FIRST-TIER TRIBUNAL
BUILDING CHAMBER
(RESIDENTIAL BUILDING)

Case Reference	:	CHI00HB/LSC/2023/0061
Building	:	76 The General, Guinea Street, Bristol, BS1 6SD
Applicant	:	The General Bristol Management Company Limited
Representative	:	Ms Rebecca Ackerley of Counsel instructed by J.B. Leitch Solicitors
Respondent	:	Mr Mark Gordon Cyril Friedman
Representative	:	Mr Charles Knapper CWC Solicitors
Type of Application	:	Transferred Proceedings from County Court in relation to service charges and administration charges
Tribunal Member(s)	:	Judge J Dobson Mr P Smith FRICS Mr M Jenkinson
Date of Hearing	:	1st February 2024
Date of Decision	:	9th February 2024

DECISION

Summary of the Decision

1. **The Tribunal determines that the Respondent was in breach of the covenants in the lease of 76 The General contained in paragraphs 21 and 22 of Schedule 4.**

2. **The Applicant's application for an order for the Respondent to pay the Applicant's costs pursuant to rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 is refused.**

3. **The Respondent's application for an order pursuant to section 20c of the Landlord and Tenant Act 1985 that the Applicant's costs be disallowed as recoverable as service charges is refused and the Respondent's application for an order pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 is also refused.**

Background

4. The Applicant is the management company of the development known as The General, Guinea Street, Bristol, BS1 6SD ("the Development") within which is situated 76 The General ("The Property"), being named as such management company in a tri-partite lease of the Property ("the Lease"). The Respondent is the lessee of the Property. The freeholder is City and Country Bristol Limited.

5. The Development includes the former general hospital, which has been converted into commercial units and, predominantly, residential flats. In addition, there are new- build properties. There are also communal areas, including car parking.

6. The Respondent became the first lessee of Flat 76. The Property is unusual in that it comprises three storeys, within which there is a mezzanine floor and a terrace. The top two storeys, comprising bedrooms and a gallery are within a domed roof. There is a separate dispute between the Respondent and the freeholder developer.

The Application and history of the case

7. The Applicant issued proceedings in the County Court at Liverpool in November 2022, seeking a declaration that the Respondent is in breach of his covenants in the Lease. The Applicant also sought a judgment for unpaid service charges. In addition, interest and costs were claimed.

8. The proceedings were transferred to the Tribunal by Order of District Judge Deane dated 27th March 2024. The determination of the payability of service charges and administration charges was transferred pursuant to s176 of the Commonhold and Leasehold

Reform Act. The remainder of the proceedings were allocated to Tribunal Judge to determine sitting as a Judge of the County Court.

9. Subsequent Directions were given by the Tribunal, principally those in July 2023, which set out the steps to be taken to prepare the case for a final hearing. Those provided, amongst other matters, for the Respondent to identify in a Scott Schedule the service charge items in dispute and the Applicant to provide the invoices and similar relied on in relation to those disputed items.

10. Further Directions were given at a hearing which had been listed as a pre- trial review in November 2023. At that stage it was said that for reason of illness, the Respondent had not been able to take the steps directed by him and timings were extended insofar as practical allowing for the Christmas and New Year period and preserving the hearing dates.

11. Pursuant to the Directions, the Applicant produced a hearing bundle. That comprises some 1818 pages. Even then it does not include some 104 additional pages which include a witness statement of Mr Toby Felton and exhibits to that- which additional pages were regrettably not paginated, although that had no effect on the hearing in the event.

12. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to many of the documents in this Decision, it being unnecessary to do so, not least given the limited nature of the remaining matters which the Tribunal was required to determine. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to page- numbering of pages in the printed bundle.

13. On 31st January 2024, so the day before the two- day hearing was due to commence, the Respondent's solicitor wrote to advise that the Respondent was no longer disputing the service charges. The reason given was that in light of the extent of the invoices, it was not commercially viable to address all of those.

