



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

Case Reference	:	CHI/00HG/LSC/2023/0079
Property	:	10 Wyoming Close, Little America, Plymouth. PL3 6SU
Applicant	:	Nigel Pinto
Respondent Representative	:	Plymouth Community Homes James Ward (Counsel)
Type of Application	:	Determination of liability to pay and reasonableness of service charges – Sections 27A and 19 the Landlord and Tenant Act 1985 Applications for cost limitation orders Section 20C; Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act (CLARA)
Tribunal Members	:	Judge C A Rai (Chairman) Mr M C Woodrow MRICS Chartered Surveyor
Date type and venue of Hearing	:	Friday 2 February 2024 In person (PT) St Catherine’s House, 5 Notte Street, Plymouth PL1 2TS
Date of Decision	:	15 February 2024

DECISION

1. The Tribunal finds that the service charges demanded by the Respondent for 2021/2022 and 2022/2023 by the Applicant are reasonable.
2. The Tribunal declines to make an order reimbursing the Applicant the £200 hearing fee.
3. The Tribunal declines to make any cost limitation orders.
4. The reasons for the Tribunal’s decision are set out below.

Background.

5. Nigel Pinto (the **Applicant**) made an application to the Tribunal dated 3 July 2023. He challenged specific service charges during the service charge years 2022/2023 and 2023/2024. In fact the Tribunal established he was referring to the service charge years 2021/2022 and 2022/2023. He confirmed this during the Case Management Hearing (**CMH**) as documented in paragraph 7 of the Directions, dated 8 November 2023, made by the Legal Officer Charlotte Cooper [24].
6. At the CMH it was agreed that the proceedings would be determined following an oral hearing and the Respondent was tasked with the preparation of the Hearing Bundle.
7. Although he did not disclose this in his application, the Applicant had previously applied to the Tribunal and received a decision dated 19 October 2021, relating to four previous years' service charges for the Property, (2017/2018, 2018/2019, 2019/2020 and 2020/2021). (The Tribunal had also decided that the service charges demanded "on account" for 2021/2022 were reasonable.
8. Prior to the hearing the Tribunal received a single electronic bundle comprising 204 pages plus a single page index. References in the decision to numbers in square brackets are to the electronically numbered pages of the bundle.
9. The Tribunal and the Applicant received the Respondent's skeleton argument just before the start of the hearing and the Respondent also shared additional drainage plans with the Applicant and the Tribunal during the hearing. Electronic copies of those plans were emailed to the Tribunal after the hearing.

The Service Charge and the Lease

10. 10 Wyoming Close, Little America, Plymouth (the **Property**) is a ground floor flat, within a block of six flats, demised by a Lease dated 1 September 1988 made between Jephson Second Housing Association Limited (1) and Colin William Pinto (2) for a term of 125 years from 1 November 1981 (the **Lease**). The block is defined in the Lease as a "Walk-in Block". The Applicant is the current lessee, and Plymouth Community Homes (**PCH**) the Respondent.
11. The Respondent acquired the freehold of the Little America Estate in December 2016. The Estate comprises 189 properties of which 117 are houses and 72 are flats. The Walk-in Blocks are defined in the Lease as the 8 blocks of flats specifically designed to render each flat therein capable of entry at ground floor level comprising in total 48 flats [109/110].

