FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AB/LSC/2024/0706**
Property	**:**	**Flat 706 Pembroke House, 21 Academy Way, Dagenham RM8 2FE**
Applicant	**:**	**Mark Smith**
Representative	**:**	**In person**
Respondent	**:**	**London & Quadrant Housing Trust**
Representative	**:**	**Samantha Hughes, team manager, service charges**
Type of application	**:**	**For the determination of the liability to pay service charges: costs recovery written submissions**
Tribunal members	**:**	**Judge R Percival**
Date of decision	**:**	**17 October 2025**

DECISION ON APPLICATION FOR ADDITIONAL ORDERS
Landlord and Tenant Act, section 20C and Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A

Background

1. The Applicant had made an application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") contesting the management charge imposed by the Respondent. A decision was published on 2 September 2025. That decision concluded that the contested service charges (ie the management fee) were reasonably incurred. The decision made provision for the parties to provide written submissions as to whether orders should be made under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. The parties were invited to make submissions on whether the lease made provision for the relevant charges (with particular emphasis on an administration charge), and whether it would be just an equitable to make the orders.

Decisions of the Tribunal

2. Written submissions were received from both parties. I do not consider it necessary to summarise them here otherwise than appears hereunder.

The administration charge

3. The key clause in relation to the administration charge is that at paragraph 12 of the third schedule, by which the lessee ("the Buyer") covenants

> "To pay all expenses (including Solicitor's costs and surveyor's fees) incurred by the Company or the Management Company … incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 (or any statutory modification re-enactment or replacement thereof) notwithstanding that forfeiture is avoided (otherwise than by relief granted by the Court)"

4. This clause is one of a familiar family of similar clauses, which vary according to their specific wording, but which, depending on their wording, may allow a lessor pass on legal costs incurred in proceedings before the Tribunal to the lessor as an administration charge. Whether different formulations of this family of clauses do so, and in what circumstances, is discussed extensively in *Tower Hamlets v Khan* [2022] EWCA Civ 831, [2022] L. & T.R. 30.

5. In that case, Newey LJ, in reviewing previous cases, considered a number of different formulations of similar clauses and emphasised that "[r]egard must be had to the specific language which the parties have chosen to include in the particular lease". Some clauses refer to "proceedings" in relation to, or "the purposes of", a section 146 notice, and some include the "contemplation" of service of a notice, or proceedings, as well as costs "incidental" to preparation and service etc

6. The clause in this lease is at the narrowest end of the spectrum of section 146 clauses. The relevant costs must be "incidental to the preparation and service of" a section 146 notice. In *Khan*, the court said this about these words:

> "the words 'incidental to' tend to suggest something subordinate. One of the meanings given to 'incidental' in the Oxford English Dictionary is '[s]uch as is incurred (in the execution of some plan or purpose) apart from the primary disbursements'. In the same vein, Arden LJ observed in *Contractreal* [*Contractreal Ltd v Davies* [2001] EWCA Civ 928] that 'the natural meaning of the word "incidental" is to denote a lesser or subordinate sum' and that, in the context of costs, the expression 'of and incidental to' 'has received a limited meaning'"."

7. The actual clause in Khan itself was broader than that in this lease. But in considering these elements of that clause, the Court said:

> "In the present case … no section 146 notice has been served, and it is, I think, very much open to question whether costs of proceedings can be deemed 'incidental' to 'the preparation and service of' a section 146 notice when no such 'preparation' or 'service' has ever taken place. While costs can be incurred 'in contemplation of' the service of a section 146 notice without any such notice being prepared or served in the event, the extent to which costs can be considered 'incidental' to 'the preparation and service' of a notice which is never undertaken strikes me as much more doubtful."

8. Further, in this case, the application was made by the lessee, not the landlord or management company. The legal costs of defending this application are far too remote from the preparation of a section 146 notice to be incidental to it, and therefore for it to be possible for them to be recovered under this clause.

