FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AA/LSC/2024/0018**
Property	**:**	**Flat 333, Lauderdale Tower, Barbican, London EC2Y 8NA**
Applicant	**:**	**Mr Richard William Tomkins**
Representative	**:**	**n/a**
Respondent	**:**	**The Mayor and Commonality and Citizens of the City of London**
Representative	**:**	**Mr Blakeney of Counsel**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge N O'Brien, Tribunal Member M Krisko FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**1 August 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum payable by the Application in respect of the Hayes contract for the years 2017-2018 to 2023-2024 is subject to the statutory cap of £100 per annum.

(2) Had the statutory cap not applied the tribunal would have reduced the sum payable by the applicant in respect of agency cleaners for the year 2023-2024 by the appropriate percentage provided by his lease of a total cost of £300,000.

(3) The tribunal makes the determinations as set out under the various headings in this Decision.

(4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(5) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees.

THE BACKGROUND

1. The Applicant is the registered leaseholder of Flat 333 Lauderdale Tower which he holds pursuant to a lease dated 6 August 1999. Lauderdale Tower forms part of the Barbican estate in the City of London. The Barbican estate is made up of 3 tower blocks and a number of terrace blocks. Lauderdale Tower is one of the 3 tower blocks. The Respondent is the landlord and the body responsible for managing the Barbican estate.

THE APPLICATION

2. The Applicant's case centres on a contract entered into by the Respondent in April 2017 with Hayes Specialist Recruitment Ltd ("Hayes") for the supply of temporary workers, not just on the Barbican estate but across all the Respondent's departments. In his application Mr Tomkins asserts that the contract with Hayes was a Qualifying Long-Term Agreement ("QLTA") within the meaning of s.20 of the Landlord and Tenant Act 1985 (The 1985 Act) and that the Respondent had failed to comply with the statutory consultation requirements required by that Act. It is common ground that the agreement with Hayes was a QLTA and it is common ground that the statutory consultation requirements were not complied with. In 2023 the Respondent applied to this tribunal for permission to retrospectively disapply the consultation requirements but withdrew that application, with the permission of the Tribunal, on 25 October

2023. Mr Tomkins issued this application on 26 January 2024. It is therefore common ground that as things stand the statutory cap of £100 per annum applies in respect of the Applicant's liability to pay for the costs incurred by the Respondent in respect of the Barbican estate pursuant to the Hayes contract from 2017 to 2024.

3. Mr Tomkins does not challenge the calculations set out in paragraph 11 of the witness statement of Ms Lloyd, the Respondent' service charge manager, which contains a table which indicates that the effect of the application of the cap to the Applicant's liability for the years 2017-2023 would be to reduce the total sum payable by him in respect of the Hayes agreement from £1,718 to £600. The accounts for the year 2023/2024 are not yet final but according to the schedule included in the Respondent's statement of case the total sum to be charged to the Applicant in respect of the Hayes contract costs for that year is estimated to be £459.13. Again this will be reduced to £100 if the cap applies.

4. In addition to the application of the cap, the Applicant raised other matters in his statement of case regarding both the payability and the reasonableness of specific costs incurred under the Hayes contract. He queries the recoverability of the following charges under the terms of his lease;
   (i) The cost of hiring agency lobby porters.
   (ii) The cost of the 'door to door' daily rubbish collection system in place throughout the estate;
   (iii) The cost of the temporary communications manager engaged by the Respondent from 2018 to 2022; and
   (iv) The cost of temporary car park attendants.

5. In addition he submits that both the cost of engaging a temporary communications manager from 2018 to 2022 and the cost of engaging temporary lobby porters during the COVID 19 pandemic were not reasonably incurred.

6. He also sought a determination as to the reasonableness of the sums spent on temporary agency cleaners for each year. He challenged in particular the cost of agency cleaners in the year 2020-2021 when he says the cleaning services were significantly reduced as a result of the COVID 19 pandemic.

7. In his application and in his statement of case the Applicant indicated that he was seeking a determination, not just in relation to his liability to pay towards the costs of the Hayes contract, but the liability of all 2074 leaseholders on the Barbican estate.

