FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00MR/LSC/2020/0071
Property:	Flat 5, Rostrevor Mansions, St Helen's Parade, Southsea, Portsmouth PO4 0RP
Applicant:	Mr Anthony Green
Representative:	In Person
Respondents:	Mr & Mrs Fraser-Harris
Representative:	Mr David Fraser-Harris
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenant's application for the determination of reasonableness of service charges for the years 2014, 2015, 2016, 2017, 2019, 2020.
Tribunal Members:	Judge A Cresswell (Chairman) Mr M Ayres FRICS
Date and venue of Hearing:	28 January 2021 by Video
Date of Decision:	1 February 2021

Any appeal is to be made electronically.

DECISION

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The Application

1. This case arises out of the Applicant tenant's application, made on 23 July 2020, for the determination of liability to pay service charges for the years 2014, 2015, 2016, 2017, 2019, 2020.

Summary Decision

2. The table below sets out the heads of expenditure challenged by the Applicant which the Tribunal found not to be reasonable and payable; the figures represent the Applicant's share of the total payable:

Disputed Heads of Expenditure	Sums Payable by Applicant
2014 Bath & Shower Sealant £58.19	Nil
2014 Handrail Cement £198	£13.17
2015 Carpeting £444	£28.66
2019 Scaffolding £1,140	Nil
2020 Electric Meter Cupboard £102	£5.16
2020 CCTV Camera Signs £46.26	Nil

6. The Tribunal cannot state the actual service charge sums due each year because it was not furnished with service charge demands for all of the years in question, which would have enabled it to do so.

7. The Tribunal does not order the reimbursement of fees paid by the Applicant.

8. The Tribunal allows the Applicant's application under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondents from recovering their costs in relation to the application by way of service charge or administration charge.

Issues

9. **James Scicluna v Zippy Stitch Ltd & Ors** (2018) CA (Civ Div) (Longmore LJ, Underhill LJ, Peter Jackson LJ): Where the parties to tribunal proceedings had agreed a list of issues, the matters to be determined in the substantive hearing and on any appeal were properly to be limited to those agreed issues.

10. There were a number of issues raised by the parties in the bundles, which were not pursued at the hearing and are not dealt with substantively in this determination because they were not further pursued by the Applicant. Many of the issues detailed within the bundles were outside the Tribunal's jurisdiction.

11. The Tribunal has dealt only with issues identified by the parties in respect of the payability of service charges and has not attempted to examine issues not so identified. It has been mindful that the documentation supplied has been supplied with the issues identified by the parties as its focus.

Inspection and Description of Property

12. The Tribunal did not inspect the property, but saw it on street view and was provided with numerous photographs and plans.

13. The property was described as a seafront Victorian building converted into 12 flats, the leases of 6 of which are in the ownership of the Respondents.

Directions

14. Directions were issued on various dates.

15. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.

16. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Mr Green and Mr Fraser-Harris and by Mr Fraser-Harris' son, Mr Adam Fraser-Harris.

17. At the end of the hearing, Mr Green and Mr Fraser-Harris told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

18. The Tribunal has regard in how it has dealt with this case to its overriding objective:
The Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

. (a) exercises any power under these Rules; or

. (b) interprets any rule or practice direction.

(4) Parties must:

. (a) help the Tribunal to further the overriding objective; and

. (b) co-operate with the Tribunal generally.

The Law

108. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.

109. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

110. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.

111. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

112. "*Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available:* **London**

Borough of Havering v Macdonald [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

113. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** [2015] UKUT 0333 (LC)).

114. Where a party does bear the burden of proof:
"*It is common for advocates to resort to [the burden of proof] when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law… It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out…: the burden of proof is a last, not a first, resort.*" (Sedley LJ in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38 at paragraph 86).

115. In **The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** (see below), the Tribunal was faced with a three-way choice:
1) To make no reduction, thereby leaving the costs as they were;
2) To adjourn to allow the landlord to provide evidence, or
3) To adopt the **Country Trade** "robust, commonsense approach".
The first of these options would have been wrong in the light of the landlord's concession that the CCTV charges included an element designed to allow the developer to recover some of its construction costs.
The second would have imposed a disproportionate burden on the parties in the light of the relatively modest sums at issue.
The Tribunal concluded that the third was the right option to have followed. It may have been unscientific, but it was proportionate and involved the application of the Tribunal's overriding objective.

116. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost.*

117. The relevant statute law is set out in the Annex below.

Ownership and Management

118. The Respondents are the owner of the freehold. The property is managed for them by Beal's Block Management.

The Lease

119. The Applicant holds Flat 5 under the terms of leases dated 13 September 1974, which was made between Charles Snook as lessor and Richard Jonathan Blair as lessee and dated 23 August 2012.

120. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

121. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:
Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

122. Pertinent parts of the lease provide:
"WHEREAS:-

(1) The Lessor is seised of the property hereinafter described for an estate in fee simple in possession free from incumbrances
(2) The Lessor intends hereafter to grant leases of some or all of the Flats in the house other than the premises hereby demised and the Lessor intends in every future Lease to impose the restrictions set forth in the First Schedule hereto to the intent that any Lessee for the time being of any part of the house or any Flat therein in respect of which such a lease has been granted may be able to enforce the observance of the said restrictions by the occupier for the time being of the other Flats covered by such lease
(3) ....

LESSEE'S COVENANTS FOR THE BENEFIT OR (sic) *THE LESSOR AND OTHER FLAT OWNERS*

4. The Lessee HEREBY COVENANTS with the Lessor and with the owners and lessees of the other flats comprised in the house that the Lessee will at all time hereafter:-

(i) Keep the demised premises (other than the parts thereof comprised and referred to in paragraphs (iv) and (vi) of Clause 5 hereof) and all walls party walls

sewers drains pipes cables wires and appurtenances thereto belonging (and the Garage) in good and tenantable repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the parts of the building other than the flat

(ii) Contribute and pay one equal twelfth part of the costs and expenses outgoings and matters mentioned in the Fourth Schedule hereto

(iii) …….

LESSOR'S COVENANTS

5. The Lessor HEREBY COVENANTS with the Lessee as follows:

(iv) That (subject to contribution and payment as hereinbefore provided) the Lessor will maintain repair decorate and renew
(a) The main structure and in particular the roof chimney stacks gutters and rainwater pipes of the house (b) the gas and water pipes drains and electric cables and wires in under and upon the house and enjoyed or used by the Lessee in common with the owners and lessees of the other flats (c) the main entrances passages landings and staircases of the house so enjoyed or used by the Lessee in common as aforesaid and (d) the boundary walls and fences of the house

THE FOURTH SCHEDULE ABOVE REFERRED TO

1. The expenses of maintaining repairing redecorating and renewing (a) the main structure and in particular the roof chimney stacks gutters and rainwater pipes of the house (b) the gas and water pipes drains and electric cables and wires in under or upon the house and enjoyed or used by the Lessee in common with the owners and lessees of the other flats (c) the main entrances passages landings staircases and other parts of the house so enjoyed or used by the Lessee in common as aforesaid and (d) the boundary walls and fences of the house"

The Items In Issue

2014 Bath & Shower Sealant £58.19
The Applicant

123. The Applicant was concerned that a charge of £58.19 for sealing a bath and shower had involved private work to a flat owned by the Respondents.

The Respondents

124. The Respondents indicated that this had been adjusted by a credit in the 2014 accounts, which the Applicant agreed to be the case, such that this issue was no longer pursued.

2014 Handrail Cement £198
The Applicant

125. The Applicant raised issue with the full cost of £198 for an invoice which included raising the level of stone to the handrail of the adjacent building. There was no breakdown of costs in the invoice and the work was conducted outside the boundary of the building. He did accept that some of the invoice was payable.

The Respondents

126. The Respondents said that a small amount of cement had been used on the boundary of the property. Mr Fraser-Harris said that he was not absolutely sure where the boundary is. A slight gap between the walls was filled. It was a very small item on a detailed invoice. "*If he wants to take off £1 or £5, carry on.*"

The Tribunal

127. The Tribunal noted that the invoice covered 5 items of work without any breakdown of the individual costs. It was not possible for the Tribunal either to establish the cost of the cement work or the costs of the other 4 items of work. The Tribunal noted, however, that the works did appear to be associated with the handrail of the adjoining property and, as such, not chargeable to the leaseholders of this property. Necessarily, therefore, the Tribunal was required to make a commonsense approximation. Accordingly, it treated each of the 5 small jobs as of equal worth and orders that 1/5th, i.e. £40, is not payable.

2015 Paving Slabs £678

The Applicant

128. The Applicant indicated that a charge of £678 was made for paving slabs as a step to the main communal front door. He said that there was no evidence of the cost of the quality stones said to be used and noted that one had cracked within months. He was prepared to pay a fair amount, which he approximated at £36 for his individual contribution (£432 in total).