12. The Lease obliges the lessor to provide specified services and for the lessees to pay 1/189 of the Fund A charges, and in the case a lessee of a Walk-in Block, 1/48 of the Fund C charges. The lessor is entitled to estimate the costs it will incur before the beginning of each service charge year and collect a payment on account from the lessees. The service charge years run from 1 April to 31 March, straddling two calendar years.
13. Following the end of each service charge year, the Applicant receives an annual service charge demand in the June or July, which sets out the “on account” annual service charge for the current year (including management charges) broken down between Fund A, the Estate Charge and Fund C, the block charge. PCH supplies a statement showing the service charges collected, the service costs spent and the difference between the two amounts. PCH also provides the Applicant with a service charge account showing any balance underpaid or any credit due. Credits and debits are set against or collected with the “on account payment” due for the next year.
14. A further summary of the actual charges for the preceding year divides the costs between the “Service Categories” to show which services cost more (or less) than was estimated in the preceding year. A summary is provided for both Funds A and C.
15. The Bundle contains copies of the service charge demands for the Property dated 8 July 2022 and 16 June 2023 [44 – 49].
16. Clause 1.11 of the Lease defines the **Reserved Property** as that part of the Development not included in the Blocks of Flats, the Buildings or the Houses but comprises (inter alia) the private estate roads garden areas lawns parking areas and amenity areas more particularly described in Part II of the Second Schedule hereto [110]. There is no specific mention of drains. The definition in Part II of the Second Schedule “includes (inter alia) the private estate roads garden areas lawns parking areas and amenity areas the use of which is in common with the owners or occupiers of the flat and the owners and occupiers of other flats and the Houses and all other parts of the Development”, so emphasises the fact that those areas can be used by everyone on the estate [120].
17. **Buildings**, clause 1.9 are those parts of each Block of flats as are described in Part 1 of the Second Schedule - (Houses are also defined in 1.10 but this not relevant to this decision). The definition of Buildings in the Lease [119] is “ALL THOSE the main structural parts of each Block of Flats including the roofs roof joists thereof the external doors thereof the external surfaces of the doors giving access to the flat or any flat the foundations and the external parts of the said Blocks of Flats and the halls staircases and any lifts steps bin stores service areas or other parts thereof the use of which is common to other owners and occupiers and lessees of each Block but not the glass in the windows of the Flat or any flat or the window frames of the Flat or any flat but including all sewers drains pipes wires ducts or conduits not used solely for the purpose of the Flat or any flat and the main joists or beams to

which are attached any ceilings or floors except where the said joists or beams also support the floor of the Flat or any flat and the drying areas and service areas and such lawns and gardens and footways where the same are designated by the Lessor for the exclusive enjoyment by the lessees of each of the Blocks”, save and except it is subject to the declaration as to party walls specified in the Third Schedule and to any similar declarations in the leases of any other flats in a block of flats.

18. The Lease refers to specified service charge expenses. **Fund A**, defined in Part I of the Seventh Schedule is for money expended or reserved by the lessor for periodical or cyclical expenditure or anticipated future liability with an expressed intention of limiting fluctuations in the annual service charge and states:-

“Money actually expended by the Lessor or reserved by the Lessor for periodical or cyclical expenditure or reserved by the Lessor against anticipated future liability or allocated to any sinking fund for carrying out works to the Reserved Property with the object as far as possible of ensuring that the contributions shall not fluctuate substantially in amount from time to time and for recouping to the Lessor the cost to the Lessor of carrying out the works and providing the services specified in this Schedule including interest on money borrowed and in respect of the general management and administration of the Reserved Property”.

1. Maintenance and repair of any roads, footpaths, pavements and street lighting not publicly maintained including cleaning and a provision for renewal and replacement.
2. Keeping sewers, drains or watercourses within the Development including all Service Installations in good repair and condition.
3. Keeping the Reserved Property neat and tidy, well maintained and where appropriate planted and painted.
4. Keeping any facilities, including buildings, provided by the lessor for employees or workmen in good repair.
5. Payment of all rates and taxes and other outgoings assessed or charged on the Reserved Property.
6. Reasonable fees incurred for the management and administration of the Reserved Property.
7. Keeping records of costs and expenses incurred to include accountancy costs and audit and certification of its records.
8. Costs associated with professionals such as architects, surveyors, solicitors and advisors necessary to enable it to comply with its obligations.
9. Insurance of the Reserved Property including liability to employees.
10. Provision and maintenance of equipment necessary to enable it to provide services.
11. Costs and expenses associated with compliance with statutory responsibilities.
12. Costs of enforcing observance of covenants by occupiers, tenants or lessees.
13. Costs of preparing and supplying copies of regulations.
14. All value added tax incurred.
15. Costs associated with compliance with its covenants.