THE HEARING

8. At the hearing the Applicant represented himself and the Respondent was represented by Mr Blakeney of counsel. In addition to the oral evidence of the Applicant we heard oral evidence from 3 employees of the Respondent; Ms Nichola Lloyd, Service Charges and Revenues Manager, Mr Jack Doherty, Area Estate Services Manager, and a Mr Hacine Slimane, Estate Supervisor on the Barbican estate. In addition to a hearing bundle of 617-pages prepared by the Respondent, we had the benefit of reading skeleton arguments filed by both parties. The Applicant filed his skeleton argument 3 days before the hearing in accordance with the Tribunal's directions. However the Respondent's skeleton argument was served and filed on the afternoon of the last working day before the hearing together with a bundle of authorities. Mr Tomkins objected to the late service of the Respondent's skeleton argument which was apparently due to the fact that Counsel for the Respondent was away. We did not consider that this was a good reason for late service, particularly as Mr Tomkins is acting in person. However there was nothing new in the skeleton argument, and while it would have been preferable for the authorities bundle to have been served earlier than it was, the Respondent did not breach any specific direction by serving it on the day before the hearing. Consequently we permitted the Respondent to rely on them.

9. At the start of the proceedings we invited submissions from both parties as to the scope of the application. Mr Tomkins invited the Tribunal to make findings in respect of the liabilities of all 2074 leaseholders on the estate arising out of the Hayes contract. Mr Blakeney submitted that the tribunal had no jurisdiction to make any finding in relation to the other leaseholders on the estate as they are not parties to the proceedings and had not appointed Mr Tomkins as their representative in accordance with Rule 14 of the Tribunal Rules.

10. Mr Tomkins referred us to the Court of Appeal decision in *Oakfern Properties Ltd v Ruddy [2006] EWCA 1289; [2007] 2 WLR 524*. That case concerned an application made by a subtenant against a head landlord for a determination of the service charges payable by the intermediate landlord. The head landlord sought to argue that the Tribunal had no jurisdiction to determine the application because the applicant was not directly liable to pay the service charges. The Court of Appeal in that case unanimously held that the Tribunal did have jurisdiction and that there were no words in s27 A limiting potential applicants to those directly liable to pay the service charges under challenge.

11. We did not consider that this case assisted the Applicant. Rule 26 of the Tribunal Rules 2013 requires the applicant to supply the tribunal with the names and addresses of any person who may have an interest in the application. The other leaseholders are not parties to these proceedings and their names and addresses were not supplied with the initial application. We note that the

original application indicated that Mr Tomkins intended to make an application on behalf of all leaseholders under s20C of the 1985 Act but did not supply their details. While the name of the current chair of the resident's association was supplied, the applicant did not include his address. It is Mr Tomkins case that the other leaseholders are nevertheless aware of these proceedings, but we note that none have applied to be joined as parties or consented to be represented by Mr Tomkins. As no other leaseholder has applied to be joined and/or consented to be represented by Mr Tompkins in these proceedings pursuant to Rule 14 of the Tribunal rules, we consider that we do not have jurisdiction to make any findings in relation to the service charge liability of any other leaseholder. Further even if we had jurisdiction to determine the liability of the other 2073 leaseholders, it would not be fair to make any determination binding on them, given that they have played no part in these proceedings.

12. We also declined to make any determination in relation to the challenge to the costs of staffing the car parks as the Applicant has no liability to pay these charges under the terms of his lease.

13. We also determined that we would consider the remaining challenges as to both payability and reasonableness of the charges irrespective of the application of the cap. The issues raised as to the payability of those charges, and as to whether or not those costs were reasonably incurred, are independent of the application of the statutory cap. Further, notwithstanding the fact that it is now over 3 years since Mr Tomkins raised the issue with the Respondent, and notwithstanding the fact that it has already made and withdrawn an application for retrospective dispensation, the Respondent maintains that it is still its intention to reapply to the Tribunal for retrospective dispensation. Thus the question of the reasonableness of the sums charged for agency cleaners may therefore re-emerge.

14. After the hearing we were sent by email further submissions by both parties. We declined to entertain them as neither party had been invited to make further submissions and it was clear that the additional submissions related to matters in respect of which we had heard argument and/or could have been made in the course of the hearing.

