, Birmingham, B3 2LX ('the Property').

2. In addition, the Applicant made applications under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') in respect of costs.

3. The Applicant is the current lessee of the Property under a lease ('the Lease') dated 28 February 2014 made between (1) FDI Limited ('the Respondent') and (2) the Applicant.

4. The Respondent holds the lease of the entire building known as Devonshire House ('the Building') under a headlease dated 20 April 2016 and made between the Respondent and FDI Freeholds Limited. Xenia Estates Services Limited ('Xenia') are instructed by the Respondent as its managing agent.

5. The service charge in dispute related solely to the charge for electricity costs in the service charge year ending 31 December 2020.

6. Directions were issued on 18 January 2023, which confirmed the matters in dispute, set out a timetable for the proceedings and confirmed that an inspection of the Building was not considered necessary. The matter was listed for a hearing to take place on 7 December 2023.

7. On 6 December 2023, the Tribunal received an email from the Respondent's representatives - JB Leitch Solicitors – stating that, as they had offered to settle the matter with the Applicant (including paying his costs of £300) they did not intend to attend the hearing as there were no issues still in dispute. The Tribunal received an email from the Applicant in response on the same day, which included an email he had sent to J B Leitch Solicitors confirming his refusal of their offer and his desire to proceed with the hearing. Accordingly, the Tribunal confirmed to both parties that the hearing would be proceeding.

8. A hearing (via VHS) was held on 7 December 2023 and, on 12 December 2023, the Respondent provided a copy of an electricity contract for the period 1 August 2020 to 31 July 2021.

The Law

9. The relevant provisions in respect of liability to pay and reasonableness of service charges are found in sections 19 and 27A of the Act (as amended), which are set out as follows:

Section 19 Limitation of service charges: reasonableness

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

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

…

10. Section 20c of the Act (as amended) provides:

Section 20c Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before….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 or any other person or person specified in the application.

…

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

11. The relevant provisions in respect of limiting the liability to pay an administration charge in respect of litigation costs are found in paragraph 5A of Schedule 11 of the 2002 Act (as amended), which provides:

Paragraph 5A Limitation of administration charges: costs of proceedings

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

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

(3) In this paragraph—
(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	*The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court*
First-tier Tribunal proceedings	*The First-tier Tribunal*
Upper Tribunal proceedings	*The Upper Tribunal*
Arbitration proceedings	*The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.*

The Lease

12. The Lease demised the Property to the Applicant for a term of 250 years from and including 28 February 2014. The general definitions in the Lease are contained within clause 1, the First Schedule defines the Property and main structure of the building, the Second Schedule details the rights granted and reserved, the Third Schedule and Fourth Schedule detail the tenant and landlord's covenants respectively and the Fifth Schedule sets out the provisions in relation to the service charge. [The terms of the remaining schedules are not relevant to this dispute].

13. Under clause 1 of the Lease, the "*Building*" is defined as:

"*The Premises known as Devonshire House, 40 Great Charles Street Queensway, Birmingham B3 2LX being the land comprised in the title above mentioned and edged blue on the Plan*",

and the "*Common Parts*" are defined as:

> "*All passageways internally and external drive and landscaped areas, stairways, the lift and other service installations, gymnasiums and common rooms and areas within the Building from time to time which do not exclusively serve the Property or which are not demised pursuant to the leases of Other Units*".

14. The service charge is referred to in the Lease as the 'Maintenance Charge' and includes the sums spent by the landlord on the maintenance and administration of the Building pursuant to the provisions of the Fifth Schedule.

15. The Property is defined within Part 1 of the First Schedule to the Lease. This confirms, in subsection (e), that the Property includes:

> "*All Service Installations comprised therein exclusively serving the same but not those used in common*".

"*Service Installations*" is defined under clause 1 of the Lease as, "*All drains channels sewers pipes wires cables installations watercourses gutters and other conducting media whatsoever…*".

16. The tenant, in paragraph 1(a)(i) of the Third Schedule covenants:

> "*To pay the Maintenance Charge…on the days and in the manner set out in the Fifth Schedule without any deductions (whether by way of set off lien charge or otherwise) whatsoever;*",

And under paragraph 1(b):

> "*To pay all existing and future council or other taxes rates assessments charges and outgoings whatsoever payable in respect of the Property*".