PROVIDED ALWAYS that the covenants and obligations of the Lessor contained in or arising under this Schedule are subject to and conditional upon (i) the payment of the Lessee's Proportion and (ii) the proviso in paragraph 6 of Part IV of this Schedule [138].

19. **Fund C**, defined in Part III of the Seventh Schedule is for money expended or reserved by the lessor for periodical or cyclical expenditure or anticipated future liability with an expressed intention of limiting fluctuations in the annual service charge and includes:-
1. Maintenance and repair including improvement of the Blocks of flats including service areas forecourts drying areas footpaths bin areas hedges fences and structural features designated by the Lessor as being part of the buildings in good and substantial condition and renewing and replacing all worn or damaged parts.
 2. Painting and redecoration of external parts and shared access doors as well as internal common parts.
 3. Costs of employing workmen to carry out necessary services.
 4. Costs associated with professionals such as architects, surveyors, solicitors and advisors necessary to enable it to comply with its obligations.
 5. Costs of insurance of the Blocks of flats including liability to employees.
 6. Cleaning and lighting common parts of and serving the Blocks.
 7. Payment of all rates and taxes and other outgoings assessed or charged on the Reserved Property.
 8. Costs and expenses of abating any nuisance and those associated with compliance with statutory responsibilities.
 9. Costs of enforcing observance of covenants by occupiers, tenants or lessees.
 10. Reasonable fees incurred for the management and administration of the Blocks.
 11. Keeping records of costs and expenses incurred to include accountancy costs and audit and certification of its records.
 12. Keeping any facilities, including buildings, provided by the lessor for employees or workmen, in good repair.
 13. Costs of preparing and supplying copies of regulations.
 14. Costs relating to supplying and maintaining firefighting appliances for the buildings.
 15. Costs associated with and relating to communal television aerials.
 16. Costs of supplying any other reasonable and necessary equipment or services to the Blocks.
 17. All value added tax incurred.
 18. Costs associated with compliance with its covenants. [142/143].
20. As is usual in long leases, the lessor's obligations are subject to and conditional upon the lessee paying the ground rent and his share of the costs reserved by the Lease (Clause 6) [114].
21. The lessor is obliged to certify the expenses incurred in each service charge year. It is entitled to charge a management fee and a discretionary amount towards estimated future costs taking into account the life expectancy of installations construction works and the landlords fixtures and fittings.

22. In summary, the Applicant is obliged to pay a variable service charge to cover all expenses incurred by the Respondent in maintaining and providing services to the Development. The Lease contains a detailed description of which costs are allocated to Fund A and shared between every property within the Development and which costs are allocated to Fund C and shared between the lessees and occupiers of the Walk-in Blocks.

The Applicant's Case.

23. The Applicant does not dispute that he is liable to pay service charges. He told the Tribunal that he made the application because he believed that PCH are overcharging him. He has identified specific charges made to both Fund A and Fund C claiming that in particular:

(2021/2022)

- a. PCH are allowing Lanes to charge too much for basic repairs;
- b. The Hallwell costs referred to in his service charge demand has nothing to do with drainage repairs and was for work done to the front gardens of two freehold properties (41 and 43 Oregon Way);
- c. That there is no breakdown of the Ad-hoc charges;
- d. That PCH charged more than once for the same repair to a downpipe; and
- e. That a fence was installed as a replacement which was a new fence, not the replacement of an existing fence [10].

(2022/2023)

- a. He was charged for a replacement fence which was in fact a new fence and that the charge was made to the wrong fund;
- b. That there is no breakdown of specified Ad-hoc charges;
- c. That the downpipe has been repaired more than once and the charges are "unbelievable";
- d. That leaseholders of his block were charged for garden taps which they had replaced themselves;
- e. That other service charges were charged to the wrong fund; and
- f. That minor works to repair the roof would not solve the problem [11].

24. In summary the Applicant stated that some charges have incorrectly been charged to Fund C instead of Fund A. He told the Tribunal that this is fraud and explained that he meant that PCH have obtained money by deception. He said that he has previously addressed all of his questions to PCH and has also raised a complaint with the Ombudsman.