129. The Applicant said that he was entitled as a leaseholder to see the receipts for the stones used by the builder.

The Respondents

130. The Respondents indicated that fixed price quotes are common. The managing agents had been appointed at the recommendation of the Applicant. "*If you go to a builder and get an estimate, you get a total price and that is what you pay*".

The Tribunal

131. The Tribunal was being asked to look at works conducted some 5 years ago. No alternative costed pricing was submitted by the Applicant. The Tribunal finds that it would be unusual for a builder to list the price of individual materials on an invoice and notes that there is no right for a leaseholder to demand such specific information from a landlord.

132. The Tribunal can envisage any number of circumstances where a good quality stone slab might crack other than faulty workmanship.

133. In all of the circumstances detailed above, the Tribunal finds that £678 was a reasonable cost for these works.

2015 Carpeting £444

The Applicant

134. The Applicant pointed to an invoice for carpeting. The carpeting had been for one flight of communal stairs, whereas the invoice wrongly showed two flights. The Applicant had been told that the underlay had been provided free by a leaseholder, yet the underlay appeared on the invoice. There were no receipts for the component parts of the invoice and, accordingly, a lack of accountability. No boot mat had been fitted at the front communal door, contrary to what was said in the invoice.

135. As freeholder, Mr Fraser-Harris should have been aware of the details. Treating this as an experiment missed the opportunity to replace carpet all the way up.

The Respondents

136. The Respondents said that this was an experiment as a leaseholder, Mrs Howard, had some underlay; there was noise, and they decided to put new underlay under new carpet and provide a new boot mat in the back entrance. Two residents consulted were happy with the outcome.

The Tribunal

137. The Tribunal noted that underlay was included in the invoice, which poorly recorded the work actually done. There being no breakdown as to individual costs, the Tribunal again had to make a commonsense assessment. Having done so, it reduced the overall sum by £100 to reflect the non-supply of underlay.

2015 Rubbish Removal £40

The Applicant

138. The Applicant asserted that a £40 charge for removal of rubbish related to rubbish left by the Respondents' tenants when they vacated one of his flats. The invoice had no indication of who it came from and the signature was illegible. £20 appears to have been changed to £40.

139. At a leaseholders' meeting on 17 September 2016, the managing agent had confirmed that the rubbish was left by residents of Flat 4 and that they had broken the meter cupboard.

The Respondents

140. The Respondents had, said Mr Fraser-Harris, been unaware of this until a year later. If it was his tenant, he would have been informed and would have removed it. It could have been fly-tipping for all he knows. He had removed rubbish when informed.

The Tribunal

141. The Tribunal was mindful that this was a complaint about a very small invoice for rubbish removal some 5 years ago. Whilst having sympathy with the Applicant, if rubbish was indeed left by residents of a flat owned by the Respondents, the fact remained that this was a service recognised by the lease as forming part of the service charge, it being a part of proper maintenance of the common parts. It follows that the Tribunal finds this to be a reasonable charge.

2016 Rubbish Removal £25

The Applicant

142. The Applicant complained that an invoice in the sum of £25 related to the removal of rubbish left by the Respondents' tenants of Flat 2B, which was confirmed in a letter from the managing agent. The invoice contained no details of who it was from and the signature was illegible.

The Respondents

143. The Respondents indicated that it was not clear if this was the same event. The Respondents had arranged for the rubbish to be cleared.

The Tribunal

144. The Tribunal was mindful that this was a complaint about a very small invoice for rubbish removal nearly 5 years ago. Whilst having sympathy with the Applicant, if rubbish was indeed left by residents of a flat owned by the Respondents, the fact remained that this was a service recognised by the lease as forming part of the service charge, it being a part of proper maintenance of the common parts. It follows that the Tribunal finds this to be a reasonable charge.

2016 September Cleaning £56
The Applicant
145. The Applicant complained that an invoice in the sum of £56 from FAC Cleaners for September 2016 appeared to be duplicated.
The Respondents
146. The Respondents said that the second invoice was for cleaning in October, but had incorrectly been recorded as September cleaning. Invoices are not necessarily spot on. Mr Fraser-Harris had checked and there were only 12 invoices for the year and he hoped that the managing agent would have checked this as well.
The Tribunal
147. The Tribunal can quite see how the second September bill was actually the bill for October, particularly given Mr Fraser-Harris's assertion that there were 12 invoices only for the year and Mr Green's admission that he did not have a bill for October. Accordingly, the Tribunal finds this invoice to be payable.