17. The Fourth Schedule details the covenants by the landlord, which include, under paragraph 7 of Part II of the Fourth Schedule:

> "*To pay all rates taxes assessments and outgoings charged imposed or assessed in respect of the Common Parts*".

18. In relation to the calculation and payment of the service charge, Paragraph 1 of the Part I of the Fifth Schedule confirms that:

> "*The Landlord shall as soon as practicable after the 1st day of January in each year prepare estimates of the Maintenance Charge ("Estimated Management Costs") for such year and forthwith thereafter notify the Tenant of such Estimated Management Costs".*

The tenant is liable to pay the Estimated Management Costs under paragraph 2.

19. Paragraph 3 confirms that, as soon as reasonably practicable, after the end of the calendar year, the landlord shall notify the tenant of the "*Actual Management Costs*" (defined as "*the sums spent by* [the Landlord] *on the matters specified in Part II of this Schedule*"). The clause then provides for an adjustment to take into account any excess or deficiency in the amount requested under paragraph 1.

20. Part II of the Fifth Schedule sets out the expenditure to be covered in the Maintenance Charge, which includes, under paragraph 4:

> "*All rates (including water rates) charges taxes assessments and any other outgoings payable in respect of the Common Parts*",

And under paragraph 5:

> "*All reasonable sums paid by the Landlord for the repair and maintenance decoration cleaning lighting and managing of the Building whether or not the Landlord was liable to incur the same under its covenants herein contained*".

The Hearing

21. A hearing was held on 7 December 2023. The Applicant attended and the Respondent was represented by Miss Ackerley from Atlantic Chambers. Ms Daniella Lipszyc (a solicitor for Xenia Estates) and Mr Bryn Hughes-Jeffries (a paralegal from J B Leitch Solicitors), also attended on behalf of the Respondent.

22. At the hearing, the parties confirmed that the only service cost in dispute under these proceedings related to the charge for the electricity in the Maintenance Charge for the year ending 31 December 2020. The Applicant also confirmed that the issues raised were:
    - whether the costs for the electricity were 'relevant costs' payable by the Applicant under the provisions of the Lease;
    - whether the final costs charged were reasonable;
    - whether the Respondent had complied with the consultation requirements under section 20 of the Act; and
    - whether an order under section 20C of the Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made.

Submissions

Payability of the costs

23. The Applicant stated that, although he was not querying either his liability for paying for the electricity costs for the common areas or the amount of those costs, he considered that the provisions in the Lease, in particular the definition of what was included within the Maintenance Charge within the Fifth Schedule, did not allow for the charging of the cost of electricity consumed in the individual flats as part of the service charge.

24. The Applicant clarified that when he purchased the Property, charges for electricity to the communal areas was charged to the leaseholders through the service charge, with bills being issued separately to the occupiers for electricity charged to each of the individual flats. As the Building only had a central meter and the flats did not have their own sub-meters, he accepted that the charges for flat consumption was based on estimates, although he stated that he had not realised this at the time.

25. In the service charge year ending 2020, without consulting the leaseholders, the Applicant stated that the Respondent decided to charge the cost for the whole of the electricity consumed within the Building to the leaseholders as part of the service charge. The Applicant stated that he thought that this was not allowed under the lease provisions, so spoke to several members of the management company to try and clarify under which provision this was being charged as it did not appear to fall within the costs allowed as part of the Maintenance Charge. He stated that he was referred by Xenia to the tenant's covenants in paragraph 1(b) of the Third Schedule.

26. The Applicant stated that, even if paragraph 1(b) of the Third Schedule included the costs for non-communal electricity, it was clearly distinct from the provisions relating to Maintenance Charge, which were defined within the Fifth Schedule and included within the tenant's covenants in paragraph 1(a) of the Third Schedule.

27. In relation to whether the lease provisions could, instead, allow the costs to be included as an administration charge, the Applicant submitted that the case of *Arnold v Britton & Others* [2015] AC 1619 confirmed that the interpretation of a contractual provision within a tenancy agreement involved identifying what the parties meant through the terms of a "*reasonable reader*". He submitted that he did not believe that a reasonable reader would consider that the provisions of paragraph 1(b) were intended to cover the costs for the provision of electricity to individual units.