25. Before the Hearing the Applicant asked PCH for a plan showing the drainage within the Estate. He also obtained a drainage search of the type used by conveyancers when transferring property, in respect of 43 Oregon Close. That is a house within the development mentioned in the application because drainage works necessitated the excavation of the garden and the adjacent garden of 41 Oregon Close. The cost of the reinstatement of the gardens was challenged by the Applicant because the invoices produced by PCH for those works referred to replacement of slabs when one of the gardens was re-turfed.

The Respondent's case.

26. This was summarised in Mr Ward's skeleton argument. He said although the Applicant has, consistently and repeatedly, raised complaints these do not appear to question the reasonableness of the charges; but were made because he wanted to "ventilate his frustrations when he identified errors". PCH accepted that errors had occasionally been made. PCH had responded and used their best endeavours to correct any errors such as charges made to the wrong funds. All errors identified by the Applicant have been rectified and incorrect invoices have been corrected before the hearing. Service charge demands issued are lawful and all sums demanded are payable.
27. Mr Ward also stated that the extent of the Tribunal's jurisdiction is to determine reasonableness and said that many of the frustrations expressed by the Applicant related to matters on which it could not adjudicate.

The Hearing.

28. Mr Pinto represented himself. Mr Ward represented the Respondent supported as necessary by Ms Joanne Lake, leasehold team leader and Mr Andrew Withey, Repairs Manager both employees of PCH. They had made statements (included in the bundle) before the Hearing. The Tribunal asked the Applicant to expand on his complaints and Mr Ward, with assistance from Mr Withey and Ms Lake, replied for the Respondent. The Tribunal also sought some clarification from both parties.

The charges relating to drainage works and reinstatement of the gardens at 41/43 Oregon Way – Lanes and Hallwell invoices.

29. **Applicant** - Mr Pinto referred the Tribunal to page 196 of the bundle which is a letter from PCH (Nichola Hunt) to him dated 8 August 2022 headed "STAGE ONE COMPLAINT – COM16521". Copies of two invoices from Lanes for £1,344 and £10,986 were enclosed with that letter [198/199]. The first invoice refers to attendance on site on 30.09 to install patch repairs as per quote (described as relining) and the second refers to attendance on site between 27.09 – 01.10 to carry out remedial works (described as excavation and "vacuumation").
30. **Respondent** - PCH's letter explained that the first invoice was for the digging up the gardens to enable a camera survey of the main sewage drain which served the whole estate and the second invoice was for a large repair to that drain. It said that the damage had been so severe that the drain had been pumped weekly, until the work was done and that the Area Repairs Supervisor had advised that the whole estate could be affected if the repair was not carried out.
31. The letter also referred to two further invoices both dated 9 November 2021 (actually dated 8 November) from Hallwell for the reinstatement of the two gardens excavated to enable the drainage works [200/201].

32. PCH acknowledged (in the letter) that the charge for the safety barrier had been made to the wrong fund and stated that this should have been noticed before and the error would be rectified. It also referred Mr Pinto to the PCH complaint procedure and indicated his options if he remained unsatisfied with its response to his complaint.
33. Mr Ward was given permission, with the agreement of Mr Pinto, to distribute three further plans. These consisted of a generic drainage responsibility plan illustrating that drainage connecting a house or a block of flats to the mains drainage system is private and the landowners' responsibility.
34. The Tribunal also asked Mr Pinto about an email and plan in the bundle supplied by a search provider [203/204]. Mr Pinto said that this plan was a South West Water plan which showed the location of the public surface and foul water drain in the vicinity of 43 Oregon Way. It was agreed that he had obtained the plan from a private search provider, not South West Water [203/204]. The plan shows the foul water drain coloured purple and the surface water drain shown coloured blue.
35. Mr Withey said that its contractors would not have undertaken work to the publicly maintained drains. All works done on behalf of PCH related to the private estate drains. Mr Withey explained that Lanes also undertook work for South West Water. He said that his contractors would know which drains are publicly maintained.
36. The Applicant referred to the wording in the PCH letter from which he had understood that the works charged to the service charges related to the mains drain. Mr Ward and Miss Lake accepted that the letter could have been better worded. He did not accept that PCH had repaired the private estate drain.
37. The Applicant had also complained that both Hallwell invoices referred to paving stones when one of the gardens was re-turfed. It was acknowledged that the narrative on the invoices was incorrect but the Respondent was confident that the charges made were correct. Mr Withey said that PCH was obliged to make good the damage it had caused when investigating and repairing the defective drain.
38. Despite what was said during the hearing, Mr Pinto was not satisfied about the location of the repaired drainage.
39. Following the complaint, and its acknowledgement of the wrong description on the invoices and the initial allocation of the charge to the wrong fund, the entire charge was refunded to Fund C, not just the invoiced amount of £858 [200].
40. Mr Ward said that the Applicant had been an unrelenting complainant since PCH acquired the freehold. Mr Pinto's share of the credit made by PCH to Fund A which was the whole of the invoiced amount was very small.