15. We first will consider whether the challenged costs were recoverable under the terms of the Applicant's lease and whether they were reasonably incurred. We will then consider the effect of the cap on those costs and lastly we will consider the reasonableness of the amounts spent on agency cleaners for all the years in dispute.

THE LEASE

16. By Clause 4(4)(a) of the lease the applicant covenanted to;

"Pay a service charge of an amount in the manner and at the time hereinafter described"

17. Clause 4(4)(b) provides;

"the relevant costs" are the relevant parts of the eligible costs ...

"the relevant parts of the eligible costs" are the aggregate of the amounts which are equal to where the eligible costs relate to matters set out in the part of the Fifth Schedule

referred to as:-

Part I, - 100% of all eligible costs

Part II, - 100% of all attributable costs

Part III, - 85% of all attributable costs

Part IV, - 100% of all attributable costs

Part V, - 100% of all eligible costs

together in the case of any tower block with one third of the salary emoluments and

wages of the lobby porters on the estate and expenses connected therewith

"the attributable costs" are 10.82 per cent of the eligible costs

"the eligible costs" means costs or estimated costs incurred or to be incurred in any accounting period ... upon or in connection with the matters set out in the Fifth Schedule hereto"

18. Clause 5(2) provides;

"That so far as is practicable the Corporation will maintain the services to the premises set out in Parts I II and III of the Fifth Schedule hereto"

19. Paragraph 4(a) of Part I of the Fifth Schedule provides for;

"The redecoration refurnishing recarpeting and cleaning of the internal common parts of the Building ... as often as the Corporation may consider such work to be expedient"

20. Paragraph 5 of Part II of the Fifth Schedule includes as an eligible cost;

"The maintenance in reasonable working order of the Garchey refuse system installed by the Corporation or the provision and maintenance of any alternative method for the collection of rubbish as the Corporation thinks fit from time to time"

21. Paragraph 8 of Part IV of the Fifth Schedule includes as an eligible cost;

"The salary emoluments and wages together with any expenses connected therewith of

(a) the key porters

(b) the storekeepers

(c) the resident housekeepers

(d) resident engineers …

(e) any other staff which the Corporation shall in its reasonable discretion employ from time to time"

22. Paragraph 10 of Part IV of the Fifth Schedule includes as an eligible cost

"All such other matters whatsoever in relation to which the Corporation may reasonably incur or decide to incur any costs liability or outgoings in relation to the Estate"

23. Paragraph 11 of Part V of the Fifth Schedule includes as an eligible cost

"All such other matters whatsoever in relation to which the Corporation may reasonably incur or decide to incur any costs liability or outgoings in relation to the Building"

24. Finally paragraph 3 of the Sixth Schedule provides

"The tenant will use any Garchey refuse system installed in the premises at any time for the disposal of any wet or putrescible refuse provided that any refuse that cannot pass through the said system shall be disposed of in accordance with prior arrangement with and as directed by the Manager"

THE LEGAL FRAMEWORK

25. Section 19 of the 1985 Act provides

(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.

26. Section 20 of the 1985 Act provides

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a)complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement the appropriate tribunal.

27. The effect of the Service Charges (Consultation Requirements)(England) Regulations 2003 SI 2003 No.1987 is that the sum which the leaseholder can be required to pay in respect of a QLTA where the consultation process is not followed is limited to £100 per annum.

RECOVERABILITY AND REASONABLENESS: LOBBY PORTERS

28. Mr Tomkins argued that the cost of engaging temporary lobby porters under the Hayes contract was not recoverable under the terms of his lease. He argued that the temporary porters were not directly paid by the Respondent and the lease only permitted the Respondent to recharge the '*salary emoluments and wages and any expenses connected therewith'*. However he accepted that the phrase '*any expenses connected therewith'* referred to the expenses of engaging porters generally, and was not limited to the expenses of paying them, such as running a payroll or pension contributions. Mr Tomkins gave the example of work uniforms as a recoverable expense under that provision of the lease.

29. Mr Blakeney submitted that the words of the lease were wide enough to encompass the salaries of porters paid via a third party and that any event the costs would be covered by the 'sweeper clause' included in the lease at paragraph 10 of Part IV of the 5th Schedule, which includes as an eligible expense "*All such other matters whatsoever in relation to which the Corporation may reasonably incur or decide to incur any costs liability or outgoings in relation to the Estate*".