28. Accordingly, the Applicant submitted that the provisions in the Lease did not allow for the costs of electricity consumed in the flats to be included within the service charge and that he did not believe that the costs could be included as an administration charge under paragraph 1(b) of the Third Schedule.

29. Miss Ackerley, on behalf of the Respondent, stated that the Building was developed off-plan and that the leases of the flats were entered into prior to the development having been completed. She confirmed that tenants were liable to pay their proportion of the service charge, with the Applicant's proportion being 2.1863%, a figure which she stated was not disputed by the Applicant. She also noted that the Applicant was not disputing either the costs for the provision of electricity nor that the Lease provided that the electricity costs for the common areas could be charged via the Maintenance Charge.

30. In relation to whether the cost for electricity to the entire Building was payable within the Maintenance Charge, she referred the Tribunal to paragraphs 4 and 5 of Part II of the Fifth Schedule.

31. In relation to paragraph 4, she stated that this included "*charges… and any other outgoings payable in respect of the Common Parts*". She stated that the definition of "*Common Parts*" included service installations within the Building and pointed out that the definition of "*Building*" included the whole of Devonshire House, encompassing both the common parts and the flats. As such, she submitted that the Lease provisions could allow for the cost of electricity to the whole of the Building to be charged as part of the Maintenance Charge.

32. In relation to paragraph 5, Miss Ackerley noted this allowed reasonable sums paid for the "*lighting… of the Building*". Again, as the definition of "*Building*" included the whole of Devonshire House, she submitted that this would include the lighting for the flats.

33. Accordingly, she submitted that the Lease provisions did allow for the charging of the whole of the electricity costs for the Building as part of the service charge.

34. Even if the cost of the electricity to the individual flats could not be included within the service charge, Miss Ackerley submitted that paragraph 1(b) of the Third Schedule clearly would allow the Respondent to charge the same as an administration charge, the costs being a 'charge' or 'outgoing' in respect of the Property.

35. On questioning by the Tribunal, Ms Lipszyc confirmed that the flats were served by their own individual service installations, distinct from those which served the communal areas, but that there were no individual electric meters to each flat.

Reasonableness of the costs

36. If the costs were payable, the Applicant submitted that the costs were unreasonable on two grounds. Firstly, he stated that it was unreasonable for the cost of consumption of electricity by the flats to be 'shoehorned' into the service charge on a retrospective basis. He stated that the initial budget for the cost of electricity for the 2020 year, dated 29 January 2020, forecast this as a sum of £8,650.00 for "*Communal electricity*". He stated that on 6 July 2021, he was forwarded a Summary of Service Charge Costs for the Building ('the Summary') which included an amount of £47,541.00 in relation to electricity costs. He stated that the Summary referred to this figure as including the electricity costs for both the communal areas and the individual flats.

37. The Applicant submitted that the inclusion of such charges on a retrospective basis was not reasonable given that there had been a long-standing established means of charging the cost of electricity to the flats directly to the occupiers monthly. The Applicant argued that the failure by the Respondent to notify the leaseholders that this was due to change meant that he could not recharge the sums to the occupants of the Property, leaving him out of pocket by approximately £615.00. He submitted that it was not reasonable for the Respondent to have altered the way in which the costs were billed without

consulting the leaseholders and taking their interests into account, as per the decision in *Waaler v Hounslow LBC* [2017] 1 WLR 2817.

38. The Applicant further submitted that the costs charged for the individual flats was unreasonable as they were divided in the same way as the service charge. The Applicant stated that the provisions of paragraph 1(b) of the Third Schedule to the Lease referred to the amounts payable "*in respect to the Property*". The Applicant stated that the Property had been vacant between May and September 2020, therefore, the costs of electricity in respect of the Property during this period would have been minimal. As such, he argued that charging those costs based on a fixed percentage of the electricity costs for the entire Building was not appropriate.