9. In her written submissions, Ms Hughes also refers to paragraph 14 of the same schedule. The lessee thereby covenants

> "To indemnify and keep indemnified the Company against all damages costs and any other liabilities resulting from any non-observance or non-performance by the Buyer or his undertenant of any covenants relating to the Property herein contained or on the registers of the title above referred to"

10. I do not understand Ms Hughes' developed submissions to rely on this clause. Nonetheless, I do not consider that this clause assists the Respondent for two reasons.

11. First, an indemnity clause such as this is aimed at protecting a landlord against costs to – at least paradigmatically – third parties caused by

breaches of the lease. The term "damages costs and any other liabilities" is apt to describe a liability directly imposed on the Company as a result of a default of the lessee. A decision by the Company to engage solicitors and counsel to defend an action no doubt imposes a liability on the Company to pay its legal bills, but that is not the sort of normal discretionary contractual liability that, on a natural meaning, an indemnity clause is designed to cover.

12. Secondly, as the Applicant observes in his written submissions, it is only liabilities imposed on the Company that are covered by this clause, not the Management Company. The Company was defined as a party to the lease as Academy Central LLP, the successor in title of which is now Aviva, not L and Q, the Management Company.

13. *Decision*: there is no provision in the lease for an administration charge covering the legal costs of the proceedings to be passed on to the Applicant. As a result of so deciding, I make no order under paragraph 5A, schedule 11 to the 2002 Act.

The service charge

14. Part II of the sixth schedule sets out the expenditure that may be recovered in the service charge ("Management Charge"). It includes, at paragraph 9

> "The costs incurred by the Management Company in bringing or defending any actions or other proceedings against or by any person whatsoever"

15. In his written submissions, Mr Smith makes arguments as to the proportionality and reasonableness of the Respondent's legal costs, and makes some criticisms of its conduct of the litigation. Neither are relevant to the first issue, which is whether the lease provides for the legal costs to be recovered through the service charge.

16. Paragraph 9 is a very broadly drafted clause that clearly allows the legal costs of these proceedings to be recovered through the service charge.

17. Turning to whether an order under section 20C should be made, Mr Smith's points about proportionality and reasonableness are not relevant. In determining both whether the costs are recoverable as a service charge, and whether an order limiting those costs should be made, the Tribunal does not and cannot take account of the reasonableness in amount of any charges. That question remains open, and may be challenged on an application under section 27A when the relevant service charge is demanded.

18. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000).

19. Such an order is an interference with the landlord's contractual rights, and must never be made as a matter of course. The Tribunal should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111. In this case, the Management Company is a large social housing organisation, with substantial income across a large portfolio. It is not at all comparable to the sort of leaseholder owned freehold company with limited access to resources referred to in *Conway*.

20. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

21. Mr Smith argues that there were failings in the way the litigation was conducted that should be taken into account. He refers to a refusal by the Respondent to provide him with material relating to a flat in a non-RTM building. I do not think there was any obligation on the Respondent to do so, and do not think it should be taken into account. He also objects that reference to the RICS guidance was only raised at a late stage. He did not take an objection to the point (as a matter of timing) at the hearing. This is relevant to my conclusion that he was not prejudiced by the fact that counsel made an argument not previously made. It was not a case of late evidence, and I consider that he was perfectly capable of making his counter-arguments.

22. In this case, the Respondent has been wholly successful, and, in the light of the considerations discussed above, I do not think it would be fair and equitable to prevent them from relying on their contractual right to pass the costs on in the service charge.

23. Mr Smith asks, in effect, that I order that any such service charge be levied across the whole of the Respondent's portfolio. I have no power to make such an order, and the Respondent has not contractual right to do so.

24. *Decision*: the Tribunal makes no order under section 20C of the 1985 Act.

Rights of appeal

25. 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 London regional office.

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

27. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

28. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge R Percival **Date:** 17 October 2025