30. If the words '*expenses connected therewith'* in paragraph 5 refers to expenses of porters generally, then in our view the expense of engaging them via a third party must be a recoverable expense under the terms of the lease. Consequently the cost of engaging temporary porters via the Hayes contract is recoverable under paragraph 8 and there is no need to consider the effect of the sweeper clause at paragraph 10.

31. Mr Tomkins also challenges the reasonableness of incurring the cost of engaging temporary porters to cover the duties of 2 porters who were shielding

at home during the early months of the COVID 19 pandemic. It is his case that none of the individuals concerned were 'clinically extremely vulnerable' as the phrase was used by governmental organisations during the pandemic. Further he argued that the Respondent could have redeployed other staff who, he surmises, must have been available for work but unable to carry out their usual duties due to the terms of the national lockdown in place in 2020.

32. In his witness statement Mr Slimane clarified that 4 lobby porters were shielded from March 2020 to September 2020. All 4 were full time employees and all 4 were replaced with temporary agency staff supplied under the Hayes contract. He confirmed that all 4 members of permanent staff were sent home on the advice from the Respondent's occupational health department, and exhibits email correspondence to this effect to his statement. He also states that redeployment was considered but it was not possible to find staff within the relevant department who could be redeployed to carry out these roles. He points out that had staff from another department been redeployed within the Barbican estate, there still would have been an additional cost to the leaseholders.

33. We consider that it was entirely reasonable for the Respondent to not require public-facing members of staff with underlying health issues to report for work during the early part of the pandemic. We are not satisfied that the Respondent acted unreasonably in engaging agency staff to undertake the tasks that those members of staff would normally do. We accept the evidence of Mr Slimane that the issue of redeployment of estate staff was considered but was not possible. We accept that redeployment of staff from other departments would have come at an additional cost to leaseholders in any event and that consequently there was no extra saving to be had.

34. Consequently the cost of engaging agency staff to cover for 4 members of the porter staff who were permitted to stay at home from March 2020 to September 2020 was both reasonably incurred and recoverable under the terms of the Applicant's lease.

CLEANERS: RECOVERABLITY

35. Mr Tomkins also argued that 27% of the total cost of cleaning was not recoverable under the terms of his lease because he estimates that the cleaning staff on the Barbican estate spend 27% of their working day collecting bagged rubbish from each flat. He submits that his lease only permits the Respondent to charge leaseholders for one method of rubbish disposal.

36. There are at present 2 methods of rubbish disposal in operation on the Barbican estate. When the estate was constructed it was fitted with a Garchey waste disposal system. This consists of a waste disposal unit fitted to each kitchen sink which is connected to an underground collection tank serving the

entire estate. This system is used primarily for food waste. In addition to the Garchey system, rubbish is collected by the estate cleaners from each flat on a daily basis. Some leaseholders have removed the Garchey disposal unit from their kitchens.

37. Mr Tomkins submits that pursuant to Paragraph 5 of Part II of the 5th Schedule to the lease, that the Respondent can either recover either the cost of the Garchey system or the cost of any alternative method of collection of rubbish, but not both. He submits that the clause "*the maintenance in reasonable working order of the Garchey refuse system installed by the corporation* ***or*** *the provision and maintenance of any alternative method for the collection of rubbish as the corporation thinks fit from time to time*" (our emphasis) has to be read disjunctively as only permitting the Respondent to either charge for the Garchey system or for an alternative system.

38. In our view the wording of Paragraph 5 of Part II to the 5th Schedule has to be seen in its context. Firstly it is clear that the Garchey system was never intended to be used to dispose of all leaseholder rubbish. The Garchey system can only be used to dispose of putrescible waste; items such as plastic packaging cannot be disposed of through the Garchey system. Secondly paragraph 3 of the 6th Schedule to the Lease obliges the tenant to dispose of any waste which cannot pass through the Garchey system '*in accordance with prior arrangement with and as directed by the manager'*. Thus it was in the contemplation of the parties at the time the lease was signed that there would be alternative arrangements in place for the disposal of waste which cannot be disposed of through the Garchey system. For this reason we consider that the word 'or' in Paragraphs 5 and 6 of Part II of Schedule 5 was not used in the disjunctive sense of either/or but in the conjunctive sense of and/or. It would not make any sense as at the date of this lease for the parties to limit the recoverable costs to one method of rubbish disposal when the existing Garchey system was already installed but could not be used to dispose of all leaseholder rubbish.