39. In relation to the reasonableness of including higher costs in the final account, Miss Ackerley referred the Tribunal to Part I of the Fifth Schedule to the Lease which stated that the Respondent was responsible for issuing estimates to the leaseholders and then accounting and adjusting based on the final amounts spent. She noted that the Applicant had not submitted that either the budget or the final account had not been prepared in accordance with those provisions. Miss Ackerley also confirmed that the Summary was a valid notification under section 20B of the Act, as it had been sent to the leaseholders within 18 months of the final electricity bill being paid. Consequently, she submitted that the total costs incurred could be included in the final account, even though the budgeted figure was much lower.

40. In relation to the costs being charged on a proportionate basis, Miss Lipszyc stated that the individual flats had previously being charged based on estimates calculated using a hand-held device. She stated that several leaseholders had challenged the amount of their electricity costs, often leading to a substantial shortfall which the Respondent had to fund. Miss Lipszyc stated that it was no longer viable for the Respondent to continue to fund the shortfall and that the landlord was not obliged to do so under the Lease provisions. As such, the Respondent decided that the most practical way to proceed was to apportion the total costs of electricity to the Building between the individual leaseholders, utilising the same proportion as for the service charge calculation.

41. Miss Ackerley referred the Tribunal to the Respondent's Statement of Case and stated that a landlord is always afforded some leeway in deciding whether a particular decision is reasonable. She submitted that when a method adopted by the landlord is objectively reasonable, it is not valid to argue that services could have been supplied in a cheaper or "*more reasonable*" way, as per the decision in *London Borough of Havering v Macdonald* [2012] UKUT 154 (LC).

42. In this matter, Miss Ackerley stated that the Respondent's decision to charge the total cost of the electricity for the Building based on a proportionate basis was reasonable, as the alternative would have been to install individual meters into each of the flats which would not only have caused practical difficulties and disruption, but would have been at a significant cost to each of the leaseholders and required section 20 consultation.

43. As such, Miss Ackerley submitted that, although the Respondent's decision may not have been ideal, it was presently the most reasonable option.

Consultation

44. The Applicant's final argument related to whether, based on the costs involved, the agreement with the electricity supplier should have been subject to the consultation process under section 20 of the Act.

45. The Applicant stated that it was clear that the arrangement entered into by the Respondent was due to last for more than 12 months and that it had already surpassed this time period by the time the leaseholders were notified of the same. The Applicant also contended that such agreements were, no doubt, exactly the type of that contracts that consultation were designed to protect leaseholders against and that it would make a mockery of the law if they could simply be circumvented by ensuring that the length of the contract did not exceed 12 months, regardless of the intention of the parties.

46. Miss Ackerley stated that the electrical costs did not fall within the definition of qualifying works and that the Respondent had confirmed, in its Statement of Case, that the contract for was for a period of less than 12 months and, therefore, was not a qualifying long-term agreement (a QLTA).

47. Ms Lipszyc confirmed that she would provide a copy of any available contract to the Tribunal following the hearing.

Applications for Costs

48. In relation to costs, Miss Ackerley confirmed that the Respondent had already conceded that the costs of the application could not be recovered directly from individual leaseholders by way of an administration charge under the Lease provisions, so submitted that an application under paragraph 5A was not required.

49. In relation to the application under section 20C of the Act, the Applicant stated that he had, on numerous occasions, tried to resolve this matter with the Respondent both prior to his application to the First-tier tribunal and following it, without success. As such, he submitted that it would be just and equitable to make such an order.

50. Miss Ackerley stated that a section 20C order should only be made if it was "*just and equitable*" in all the circumstances. She submitted that there was nothing in the Respondent's conduct which would warrant such an order, as the Respondent had complied fully with the Tribunal throughout the proceedings, observing all directions issued. She also stated that the Respondent had actively engaged in mediation and had tried to resolve the matter prior to the actual hearing date. As such, she contended that it would not be just or equitable for an order to be made in this matter.

The Tribunal's Deliberations and Determinations

51. The Tribunal considered all of the written and oral evidence submitted by both parties, briefly summarised above.

Payability of the costs

52. The Tribunal noted that the Applicant was not disputing his liability for payment of the electricity costs for the common areas, which he accepted did fall within the provisions of the service charge. The question for the Tribunal was whether the electricity costs for the individual flats, including the Property, could also be included with within the definition of the 'Maintenance Charge' under the provisions of the Lease.