2017 External Painting £768
The Applicant
148. The Applicant accepted that he must pay his proportion of this sum.

2019 FAC Cleaning Invoices
The Applicant
149. The Applicant was concerned that the late receipt by the managing agents of FAC invoices led to a late inclusion of those invoices in the service charge demands. He accepted that he was responsible for the payment of these invoices, but was concerned that this was another example of poor accounting practice by the Respondents.
The Respondents
150. The Respondents pointed to poor invoicing by the supplier. Mr Adam Fraser-Harris indicated that 2 invoices for part of 2018 were late and that there were problems the following year too. He accepted that there was tardy behaviour at best and that the managing agent should be keeping an eye on that.
The Tribunal
151. The Tribunal, given that payment of the invoices is no longer an actual issue, finds that the invoices are payable in accordance with the terms of the lease.

2019 Gutter Clearing
The Applicant
152. The Applicant was concerned about the 3 invoices here. There was an undated invoice in the sum of £120 for clearing guttering on the roof, an invoice in the sum of £290 for clearing box guttering dated 17 December 2018 (both from KL Keirle) and the accounts also included an invoice from CT McCann for clearing box guttering. He queried the evidence that the last invoice had been paid.

153. One of the invoices was in a different style to others.
The Respondents
154. The Respondents accepted that there had been poor invoicing. The area of the roof was, however, large. The Applicant complains of leaks and the leak in the entrance hall is linked to the guttering. Some of the work involves climbing over glass and the gutters fill the entire time with detritus from pigeons and other sources.

155. One invoice was whilst Mr Keirle was doing the pointing on top of the scaffolding close to the Applicant's flat. Another was concerned with the main roof, which Mr Fraser-Harris assisted with, and the third was organised by the managing agent.

The Tribunal

156. The Tribunal could see nothing suspicious on the face of the invoices. There is a large roof area here. The Tribunal could also see how the work might be approached in 3 tranches. It was not possible on the evidence available to it for the Tribunal to conclude that these were other than genuine invoices for genuine works and, as such, they are payable as part of the service charge.

2019 Scaffolding £1,140

The Applicant

157. The Applicant raised an issue in relation to the charging for the 2 phases of scaffolding. Phase 1 was charged at £950 and phase 2 at £1,140.

158. The managing agent also manages the adjacent building. Mr D Faulkner of the managing agent told the Applicant that phase 2 was to be shared with the adjacent building, the suggestion being that phase 1 would be charged to the Respondents and phase 2 to the next-door building. Notwithstanding that, £1,140 had been charged.

159. Mr Green could not see the charge on the service charge statement for 2019. The invoice had been sent to him by the managing agent.

The Respondents

160. The Respondents indicated that the scaffolding was erected for pointing and painting. Mr Fraser-Harris was vaguely aware of the discussion about charging and that part of the scaffolding was paid by the next building. He queried whether accounts had been done for this work. Mr Adam Fraser-Harris said that although the invoice had been paid by the managing agent, the managing agents also managed the next-door property and it was a question of how the payment would be accounted for. Mr Fraser-Harris then told the Tribunal "*we have paid both of those invoices*" and that the next-door building had made a contribution directly to the scaffolder, who had invoiced them separately.

161. Mr Adam Fraser-Harris said that he assumed that the managing agent was only charging for items due for the property.

The Tribunal

162. The Tribunal agreed with Mr Green's criticism of the Respondents' evidence here. There appeared to be a lot of assumptions made, some of them contradictory, when it should have been quite easy for the Respondents to settle this matter with the production of relevant documentation.

163. On the basis of evidence available to it, the Tribunal cannot be satisfied that it is reasonable to charge the phase 2 scaffolding invoice to the service charge account and disallows it in its total sum of £1,140.

2019 Accountancy Fees £360

The Applicant

164. The Applicant complained that £360 retrospective accountancy fees for the years 2017 and 2018 had only been demanded in 2019 and that they had not been shown in accounts for the years to which they related. He was confused by the lack of clarity

about the cash basis of the Respondents' accounting practice, but accepted that he was obliged to pay his proportion of these fees.

The Respondents

165. The Respondents accepted that the invoices for accounts had been received late and should have been spotted earlier.