39. Consequently the cost of daily rubbish collection is a chargeable cost under Paragraph 5 of Part VI of Schedule 5 to the applicant's lease. There is no need to resort to the 'sweeper clause' in Paragraph 10.

COMMUNICATIONS OFFICER: RECOVERABILITY AND REASONABLENESS

40. Mr Tomkins argued that Paragraph 8 of Part IV to Schedule 5 of the lease makes no mention of communications manager and that consequently the cost of engaging a temporary communications manager is not a recoverable cost under his lease. Mr Blakley submitted that paragraph 8(e) of Part VI of the 5th Schedule was sufficiently wide to cover the engagement of a communications

officer as long as the engagement of such a staff member was reasonable. Alternatively he relies on the sweeper clause at paragraph 10.

41. In his witness statement at paragraph 9 Mr Doherty sets out the structure of the staffing on the Barbican Estate. Very few of the job titles shown there come under the express provisions of paragraph 8 of Part IV of Schedule 5 of the lease, which only refers to either public facing roles (housekeepers and porters), or manual roles (engineers and storekeepers). However it must have been within the contemplation of the parties that the Respondent would have also have to engage administrative staff as well as front of house staff and manual workers in order to manage the estate properly. In our view administrative staff are covered by paragraph 8(e) of Part IV of the 5th Schedule. We note that Mr Tomkins does not challenge the necessity of engaging the 3 employees of the Barbican estate office who gave evidence on behalf of the respondent notwithstanding the fact that none of their respective jobs titles are expressly mentioned in paragraph 8.

42. The power to charge residents for the cost of such administrative staff is subject to a requirement of reasonableness both under the lease and pursuant to s.19 of the 1985 Act. We note that the role of communications manager is vacant and some of the tasks of the communications officer are now undertaken by a permanent member of staff who works in the estate office 1 day a week. Mr Tomkins submits that it cannot be reasonable to hire a full-time employee to carry out this role if its functions could be adequately covered by a permanent member of staff working for 1 day a week in the estate office.

43. The evidence of Mr Slimane at paragraph 45 of his statement is that the engagement of a permanent communications officer was proposed by the Respondent in 2017 and approved by the Barbican Residential Committee in 2019. He also states that the engagement of a full-time communications officer has been approved by the City of London as part of a city-wide review of its staffing arrangements, the Target Operating Model (TOM) review, in 2021. However due to a recruitment freeze, the post was filled by a temporary worker via the Hayes contract from 2018 to 2022. He further states that residents on the estate had in the past raised communication with leaseholders as an area which required improvement. He states that there are some communications tasks which are currently not been undertaken, such as updating the estate website and the preparation of welcome packs for new residents, due to the lack of a full-time communications officer.

44. We accept the evidence of Mr Slimane. Further we think it is particularly relevant that the appointment of a permanent communications officer was approved by the residents committee in 2019. We are not satisfied that the decision to engage a temporary communications officer was unreasonable. Consequently we consider that the cost of the same was recoverable both under

the lease and was reasonably incurred within the meaning of s.19 of the 1985 Act.

THE S.20 CAP

45. The Respondent accepts that the Hayes contract is a QLTA and that the requisite statutory consultation was not undertaken. Consequently the sum that can be recovered from the Applicant in respect of the Hayes contract for the years 2017-2018 to 2023-2024 is capped at £700.

REASONABLENESS – AGENCY CLEANING COSTS

46. Mr Tomkins submits that the sums spent by the Respondent on hiring agency cleaners via the Hayes agreement is not reasonable. He points to the fact that the cost of temporary workers on the estate has increased from £77,000 in year 2017/2018 to £255,040 in the year 2022/2023. He further points to the estimated cost for the year 2023/2024 which is £472,337 (see appendix B to his skeleton argument) which he says is evidence of a failure on the part of the Respondent to control agency costs and to manage its permanent workforce properly. He drew our attention to an independent review of the Barbican Estate Office dated December 2022 which pointed in particular to a failure on the part of the Barbican estate office to manage its permanent workforce efficiently. The report also identified a tendency to rely on temporary agency workers to manage staff absences and staff leave. The report noted in particular a lack of management training in areas such as tracking and managing sickness absence. The reported noted that the sickness rate for frontline staff on the Barbican estate was over 3 times the national average.