41. Mr Pinto insisted that the invoice was evidence of fraud. PCH maintained that the error was purely administrative. Whilst the charge was made to the wrong fund, the cost had been incurred and it was appropriate for PCH to do the works undertaken and recover the costs.
42. The eventual outcome was that the total of the invoice, £1,092 was recredited to Fund C [182]. Mr Pinto commented that everything was always confusing.

Ad-hoc charges for 2021/2022.

43. **Applicant** - These are listed both in the application and in Mr Withey's statement [162]. Mr Pinto wanted to know why fly tipping which is separately categorised was also included in this category. This was a misunderstanding. The costs of removing fly tipping are not within the total of the ad hoc charges.
44. Mr Pinto said that there was a double charge for the downpipe repairs. He said it is regularly broken when PCH carry out strimming. The Respondent disputed that there was any double charging. Mr Pinto referred to Page 173 of the bundle which shows two separate entries for the repair to a downpipe within Block 7 – 11 Wyoming Close on the 7 April 2021 and 22 November 2021. The costs charged to Fund C for repairs were £131.57 (which included gutter clearing) and £118.45.
45. There is one other reference to a downpipe in the block (in the next year) [183] which is the repairs for April 2022 to March 2023 (incorrectly headed April 2021 to March 2022) and shows that the downpipe was broken on 19 April 2022 and cost of the repair was £989.41. Mr Withey said he was unable to comment on the costs of the repairs without knowledge about what had been damaged and what the repair entailed. He said it was usual for disrepair to be reported, sometimes by the PCH rangers. He said that PCH have a schedule of rates for works. He did not know who carried out that specific job. He cannot tell without sight of the invoice.
46. **Applicant** - The next item queried by Mr Pinto was the cost of new fencing described as a safety barrier/fence replacement. He said that this was a new fence not a replacement; previously there had been no fence so the narrative was wrong too.
47. **Respondent** - PCH stated that the fence had been installed following a risk assessment. It accepted that the charge had been made incorrectly to Fund C. The sum has since been recredited and charged to Fund A. However, £50.08 was refunded to the leaseholders of the 48 walk in-flats. This seemed to have been part of the reason for Mr Pinto's complaint. He told the Tribunal that he receives income support to defray his monthly service charge payment. If credits and debits are adjusted annually in his service charge account this requires no further action, but if he receives an actual refund, he has to return this to the Department of Work and Pensions which he said was extremely difficult.

Outside taps

48. **Applicant** - Mr Pinto suggested that the old valves in those taps had been deemed by PCH not to comply with modern requirements which made necessary to replace the existing taps. Mr Pinto said he had replaced his own tap and was subsequently told that the old had been compliant. He had passed on this information to one of his neighbours.
49. The cost shown in the schedule of ad-hoc charges is £42. Mr Pinto appeared to suggest that narrative for the repair on 19 May 2022 may not have been entirely accurate as it refers to “the removal of a redundant fitting and outside tap as it is not used” [183].
50. **Respondent** - Mr Withey stated that he had no knowledge about any works undertaken by Mr Pinto or any other leaseholder. The job completed by the Respondent for which the charge was made was the removal of the redundant fitting.

The Respondent’s case (generally).