14. Whilst the Tribunal (and Court) was invited to vacate the hearing, that invitation was declined. The hearing remained listed in order to deal with the various other elements of the case, both before the Tribunal and before the Court.

15. The Applicant's solicitors had filed and served a schedule of costs in the relevant format for summary assessment. Ms Ackerley also subsequently provided a Skeleton Argument.

16. That stated that the administration charges were no longer pursued. A draft County Court order and a calculation of interest were also provided.

The Lease

17. The lease of Flat 76 as granted to the Respondent [44- 97] in the Building has been supplied. The Tribunal perceives the other leases of flats to be in substantively the same terms.

18. The Lease is tri- partite, the parties being the freeholder, the Applicant management company and the Respondent, as mentioned above. It addresses the sorts of matters which would be expected to be included and any queries which the Tribunal may have wished to hear submissions about if it had been determining service charges are no longer relevant.

19. It is only necessary to refer to such provisions as relate to the matters remaining in need of determination, which the Tribunal therefore does.

20. There are provisions defining service charges and service costs and the methodology for determining the amount payable by the given lessee.

21. The Tenant's Covenants, as termed are set out in in Schedule 4 to the Lease. By clause 5 of the Lease, the Respondent agrees to observe those covenants.

22. The Respondent is required by paragraphs 21 and 22 of Schedule 4, to pay sums in respect of expenditure. The relevant paragraphs read as follows:

> 21. **Covenant with the Company**
>
> THE Tenant HEREBY COVENANTS with the Company and also as a separate covenant with the Landlord: -
>
> 21.1 During the subsistence of the said Term to pay to the Company (or as directed) (or to the Landlord or to a managing agent appointed by the Company or the Landlord as applicable from time to time) an annual subscription (payable as rent without deduction or set off) equal to the Tenants Proportion (or until the completion of the development of the Estate such other proportion as may be properly due in respect of the Demised Premises as certified by the accountant hereinafter referred to in this sub-clause) and the full annual payment in advance to the Company from the date hereof of the cost to the Company of the following:
>
> 21.1.1 Carrying out the obligations of the Company in accordance with its covenants herein contained
> 21.1.2 The wages of the Company's employees and officers (if any)
> 21.1.3 Administrative and office and other incidental expenses of the Company in undertaking and running its business
> 21.1.4 The fees of accountants and managing agents and other professional fees
> 21.1.5 Maintenance contract/ service agreement payments
> 21.1.6 Any reserve properly and reasonably required for the running of the Company's business (including the provision of a reserve on account of

anticipated or future expenditure) and in connection with the performance and observance during the whole of the said term of the covenants on the part of the Company herein contained

21.1.7 The whole of any excess paid under the insurance policy by the Landlord in accordance with the provisions of this Lease where it relates to an individual claim

21.1.8 All other expenses (if any) incurred or to be incurred by the Landlord or the Company in and about the maintenance and proper and convenient management and running of the Estate including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Estate (including the Building) or any other part of the Estate (except in so far as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is who may be liable therefor) any interest paid on any money borrowed to defray any expenses incurred any legal or other costs reasonably and properly incurred by the Landlord or the Company and otherwise not recovered in taking or defending proceedings (including any arbitration tribunal proceedings or other proceedings whatsoever) arising out of any lease or transfer of any part of the Estate or any claim by or against owner or tenant thereof or by any third party against the Landlord as owner the Company tenant or occupier of any part of the Estate