53. The Tribunal noted the submissions made by Miss Ackerley regarding the wording of paragraphs 4 and 5 of Part II of the Fifth Schedule and considered whether these could encompass the disputed costs.

54. In relation to the wording in paragraph 4, the Tribunal noted that this only included outgoings in respect of the 'Common Parts'. Although the Tribunal accepted that the definition of 'Common Parts' included 'service installations' within the 'Building', and that the definition of 'Building' included the whole of Devonshire House (including the individual flats), the Tribunal determined that, when reading the paragraph as a whole, it did not include those service installations which exclusively served either the Property or those which were demised in the leases of the other flats.

55. The Tribunal found that this interpretation was reinforced by the provisions of paragraph (e) of Part I of the First Schedule, which included within the definition of the Property:

> "A*ll Service Installations comprised therein exclusively serving the same but not those used in common*".

56. As the service installations serving the Property were separate and distinct to those serving the Common Parts, the Tribunal found that the cost for electricity to the individual flats would not fall within paragraph 4.

57. In relation to the provisions of paragraph 5, the Tribunal did accept that, due to the definition of the 'Building' and the poor terminology used in this paragraph, that any costs for the lighting of the flats which had been incurred by Respondent could be included in the Maintenance Charge. The Tribunal noted that it was unlikely that this would have been the intention of the draftsman, as calculating the same would be nigh impossible without a separate electrical system.

58. The Tribunal found that none of the other Maintenance Charge provisions in the Lease allowed for the remaining costs for electricity to be included and, consequently, found that such costs were not payable as part of the service charge.

59. Although this application only relates to the payability and reasonableness of the service charge, the Tribunal would comment that "*outgoings*" in respect of individual flats generally includes services such as electricity costs. As such, the electricity costs for the individual flats could be payable as an administration charge under paragraph 1(b) of the Third Schedule as opined by the Respondent. That being said, the Respondent would have to show that, not only such costs were reasonable, but that they were "*payable in respect of the Property*".

Reasonableness of the costs

60. Although the Tribunal found that the costs for the supply of electricity to the individual flats, other than potentially the lighting, was not payable under the service charge, the Tribunal did go on to consider the other arguments raised by the Applicant.

61. In relation to whether it was reasonable for the Respondent to charge the costs when they had not been raised in the budget, the Tribunal agrees with Miss Ackerley that both the budgeted and final accounts appear to have been raised in accordance with the Lease provisions. The terms of Part I of the Fifth Schedule are quite clear in that the budget is simply an estimate of the management costs and, once the costs incurred have been calculated, the leaseholders are then notified of the same.

62. In addition, if the electricity costs for the flats had been payable as part of the Maintenance Charge, the Tribunal considers that the Summary would have classed as a valid notification of the sums incurred, as the Respondent appeared to have notified the leaseholders of the same within 18 months of payment.

63. In relation to the division of those costs on a proportional basis, as the costs do not fall within the Maintenance Charge they appear only to be payable under paragraph 1(b) of the Third Schedule. Unlike the Maintenance Charge provisions which refer to proportionate sums, this paragraph clearly states that the Applicant would only be liable for those costs "*payable in respect of the Property*".

Consultation

64. In respect of consultation, the costs for the electricity do not count as qualifying works as they do not comprise "*works to the building or premises*" under the definition set out in section 20ZA(2) of the Act.

65. In relation to whether the electricity contracts were QLTAs, the legislation confirms that agreements are only QLTAs if they are for "*a term of more than 12 months*" (section 20ZA(2) of the Act). The purpose of the legislation is to ensure that if the landlord does not consult in the statutorily prescribed manner, unless an application for dispensation is successful, the recoverable service charges levied on leaseholders is capped. The legislation does not affect the provisions relating to reasonableness of service charges and so leaseholders are still afforded the benefit of protection under section 19 of the Act.

66. Following the hearing, the Respondent was only able to supply the electricity contract which commenced on 1 August 2020 and ended on 31 July 2021. This, in the absence of any other evidence, did not qualify as a QLTA. However, as the previous contract could not be supplied, had the Tribunal found that the electricity costs were included within the Maintenance Charge, it would have considered capping the amount due from the Applicant for the period between January 2020 and 31 July 2020.

