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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KF/LAM/2023/0001**
Property	**:**	**Mont Dol, 58 Chalkwell Ave, Westcliff-on-Sea, Essex SS) 8NN.**
Applicant	**:**	**Kelly Ivory Empegliazzo (Tribunal appointed manager)**
Respondent	**:**	**Mr Edward Beale, Ms Deborah Burwood**
Type of application	**:**	**Application as to whether an administration charge is payable, under para 5, Sch 11 CLRA 2002**
Tribunal	**:**	**Judge Stephen Evans** **Judge Mary Hardman**
Date of original decision	**:**	**15 October 2025**
Date of decision	**:**	**2 March 2026**

DECISION

DECISION

(1) The Tribunal determines that an administration charge is payable pursuant to clause 2(17) of the lease by the Respondents in respect of the Applicant's costs of the s.27A proceedings.

(2) If an in so far as the Tribunal needs to do so, it considers that it would be just and equitable to make an order in respect of the Applicant's litigation costs pursuant to paragraph 5A of Sch 11 of CLRA 2002. The Respondents' failure to pay their due proportion for the major works was the reason for the Applicant's s.27A application, which was almost wholly successful;

(3) If the costs sum cannot be agreed, either the Applicant or the Respondents will need to issue a further application to this Tribunal for a determination of the amount pursuant to paragraph 5(1) of Sch 11 CLRA.

Background

1. On 24 January 2024 the Tribunal made a management order appointing the Applicant as Manager pursuant to s.24 Landlord and Tenant Act 1987 of the Property.

2. Between May 2024 and August 2024 major works were caried out on the Property costing over £102,000. The Applicant had demanded the Respondents' due proportion for these works, but they had failed to pay. Another leaseholder is said to have given a loan to the Applicant to enable the major works to proceed.

3. Proceedings were later brought in this Tribunal by the Applicant under s.27A Landlord And Tenant Act 2025 (payability and reasonableness of service charges) in CAM/00KF/LSC/2025/0608. The Respondents to that application are the Respondents to this application, being the lessees of flats 3 and 4 in the Property. With the exception of 1 small reduction, the Tribunal found in its decision dated 15 October 2025 that the costs of major works challenged by the Respondents were all reasonable in amount and repairs had been undertaken to a reasonable standard.

4. On 5 November 2025 the Applicant applied to the Tribunal on form Order 1 for directions, which she categorised as a clarification of her duty, particularly whether she was entitled to "debit the accounts of the defaulting leaseholders [i.e. the Respondents] with the costs incurred in the tribunal proceedings CAM/00KF/LSC/2025/0608".

5. This application was not copied to the Respondents, and the Tribunal directed that it should be.

6. On 12 February 2026 Tribunal Judge Evans gave directions that the Tribunal was minded to treat the application of 5 November 2025 as an application pursuant to para 5 of Sch 11 of the Commonhold and Leasehold Reform Act as to whether an administration charge is payable by the Respondents.

7. It directed the Respondents to give a response, which they did. It also gave the Applicant the opportunity for a short reply, which she did on 20 February 2026.

The Applicant's representations

8. In her application supported by a 64 page bundle, the Applicant states that it is her understanding that she may be allowed to debit the costs of the service charge proceedings paid by her (particularly to lawyers KD Law) as an administration charge pursuant to clause 2(17) of the Lease.

9. Clause 2(17) provides a covenant on the Respondents:

   "To pay all expenses (including solicitors costs and surveyors fees) incurred by the lessor and/or the superior lessor incidental to the preparation and service of a notice under section 146 and/or section 147 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the court."

10. The Applicant in her application then makes a reference to "as per 69 Marina?" - ostensibly a reference to *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258, [2012] HLR 12.

11. She later states the purpose of the application is to ensure that she acts lawfully and equitably, and to prevent prejudice to the compliant leaseholders, who would otherwise bear the burden of costs as a service charge pursuant to paragraph 25 of the management order, caused solely by the Respondents' defaults.

12. In her reply the Applicant maintains that the costs were incurred solely as a consequence of the Respondents' default and are not routine management expenses; to require compliant leaseholders to bear those costs through the service charge would be inequitable.

13. She further asks the Tribunal whether it would be willing to determine the amount payable if payability is established, and she gives figures. She also requests what she calls a modest fee for her time incurred as a direct consequence of the Respondents' actions.

The Respondent's representations

14. The Respondent's representations may be summarised as follows:

(1) They do not admit that any administration charge is payable.

(2) No administration charge demand has been served. No sum has been specified and no summary of rights and obligations has been provided. In those circumstances, there is no validly demanded administration charge payable.