21.1.8.1 Such payment to be made in advance by two instalments on the first day of July and the first day of January or at such alternative intervals and at such other times as the Company shall in writing notify to the Tenant and PROVIDED that in the event that such payments fall short of the Tenant's liability under this paragraph the Tenant shall pay the excess expenditure within 14 days of demand by the Company or the Landlord and in the event of a surplus such sum shall be credited to the Tenant for the following year PROVIDED THAT on default by the Tenant in the paying of the whole or part of any such annual payments the Landlord shall be entitled to distain re-enter and exercise all or any remedies of the Landlord exercisable in respect of breach of covenant PROVIDED FURTHER ALWAYS that the certificate from time to time of the accountant for the time being of the Company or if the Company shall fail to produce such certificate within a reasonable time the certificate of the accountant for the time being of the Landlord as to the amount payable by the Tenant from time to time in accordance with this present paragraph shall be conclusive and binding on the Landlord and the Tenant and the Company

21.1.9 To make the payments due under this Lease direct to the Landlord until such time as the management of the Building in which the Demised Premises is situated has been handed over to the Company by the Landlord

22. **Service Charge**

22.1 To pay to the Landlord a fair and proper proportion of the total expenditure reasonably and properly incurred by the Landlord in complying with clause 6 of this Lease and providing the Services listed at Schedule 10 PROVIDED ALWAYS that in the event of any such proportion being Inappropriate having regard to the nature of the expenditure incurred or the premises in or upon the Estate benefited

by the expenditure (or item of expenditure) or otherwise the Landlord shall be at liberty in its discretion to adopt such other method of calculation of the Tenant's proportion of total expenditure to be attributed to the Demised Premises as shall be fair and reasonable in the circumstances

22.2 to pay to the Landlord or to the Company (as the Landlord may direct) the costs in providing the Heating Services together with such sum as shall be considered reasonably and properly necessary by the Landlord or by the Company (whose decision shall be final as to the questions of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Heating Services.

23. There is a provision in respect of interest if payments are not made within seven days, in which event interest is calculated from the date of the demand. However, that is relevant to the County Court proceedings and not the Tribunal ones.

24. The above paragraphs of the Lease in addition to identifying the Respondent's covenants, also permit the Applicant to take the action taken by it.

The relevant Law

25. The relevant law in relation to breach of covenant is set out in section 168 Commonhold and Leasehold Reform Act 2002, most particularly section 168(4), which reads as follows:

> "A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for determination that a breach of a covenant or condition in the lease has occurred."

26. The Tribunal must assess whether there has been a breach of the Lease on the balance of probabilities.

27. A determination under Section 168(4) does not require the Tribunal to consider any issue other than the question of whether a breach has occurred. The Tribunal's jurisdiction is limited to the question of whether or not there has been a breach. As explained in *Vine Housing Cooperative Ltd v Smith* (2015) UKUT 0501 (LC), the motivations behind the making of applications, are of no concern to the Tribunal, although they may later be for a court.

28. The Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the

> language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

29. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

30. In respect of costs, save to the extent that costs are recoverable as between parties pursuant to Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), costs are not payable as between parties to proceedings before this Tribunal, with the potential exception of a specific contractual entitlement.

31. The basic power of the Tribunal to award costs is found in section 29 of the Tribunals, Courts and Enforcement Act 2007, which states that costs shall be in the discretion of the Tribunal but subject to, in the case of this Tribunal, the Rules. The Rules then proscribe that discretion substantially. Rule 13 provides that:

> "The Tribunal may make an order in respect of costs only –
> a) where there are wasted costs
> b) if a person has acted unreasonably in bringing, defending or conducting proceedings……."

32. The leading authority in respect of the rule 13 (b) is the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Alexander* (and linked cases) [2016] UKUT 290 (LC) (referred to below as "*Willow Court*"). It is worth bearing in mind the status of the guidance given by the Upper Tribunal in its decision. It is not uncommon to hear practitioners refer to the *Willow Court* "rules" or "tests". But that is strictly speaking wrong. Although the Upper

Tribunal's decision in *Willow Court* was intended to be of general application, it does not purport to lay down any "rules" at all.

33. The position was explained in *Laskar v Prescot Management Company Ltd* [2020] UKUT 241 (LC), that *Willow Court* suggested:

> "an approach to decision making which encouraged tribunals to work through a logical sequence of steps, it does not follow that a tribunal will be in error if it does not do so."