51. Mr Ward did not cross examine Mr Pinto. He said he would make general submissions and refer as necessary to the two witnesses present.
52. Mr Withey confirmed that he is the repairs manager for PCH which has a housing stock of approximately 16,000 properties.
53. His role includes the oversight of repair works carried out by PCH at a number of properties, including the Little America Estate, and in particular the block containing 7 – 12 Wyoming Close [160]. PCH maximise the use of its ‘in-house workforce’ and carried out approximately 1,000 repairs each week. Given the high level of demand for its services, it is necessary to supplement this with contractor support. He said it is and will be more cost effective for the in house team to carry out minor repairs. Value added tax is not chargeable on in-house repairs so those repairs represent better value to the leaseholders.
54. Mr Withey was previously employed by Plymouth City Council in the same role as his current role with PCH. He said there are guidelines with timescales which will dictate the urgency of jobs. It is important for PCH to manage its resources. Contractors used are on “reactive maintenance contracts”. They employ a number of specific trades, including general builders, to carry out repairs and other trades. The eight contractors regularly employed by PCH had been procured following a tender process for reactive maintenance contractors. There is an agreed schedule of agreed rates. PCH will determine who is the best value contractor for each specific job. The rates are competitive with the open market and the cost to other social housing providers. A benchmarking process of those rates is managed by the PCH governance team. Whilst he believes that the charges are fair and reasonable, he does not know if works would cost more or less if carried out by a third party.

55. He said as far as he was concerned the two primary issues were:-
a. Reasonableness of costs and
b. Appropriate scrutiny.
The set procedure for repairs has to be followed. There is a quality assurance team and also an internal audit procedure which analyses a repair from start to finish to check on conformity. External audits will also be undertaken.
56. Mr Withey was confident that Lanes, its contractor, also separately retained by South West Water, would not have carried out work on the public drainage system.
57. Mr Ward asked Mr Lane about the ownership ratio of the estate. He said that 40%/45% of the Properties are owner occupied. The remainder belong to PCH and are occupied by its tenants.
58. Mr Withey stated that there is a program of regular works including a high volume of ground maintenance works, particularly during the autumn. He suggested that the program had been “inherited” from Plymouth City Council.
59. Mr Ward questioned Mr Withey about the roof repairs. He did this because the Applicant had commented that the works undertaken would not solve the problem. Mr Withey stated that work was done to rectify the leaks. A repair issue will be assessed and if a minimal repair is likely to safeguard the integrity of the roof, it will be carried out but PCH will always assess if it is more cost effective to do “a larger job”. He believes on this occasion one roof covering affected three flats. The roof is shallow pitched.
60. Mr Ward asked Miss Lake about error management. She accepted that there had been errors. PCH carry out regular service charge audits and legislation audits. Any issues identified will be examined and procedures changed and hopefully improved. Every call is recorded in their repair system. The date and description of the initial entry into that system cannot be amended later. Mr Ward stated that he thought that all of Mr Pinto’s queries and challenges could have been dealt with without recourse to the Tribunal.

The Respondent’s case.

61. Mr Pinto said that PCH had only answered his questions because he had made the application to the Tribunal.

Reasons for the Tribunal’s decision.

62. The Tribunal found that the Applicant received valid service charge demands with a summary of expenditure and a reconciliation of the charges for both 2021/2022 and 2022/2023 (the disputed years).
63. The Respondent had accepted, before the hearing, that the cost of the fencing was initially charged to the wrong service charge fund but this error had been corrected. The wrong entries were corrected in both service charge years and the charges were not duplicated.