Determination on Electricity Costs

67. As stated above, the Tribunal finds that the cost of electricity to the Property, other than lighting, cannot be included within the provisions of the service charge. As the electricity is run through a central meter that serves the Building and the Respondent is unable to determine what costs relate to the Common Parts, the lighting and to the individual flats, the actual costs cannot be definitively determined.

68. Under the provisions of the Lease, the Applicant is clearly liable to pay for the electricity costs for the Common Parts and, arguably, for the lighting to the Building. As the Applicant did not state that the actual cost of the supply was unreasonable, nor did he dispute the reasonableness of the budgeted sum, the Tribunal determines that the reasonable sum payable under the Maintenance Charge is £8,650.00 (the budgeted figure).

69. The Applicant is, thus, only liable for an amount of £189.11 (2.1863% of £8,650.00) towards the costs of the electricity as part of the Maintenance Charge for the service charge year ending 31 December 2020.

Applications for Costs

70. In relation to the application under paragraph 5A of Schedule 11 to the 2002 Act, the Tribunal notes the Respondent's submissions and agrees that that the provisions under the Lease do not provide for the Respondent to obtain their costs by way of an administration charge, so no order is required.

71. In relation to the Applicant's application under section 20C of the Act, in making such an order, the Tribunal must consider what is 'just and equitable' in the circumstances of the case, taking into account matters such as the conduct and circumstances of the parties and the outcome of the proceedings.

72. The Tribunal also notes the comments of Martin Rodger QC (Deputy President) in the Upper Tribunal decision in *Conway and others v Jam Factory Freehold Limited* [2013] UKUT 592 (LC), in which he referred back to the decision of Judge Rich QC in *Schilling v Canary Riverside Property Limited* LRX/65/2005 and his reflection upon his earlier decision in *The Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000 ('*Doren*'). At paragraph 54, Martin Rodger QC stated:

"In Schilling v Canary Riverside Development PTE Limited LRX/26/2005 Judge Rich QC reiterated that the only guidance as to the exercise of the statutory discretion which can be given is to apply the statutory test of what is just and equitable in the circumstances. The observations he had made in his earlier decision were intended to be "illustrative, rather than exhaustive" of the matters which needed to be considered. He added at paragraph 13 that:

"The ratio of the decision [in Doren] is "there is no automatic expectation of an Order under s.20C in favour of a successful tenant." So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour.""

73. Looking at the circumstances leading to the application and the conduct of the parties, the Tribunal is conscious of the fact that the application was made by the Applicant due to his concerns regarding the dramatic increase in the costs for the electricity and did not consider that the electricity costs for the individual flats was payable as part of the service charge. Although the Applicant may not have been correct in all of his arguments, he was in that regard and, as such, has clearly been successful in his application.

74. The Tribunal also notes that the Applicant had made several attempts to resolve this dispute both prior to and after making his tribunal application. Although the Respondent agreed to mediation and tried to settle the matter prior to the hearing, the Tribunal accepts that the final offer to the Applicant was made far too late in the day for him to agree to and would not have resolved the underlying dispute in any event.

75. Taking into account all of the circumstances of the case and the submissions made, the Tribunal does consider that it is just and equitable to make an order in favour of the Applicant under section 20C of the Act.

76. Accordingly, the Tribunal orders that all or any of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Discretionary Order under Rule 13

77. The Tribunal, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Rules'), "*may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party…*". In this matter, the Applicant paid an application fee of £100 and a hearing fee £200.

78. Under Rule 13(3) of the Rules the Tribunal may make an order under Rule 13 on application or under its own initiative.

79. In this matter, the Tribunal considers that the Applicant was left with no choice but to make an application to the Tribunal, as the alternative would have meant

that he would be incorrectly charged for sums not payable within the service charge provisions in his lease.

80. As such, the Tribunal considers that it should exercise its discretion and also orders that the Respondent reimburse to the Applicant the whole of the application and hearing fee, being an amount of £300.

Appeal Provisions

81. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM
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Judge M K Gandham