The question is:

> "whether everything has been taken into account which ought to have been, and nothing which ought not, and whether the tribunal has explained its reasons and dealt with the main issues in such a way that its conclusion can be understood, rather than by considering whether the *Willow Court* framework has been adhered to".

The Upper Tribunal emphasised:

> "That framework is an aid, not a straightjacket."

34. In *Willow Court*, the Upper Tribunal suggested three sequential stages should be worked through, summarised as follows:

> Stage 1: Whether the party has acted unreasonably. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.
> Stage 2: Whether the tribunal ought (in its discretion) to make an order for costs or not. Relevant considerations include the nature, seriousness, and effect of the unreasonable conduct.
> Stage 3: Discretion as to quantum. Again, relevant considerations include the nature seriousness and effect of the conduct.

35. Whilst it is not strictly necessary to work through those stages because there is no imposed "straightjacket", the Tribunal considers that in most instances, taking up the suggestion of the Upper Tribunal is the appropriate course to adopt.

36. The burden is on the applicant for an order pursuant to rule 13. And it is undoubtedly the case that orders under r.13(1)(b) are to be reserved for the clearest cases.

37. Rule 13(1)(b) is quite specific that an order may only be made:

> "if a person has acted unreasonably in … defending or conducting proceedings". Under the Tribunal Procedure Rules, the word "proceedings" means acts undertaken in connection with the application itself and steps taken thereafter".

38. Such an application does not therefore involve any primary examination of a party's actions before an application is brought (although pre-commencement behaviour might be relevant to an assessment of the reasonableness of later actions in "defending or conducting proceedings").

39. In addition, the Tribunal can pursuant to section 20c of the Landlord and Tenant Act 1985 order that the Applicant's costs are disallowed as recoverable as service charges. In addition, the Tribunal can make effectively the same order in respect of administration charges pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

40. Section 20C (3) of the 1985 Act, provides:

> "the … Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances".

The Tribunal is given a wide discretion.

41. Paragraph 5 of Schedule 11 says:

> "(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."

42. The provisions of paragraph 5A are equivalent and for practical purposes the test to be applied to each limb of the applications that costs of the proceedings should not be recoverable is the same.

43. The Tribunal's jurisdiction is necessarily limited to the Tribunal proceedings and cannot extend to the Court proceedings.

44. The provisions of section 20C were considered in *Re: SMCLLA (Freehold) Ltd's Appeal* [2014] UKUT 58, where the Upper Tribunal held that:

> "although [the First-tier Tribunal] has a wide jurisdiction to make such order as it considers just and equitable in the circumstances" (at paragraph 25), "an order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances" (at paragraph 27).

45. In *Conway v Jam Factory Freehold Ltd*, [2014] 1 EGLR 111 the Deputy President Martin Rodger KC suggested that, when considering such an application under section 20C, it was:

> "essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make".

46. Whilst there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.

The Hearing

47. The hearing was conducted at Bristol Magistrates Court and Tribunal Centre in person.

48. Ms Ackerley represented the Applicants, accompanied by Mr Felton. Mr Knapper represented the Respondent, who did not himself attend. Mr Knapper explained about the Respondent's illness.

49. The hearing included both the elements determined and otherwise referred to below in relation to the Tribunal proceedings and the elements of the County Court proceedings. The Tribunal matters were considered by the Tribunal as a whole: the Court matters were dealt with solely by the Judge, although the Tribunal members remained in the hearing room.

50. For the avoidance of doubt, the decisions of the Court were given orally and are encapsulated in an Order of today's date. There is no written decision document. This Decision therefore relates solely to the Tribunal elements of the case.

Consideration

51. Given the concessions in respect of service charges and administration charges, the only substantive element which required determination by the Tribunal was the question of whether the Respondent is in breach of the covenants in the Lease.