The Tribunal

166. The Tribunal notes the Applicant's concession that he is obliged to pay his 1/12th proportion of these fees.

2020 Electric Meter Cupboard £102

The Applicant

167. The Applicant was concerned that a £102 invoice included repairs to electric meter cupboard doors, which had been forcibly broken by the tenants of the Respondents in Flat 2B, a fact confirmed in a letter by the managing agent of 14 July 2016. He queried whether this should be charged to the Respondents. He said that the Respondents should have a deposit scheme to pay for that.

168. The contractor, Mr Underwood, should have separated each element of the invoice and because he failed to do so, Mr Green was unable to say what the cost of damage to the doors was. As a guesstimate, he suggested that it would cost £40 to fix a door.

The Respondents

169. The Respondents via Mr Fraser-Harris indicated that they would be willing to forego a demand for £40.

The Tribunal

170. The Tribunal, accordingly, on the basis of the agreement between the parties recorded above, reduces the £102 invoice by £40 to £62.

2020 CCTV Camera Signs £46.26

171. The Respondents agreed to reimburse the £46.26.

The Tribunal

172. The Tribunal, accordingly, so orders.

General

173. The Tribunal finds it unfortunate that this matter should have had to be brought before it.

174. This was always going to be a difficult set of issues because the Applicant was challenging expenditure from as long ago as 5 years. That task was made more difficult by the Respondents having to rely on their own memory, unaided by anybody from the managing agent.

175. For the future, the managing agent would be advised to ask contractors, wherever possible, to break down elements of their invoices, where multiple tasks are undertaken. That is a requirement recognised by the Code at 10.4: *"Contractors should issue appropriately detailed invoices for all works carried out, however minor, which should state clearly what the charges are for."*

176. The Tribunal records that the recommended standard, to be found in technical releases 03/11 (Residential Service Charge Accounts) issued by ICAEW states that Service Charge accounts should be prepared on the accruals basis. This method of accounting recognises costs in the accounts when the expense was incurred rather

than when the invoice is paid. The benefit to lessees of the accruals basis is that they can be confident that the expenses in the accounts only relate to the Service Charge period in question. Cash accounting recognises transactions only when there is an exchange of cash.

177. The Code at 7.10 advises: "*If the lease does not specify the form and content, service charge accounts should be prepared in accordance with TECH 03/11 (see glossary for details) It is best practice and helpful to users of the accounts if prior year numbers and/or budgeted figures are included.*"

178. There may be scope for the managing agent to hold a meeting with leaseholders to explain how it goes about its accounting duties in line with the Code so as to instil more confidence and reduce the amount of micro-management that the Applicant feels he needs to undertake.

Section 20c and Rule 13 Costs and Paragraph 5A Application and Fees

179. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondents' costs incurred in these proceedings.

180. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: 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 … … leasehold valuation tribunal, ….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 person or persons specified in the application.

(3) The … tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002 Schedule 11

Paragraph 5A Limitation of administration charges: costs of proceedings

(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.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

Section 29 of the Tribunals, Courts and Enforcement Act 2007, provides (so far as relevant) as follows:
29. ***Costs or expenses***

(1) The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and (b) all proceedings in the Upper Tribunal,

shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"):

Rule 13

> *(2) 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.*

Section 20C

181. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. It follows a similar course when considering administration charges. *"Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."* (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000).

182. "*An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances.*"
"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order…;
"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".
(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."* (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

183. The Tribunal notes that the Applicant has been partially successful in his submissions.

184. The Tribunal is aware that any costs will fall upon the Respondents, which may try to recover them from the other tenants by way of service charge, but the other tenants are able to challenge the ability of the Respondents to do so in accordance with the terms of the lease and the reasonableness of the Respondents seeking to do so and the reasonableness of any sums sought to be charged.

185. The costs incurred by the Respondents in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant in this or any other year.

Paragraph 5A

186. For the same reasons the Tribunal allows the Applicant's application under Section 20C above, the Tribunal allows his application under Paragraph 5A, so that the costs incurred by the Respondents in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicant in this or any other year.

Fees

187. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*
"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."

188. The Tribunal finds that it would not be appropriate to order the Respondents to reimburse the Applicant with the fees paid by him. In so deciding, the Tribunal is mindful that the Applicant was unsuccessful in respect of a number of issues he raised

and that he further raised a number of issues outside the jurisdiction of the Tribunal and that the Respondents have been denied the opportunity of recovering their costs by way of service charge or administration charge.

APPEAL

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

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

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

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of “service charge” and “relevant costs”

(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—
(a) “costs” includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

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.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal 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—
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) 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—
(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 postdispute 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—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.