64. The Respondent also accepted that the invoices for the reinstatement of the gardens which had been excavated and the investigation and repair of the drain were inaccurate, but this had also been corrected before the hearing.
65. The Tribunal finds that there is no evidence in the bundle which substantiates the claim by the Applicant that PCH commissioned any drainage repairs which related to the main drains. The evidence supplied shows that the drains which were repaired are private “estate drains”. The costs of repairs is recoverable as a Fund A service charge. The drainage plans obtained by the Applicant and supplied by the Respondent are both accurate and not contradictory.
66. The Tribunal is not satisfied that the Applicant has provided any evidence which demonstrated that PCH has charged more than once for repairs to a downpipe or that the repairs it carried out were inadequate. The Applicant has not provided any evidence that the cost of the repairs that were carried out are unreasonable.
67. The Applicant has received a break down of the ad-hoc charges together with clarification that demonstrated that fly tipping charges were not charged for within this heading but separately.
68. The Tribunal has concluded that the Applicant has not provided any evidence which substantiated his claim that this information was only provided because he made an application to the Tribunal. The evidence in the bundle contains copies of correspondence exchanged between the Applicant and PCH between 8 August 2022 and 19 January 2023 in which PCH addressed and resolved the Applicant’s questions [196, 67 & 156, 71, 88 - 94]. Notwithstanding this, the Applicant applied to the Tribunal on 3 July 2023.
69. From its review of the correspondence in the Bundle, the Tribunal is satisfied that PCH provided the Applicant with answers to his questions about the service charges as well as its complaints procedure should he remain unsatisfied with its responses, before he made the application.
70. Although the Applicant has suggested that the repairs to the roof of some buildings undertaken by the Respondent “will not solve the problem”, he has offered the Tribunal no explanation why he has reached this conclusion.
71. The Tribunal’s jurisdiction is contained in sections 27A and 19 of the Act. It can determine reasonableness both of a service charge and the repair for which the charge has been made. Those sections are set out in the annexe to this decision.
72. Having considered the Applicant’s statements and his submissions made during the hearing, the Tribunal is satisfied that none of the service charges to which the Applicant has referred are unreasonable.
73. The application is dismissed in its entirety.

Reimbursement of fees (Rule 13) and Section 20C and paragraph 5A of schedule 11 to CLARA

74. The Applicant applied for the return of his hearing fee of £200 and for orders under section 20C and paragraph 5A. An extract from the rule and from the relevant sections of the acts are set out in the Appendix to this decision.
75. Mr Pinto confirmed that he had not been liable to pay an application fee but had paid the hearing fee. He seemed unsure why he had applied for the other two cost limitation orders.
76. The Respondent objected to all the applications. Mr Ward described the Applicant as “a committed complainant who puts the Respondent to great cost with regularity”. He said that the Tribunal should only grant orders sparingly in circumstances where a landlord loses and might seek to recover its costs anyway.
77. Although he did not disclose it himself, Mr Pinto has challenged the service charges for every service charge year between 2017 and 2023. His previous application to the Tribunal was unsuccessful.
78. The Tribunal has a discretion whether or not to make an order requiring a party to reimburse another party the whole or any part of any fee paid. In this case the Tribunal will not exercise its discretion.
79. The Applicant has not been successful. The Tribunal has therefore decided not to make orders under section 20C or paragraph 5A of Schedule 5A of CLARA.

Judge C A Rai
Chairman

Appendix

Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013 [2013 NO.1169]

The Tribunal 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 which has not been remitted by the Lord Chancellor.

Landlord and Tenant Act 1985

27A Liability to pay service charges: jurisdiction

- (1) An application may be made to [the appropriate tribunal]² for a determination whether a service charge is payable and, if it is, as to—
- the person by whom it is payable,
 - the person to whom it is payable,
 - the amount which is payable,
 - the date at or by which it is payable, and
 - the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to [the appropriate tribunal]² for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
- the person by whom it would be payable,
 - the person to whom it would be payable,
 - the amount which would be payable,
 - the date at or by which it would be payable, and
 - the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
- has been agreed or admitted by the tenant,
 - has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - has been the subject of determination by a court, or
 - has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- in a particular manner, or
 - on particular evidence,
- of any question which may be the subject of an application under subsection (1)

or (3).

(7) The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter. [...]³

¹

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.

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

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 a court [,residential property tribunal] or leasehold valuation tribunal [or the First-tier Tribunal], or the [Upper Tribunal] or in connection with arbitration 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 tenant or any other persons or persons specified in the application

(2)

(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

Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Paragraph 5A

(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.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
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.”

Appeals

1. A person wishing to appeal this decision to the Upper 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.
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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.