(3) The Manager's powers and entitlement to costs are governed by the management order. Clauses 17–19 of that order permit the Manager to instruct legal representatives and, subject to reasonableness, to be reimbursed for such costs from the service charge account.

(4) The Respondents do not accept that the management order or the lease authorises the recovery of tribunal litigation costs by way of an administration charge levied directly against individual leaseholders. The management order provides a specific mechanism for recovery, and the Applicant is put to strict proof of any alternative contractual or statutory entitlement.

(5) Further and in any event, the Applicant's decision to instruct solicitors and counsel was voluntary. The First-tier Tribunal is intended to operate as a low-cost jurisdiction, and any attempt to recover substantial litigation costs via an administration charge could be seen as unreasonable within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The relevant law

15. Schedule 11 of the 2002 Act provides, so far as is material:

"1(1)In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d)in connection with a breach (or alleged breach) of a covenant or condition in his lease.

....

4(1)A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2)The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

...

5(1)An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a)the person by whom it is payable,

(b)the person to whom it is payable,

(c)the amount, which is payable,

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

(e)the manner in which it is payable.

(2)Sub-paragraph (1) applies whether or not any payment has been made.

(3)The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4)No application under sub-paragraph (1) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c)has been the subject of determination by a court, or

(d)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…"

16. *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258, [2012] HLR 12 was a case in the civil courts. The Lease contained a service charge clause 1(b), and another clause called 3(12), which is in near identical terms to clause 2(17) in the instant case. Similar to this case also, the landlord carried out major works to the premises, and 2 of the leaseholders refused to pay. The leaseholders' application to the Tribunal for a determination that their proportion of the costs of the works was not payable was not successful. Thereafter they still did not pay.

17. The freeholder landlord thus brought a claim in the county court seeking (1) the arrears of service charge (2) the costs of the tribunal proceedings pursuant to clause 3(12). Both a direct judge and a circuit judge agreed the leaseholders should pay both (1) and (2).

18. In between the district judge's hearing and the circuit judge's hearing, the landlord served a s.146 notice.

19. The Court of Appeal dismissed a second appeal by the leaseholders. It dismissed counsel for the leaseholders' argument that the landlord's costs in the tribunal were not incidental to the preparation and service of a s.146 notice.

20. In so doing, Sir Andrew Morritt held:

"18…There is no doubt that the Freeholders incurred costs in the repair of the common parts of the Building in performance of their obligation under cl.4(1). That, in turn, created a liability on the tenants, including the Lessees, to reimburse the Freeholders for those costs under cl.1(b). The amount of that liability comes within the definition of service charge in s.18 of the Landlord and Tenant Act 1985 but cannot be enforced except in accordance with the terms of s.81 of the Housing Act 1996 and, in the case of a long lease, as defined, in accordance with the provisions of s.168 of the Commonhold and Leasehold Reform Act 2002. Each of those sections requires the amount of the

tenant's liability to have been finally determined by the leasehold valuation tribunal. Moreover each of those sections requires or recognises that even when so determined the enforcement of that liability is subject to the provisions of s.146 even if the lease treats it as an additional rent recoverable as such. In short the enforcement of the liability of the tenants under cl.1(b) required first the determination of the tribunal and second a s.146 notice.

19 I do not doubt that the covenant contained in cl.3(12) is separate and independent of that contained in cl.1(b). It does not follow that if the Freeholders' cost of the repairs was only recoverable under cl.1(b) its costs of the proceedings before the tribunal were only so recoverable. Indeed I do not consider that the Freeholders' costs of the proceedings before the tribunal come within the terms of cl.1(b) at all. They were not incurred in performing the landlord's obligation to repair, the apportionment of such costs or the collection of such costs.

20 In those circumstances the district judge was right to have concentrated on the terms of cl.3(12)…

21 The district judge considered this matter at a time before any s.146 notice had been served. This accounts for her conclusion in [6] of her judgment and the decision of the circuit judge in [10] of his. Whilst neither of them spelled out the exact nature of the liability of the Lessees under cl.3(12), there is no doubt as to their conclusions. I agree with them…

22 …

23 I reach these conclusions without regret. The proceedings before the tribunal were necessitated by the refusal of the Lessees, two out of the six tenants of the Building, to pay anything in respect of the Freeholders' costs of the repairs. If, as the Lessees contended, the costs of the proceedings were only recoverable by the Freeholders under cl.1(b) then such proportion of the costs as was in excess of the Lessees' rateable proportion would have been payable by the other four tenants who had paid their due share of the cost of the repairs and were not concerned in the proceedings before the tribunal."