47. Mr Slimane blames a recruitment freeze as the main driver of the estate office's increasing reliance on agency staff from 2017 to 2023. At paragraph 26 of his statement he explains that due to a city-wide freeze on recruiting permanent staff, the Barbican estate lost 13 permanent cleaning posts between February 2018 and January 2023. In answer to questions put to him by the panel he stated that no further permanent posts had been lost since January 2023, and that the Respondent had recently decided to end its freeze on direct recruitment.

48. Ms Lloyd's evidence is that the cost of agency staff is in fact slightly lower than the cost of full-time directly employed staff. At paragraph 15 of her statement she has included a table which indicates that a permanent member of cleaning staff costs the Respondent £3,436, whereas the cost of an agency worker is £3,057 per month.

49. The Tespondent has supplied the Tribunal with a table showing the total cost of cleaners on the estate from 2017-2018 to 2022-2023, This is at a page 368 of the bundle. The cost in 2017-2018 was £981,142. The cost in 2022-2023 was £1,187,324. Mr Tomkins does not seek to argue that the total sums spent on cleaning were unreasonable and we note that the total cleaning cost has barely kept up with inflation over the period under challenge. The table shows that as the cost of temporary workers has increased over the years, the cost of permanent cleaning staff has decreased, presumably as a result of the recruitment freeze and the consequent reduction in staff numbers. There is in our view no evidence to show that the sums spent on cleaning overall, or the sums spent on temporary staff from 2017-2018 to 2022-2023 were unreasonable in amount.

50. In our experience it was not unusual for cleaning costs in residential blocks to increase significantly during the COVID 19 pandemic primarily due to the need for increased touch point cleaning. We also bear in mind the difficulties faced by all employers in arranging for staff who could not work from home to undertake their roles in as safe a manner as possible during the pandemic, particularly during the first national lockdown. We do not consider that the sums spent on cleaning in 2020-2021 were unreasonable in amount.

51. However, the estimated total sum spent on agency cleaners for the year 2023-2024 is eye-catching. While we do not have any figure for the total sum spent in relation to cleaning in 2023-2024, we note that the sum spent on temporary cleaners increased by 85% from £255,040 in 2022-2023 to an estimated total of £472,337 for 2023-2024. The number of permanent cleaning staff has not changed since January 2023. We have had no explanation from the Respondent as to why the estimated cost of agency cleaners has gone up so much while the cost of permanent staff has presumably not reduced. Even making due allowance for wage increases between 2022-2023 and 2023-2024 it is difficult to see how a near doubling of the cost could be justified. In our view based on the available evidence a reasonable amount would be £300,000. This is based on the sums spent in 2022-2023 with an allowance for wage and services inflation.

52. This will have no effect on the sums payable by Mr Tomkins in respect of the Hayes contract for this year as this is subject to the cap of £100.

Application under s.20C and refund of fees

53. In his application notice the Applicant made an application for a refund of the fees that he had paid in respect of the application and the hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision. The thrust of his application related to the application of the statutory cap to the costs incurred under the Hayes contract. The Respondent has been aware of this

issue since 2021 but to date has failed either to repay the sums charged to the leaseholders attributable to the Hayes contract which exceeds the cap, or to pursue an application for retrospective dispensation. In the circumstances the applicant was justified in forcing the issue by making this application.

54. In the application form and in the statement of case, the Applicant applied for an order under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the 2002 Act limiting the ability of the Respondent to recover the costs of these proceedings as either a service charge or an administration charge. It is the Respondent's position that the Applicants lease does not permit it to recover those costs either as a service charge or as an administration charge. We were not invited to make an 'in principle' determination on either application. As the Respondent accepts that its costs of these proceedings are not recoverable under the lease, no determination is necessary.

Name: Judge O'Brien **Date:** 1 August 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

55.