52. For the avoidance of doubt, as the Respondent had agreed the service charges demanded to be payable and reasonable- or at least no longer sought to challenge those matters- there was no dispute in respect of the service charges for the Tribunal to determine. Consequently, there was both no need for the Tribunal to make any such determination and the Tribunal no longer held jurisdiction to make any such determination in any event.

53. Mr Knapper submitted that the Tribunal should not find there to have been a breach of covenant, notwithstanding that the Respondent had not paid the service charges in response to demands made. He asserted that the Respondent had made previous requests for copies of invoices and that the Applicant had been criticised by the District Judge at Liverpool County Court for not having produced the evidence on which the service charge demands were based. The documents had been

provided just before Christmas at the end of 2023. Mr Knapper suggested that there had been a "technical breach" but which arose from the lack of documents. It was argued that in those circumstances, it was not appropriate- indeed would be wrong- to determine the Respondent to be in breach.

54. Mr Knapper also referred to the fact that payments in account had been made by the Respondent. He also argued that the decision for the Tribunal was an equitable one and was not clear cut.

55. It was pointed out to Mr Knapper by the Tribunal that he could not give evidence but only make submissions on evidence presented, that the bundle, despite its considerable length, contained no copies of any requests to inspect invoices or other documents or for copies of such documents. In any event, the Tribunal observed that a breach by the Applicant, if any, did not prevent there also being a breach by the Respondent. Mr Knapper was asked to clarify whether his argument was against forfeiture, which it was noted is a separate matter, or against breach itself and to explain what equitable doctrine applied and why.

56. Mr Knapper said that in another case, the details of which he did not have, a Tribunal had said that there had been a technical breach but that did not give a right to take forfeiture proceedings.

57. Ms Ackerley responded pointing out that there had been no issue taken with the service charge demands and that the provision of invoices was not a condition precedent to being able to obtain a determination of a breach, nor was there any other defence in law. Ms Ackerley adopted the point that there was no evidence of earlier requests for invoices and added that there was nothing in the Respondent's written cases asserting any such requests. She said that Mr Felton could give oral evidence that he had checked the Applicant's system and that there was no record of requests.

58. It was also disputed that the District Judge had expressed any view as asserted by Mr Knapper and she noted the lack of any mention in the recitals to the Order. She also stated that in addition to accounts and similar being provided prior to the Scott Schedule of the Respondent's objections, a breakdown of invoices received had been provided. Understandably, Ms Ackerley was unable to make submissions about an unknown other case. She did not accept any relevant equitable jurisdiction.

59. The Tribunal determined that the Respondent is in breach of the covenants in the Lease at paragraphs 21 and 22 of Schedule 4.

60. The Tribunal noted that the Respondent had not paid the service charges demanded in full, and that payments being made on account reduced the extent of the breach but did not prevent a breach. The Tribunal did not need to hear from Mr Felton.

61. The Tribunal does not consider there to be any basis in equity, which was in any event not explained by Mr Knapper, for refusing to determine that the Respondent is in breach where clearly in law he is.

62. The Tribunal considered that the question of whether the Applicant can pursue proceedings for forfeiture, necessarily before the County Court, and whether forfeiture should be awarded are matters outside of its jurisdiction and ones for the County Court.

63. The Tribunal does observe, going as far as it considers it possibly can, that it would be decidedly unfortunate if the Applicant were to issue a section 146 Notice or to take forfeiture proceedings. There plainly was a dispute, hence these proceedings and that may have some relevance in itself, an obvious contrast with, for example, a wilful refusal to pay (in relation to which the making of partial payments is also relevant).

64. In addition, it appears that the Respondent is very ill and that may be a consequence of failings on the part of the freeholder as developer, which would need to take any such proceedings, and the service charges unpaid are a small fraction of the likely value of the Property. The Tribunal of course seeks to make no determination as to whether there were failures in the course of the development or subsequently or whether those caused illness, which go far beyond its jurisdiction.