Discussion and determination

23. The Management Order of 24 January 2024 provides (para. 26) that:

"The Manager may recover (subject to such provisions of the leases as may allow) administrative charges from individual tenants for their costs incurred in collecting ground rent, service charges and insurance which includes the cost of reminder letters, transfer of files to solicitors and letters before action.

Such charges will be subject to legal requirements as set out in Schedule 11 of the Commonhold And Leasehold Reform Act 2002."

24. It is thus clear that the Management Order does not provide any freestanding ability on the part of the Manager to demand an administration charge. The ability to do so is subject to (a) the Lease and (b) Schedule 11 of CLRA 2002.

25. Further, the Respondents point to paragraphs 17-19 of the Management Order which give the Manager power to bring s.27A proceedings and to incur solicitor and counsels costs; and entitlement to reimbursement from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so.

26. However, 2 points are prevalent. It is notable that para 19 ends with these words:

"If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account."

27. It follows that the Management Order does not provide that the Manager may only recover her costs of proceedings through the service charge.

28. Secondly, in *69 Marina* the CA found the lessees' argument that the costs were still recoverable from all persons through the service charges to be unattractive.

29. The real question here is therefore whether the Manager can invoke para 26 of the Order.

30. The answer does not lie in *69 Marina*. That CA case only illustrates that a landlord's tribunal costs, even if incurred before the service of a s.146 notice, may be considered costs incidental to the preparation and service of such a notice if the circumstances permit.

31. Although not essential to the Tribunal's decision herein, the Applicant's case does not appear distinguishable from the material facts in *69 Marina,* at least up to the point of the freeholder's issue of proceedings in the county court.

32. As to whether an administration charge is payable, the Tribunal finds as follows:

33. The Tribunal is bound to find that clause 2(17) in this case is an administration charge within the meaning of Sch 11, para 1 of CLRA 2002: see *Christoforou v Standard Apartments Ltd* [2013] UKUT 0586 (LC); [2014] L. & T.R. 12 in which Martin Rodger KC held at [32] that para 1(1) "would

include costs incurred in the preparation of s.146 notices or schedules of dilapidations which are routinely the subject of indemnity covenants in residential leases."

34. In *Drewett & Anor v Bold & Anor* [2006] EWLands LRX_90_2005 (04 May 2006), the landlords sent a without prejudice letter setting out the amount of the costs it expected for a retrospective grant of a licence to carry out alterations. The Lands Tribunal rejected the argument by the landlord that a demand complying with para 4 of Sch 11 was necessary before the LVT could have determined whether an administration charge was payable. The LT was unable to accept the argument that the word "payable" in paragraph 1 means "due". See HHJ Huskinson at paragraphs 36 and 40-41 of the decision.

35. In that last paragraph the LT gave an example of a landlord who had made clear to a tenant that a large sum by way of administration charge was payable but the landlord was not prepared to serve a demand yet; it would be strange if the tenant was unable to obtain resolution of whether the charge was a reasonable charge. Also, the LT held at [43] that the fact that there is a dispute between the Landlords and the Tenant which had not yet been concluded does not deprive the LVT (now FTT) of jurisdiction to consider the questions in paragraph 5 of Sch 11.

36. Accordingly, the Respondents' second argument in this case must fail; it is open to this Tribunal to determine whether an administration charge is payable.

37. The Tribunal determines that an administration charge is payable pursuant to clause 2(17) of the lease by the Respondents to the Applicant in respect of the Applicant's costs of the s.27A proceedings.

38. If an in so far as the Tribunal needs to do, it considers that it would be just and equitable to make an order in respect of the Applicant's litigation costs pursuant to paragraph 5A of Sch 11 of CLRA 2002. The Respondents' failure to pay their due proportion of service charge for the major works was the reason for the Applicant's s.27A application, which was almost wholly successful, just as in *69 Marina*. It would not be just to make all leaseholders bear the costs.

39. However, unlike *Drewett*, the Respondents here have not had any inking prior to the Applicant's Reply on 20 February 2026 as to what the sum claimed in costs might be. Moreover, there is little detail in that Reply, except as to a breakdown of dates and sums. Given that para 2 of Sch 11 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable, the Tribunal considers the parties must now seek to negotiate a figure, with or without a formal demand. It would not be in accordance with the overriding objective for the Tribunal to assess it at this stage, or determine a date by which any sum must be paid.

40. If the sum cannot be agreed, either the Applicant or the Respondents will need to issue an application to this Tribunal for a determination of the amount pursuant to paragraph 5(1) of Sch 11 CLRA 2002.

Judge:

S J Evans

Date:

2/3/26

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.

3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.

4. 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