Applications in respect of costs and fees

65. There were no written applications in respect of costs within the jurisdiction of the Tribunal. However, the Tribunal permitted the parties to make oral applications.

66. The first was made by Ms Ackerley on behalf of the Applicants seeking an order for the Respondent to pay the Applicant's costs pursuant to rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. She said her primary application was that the costs of the Tribunal proceedings could be recovered in the County Court. However, that was a matter for the Court and not the Tribunal- and in the event subsequently not accepted by the Court.

67. Ms Ackerley submitted that the Applicant had complied with Directions and had been put to expenditure and that it was wrong for the Respondent to say that he was compelled to capitulate because of the time of receipt of the invoices. She added that the Respondent could have applied if appropriate.

68. Mr Knapper argued that the bar was "incredibly high". He explained that by the time of receipt of the invoices the Respondent was extremely ill and it was not possible to put in the resources to go through the invoices. Mr Knapper also said that efforts had been made to reach a compromise with promises of a response which were not fulfilled,

before being informed that the Applicant's solicitor had been on holiday from the Tuesday.

69. Ms Ackerley responded observing that the Respondent had known the expenditure and implicitly that any commercial view could have been taken sooner. She also said that whilst the particular solicitor had gone on holiday, a colleague had dealt with the case and a counter- offer had been made.

70. The Tribunal considered there to be some merit in the Applicant's position but was mindful that it was important for a party to be able to concede matters on the basis of evidence and/ or advice received, even late in proceedings, and without undue fear of that resulting in adverse costs orders, not least because of the risk that parties may otherwise be discouraged from making such concessions and may continue to contest cases which could otherwise have been resolved in order to avoid taking a step which might be more likely to expose them to such a costs order.

71. The Applicant could arguably have provided copies of invoices in respect of service charges demanded sooner and that may have enabled the Respondent to consider them sooner, although equally Ms Ackerley was quite right to say that the Applicant had done so in compliance with Directions and could hardly be criticised. Equally, the Respondent had not received the invoices sooner.

72. The delay in dates in Directions had reflected the Respondent not taking steps by the dates previously directed, but it had been accepted in the November Directions that the delay was a consequence of the Respondent's illness, much as a better approach could have been taken to deal with that by applying. The Tribunal did not consider the situation went as far as to be categorizable as unreasonableness.

73. The Respondent had therefore taken a step in consequence of the date on which the Applicant had compliantly provided the invoices which was reasonably open to the Respondent. The Tribunal considered also that it could reasonably infer, although there was no direct evidence and hence an inference had to be drawn, that the Respondent's apparent illness had been a relevant feature.

74. The Tribunal determined that the Applicant had failed to get through the first stage of the Willow Court framework, having decided it to be appropriate to adopt that. The application therefore failed and so it was unnecessary to work through the other stages, which the Tribunal does not do.

75. As referred to above, applications were made by the Applicant that any costs incurred by the Respondent in connection with proceedings before the Tribunal should not be included in the amount of any service charge or any administration charges.

76. Whilst the Tribunal accepted that the outcome of the case was not the entire answer, if was a notable feature of the circumstances in which the decision came to be made that the Applicant had succeeded in respect of the service charges and in respect of breach of covenant and that the withdrawal of the administration charges element was a modest matter in comparison. Albeit that the Respondent received the actual invoices late in the proceedings, he had received documents earlier and had then raised extensive challenges. The Applicant had inevitably incurred costs in dealing with those matters and in respect of the proceedings against the Respondent.

77. Taking matters overall, the Tribunal did not consider that it would be just and equitable to prevent the Applicant from recovering any costs from the Respondent as service charges or administration charges.

78. For the avoidance of doubt, there were no fees payable for the Tribunal proceedings, the fee to issue the Court proceedings having exceeded the level of such fees.

RIGHTS OF APPEAL

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

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