



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

**Case Reference** : CHI/00HY/LIS/2014/0057.

**Property** : Flat 7, The Old House, 3 Rougemont Close, Salisbury, SP1 1LY.

**Applicant** : Mr. John James Cheyne.

**Representative** : In person.

**Respondent** : The Old House Management Company (Salisbury) Limited.

**Representative** : In person.

**Type of Application** : Determination of reasonableness of service charges, s27A Landlord and Tenant Act 1985 (as amended).

**Tribunal Members** : Judge J G Orme (Chairman)  
Mr. P Smith FRICS (Member)

**Date and Venue of Hearing** : 16 December 2014.  
The Red Lion Hotel, Salisbury.

**Date of Decision** : 8 January 2015.

## Decision

For the reasons set out below, the Tribunal:

1. **Determines that:**
  - a. **The cost of electricity used to heat the hall at The Old House, 3 Rougemont Close, Salisbury, SP1 1LY (“the Property”) is recoverable as part of the service charge payable in respect of Flat 7 at the Property by Mr. John James Cheyne (“the Applicant”) to The Old House Management Company (Salisbury) Limited (“the Respondent”) for the years ended 31 December 2012, 2013 and 2014 and is payable in so far as the cost is reasonably incurred.**
  - b. **The cost of a policy of insurance taken out by the Respondent to insure against the liability of the directors of the company is not recoverable as part of the aforementioned service charge for the years ended 31 December 2012, 2013 and 2014.**
2. **Makes no determination in respect of the reasonableness of the contributions to the reserve fund forming part of the aforementioned service charge for the years ended 31 December 2012, 2013 and 2014.**
3. **Makes no order for costs in relation to the proceedings before the Tribunal.**

## Reasons

### Background

1. In about 1988, The Old House, 3 Rougemont Close, Salisbury, SP1 1LY (“the Property”) was converted and extended to form 9 flats. The access to flats 1 to 5 is through the main door and hallway of the Property. Flats 6 to 9 are located in the extension at the rear of the Property and have their own individual entry doors.
2. The freehold of the Property is now vested in The Old House Management Company (Salisbury) Limited (“the Company”). The members and shareholders of the Company are the leaseholders of the 9 flats. The Company is responsible for the management and maintenance of the Property and is entitled to collect a service charge from the leaseholders to cover the costs so incurred.
3. Mr. John James Cheyne is the current leaseholder of Flat 7 at the Property. He purchased the lease on 27 April 2012. He is in dispute with the Company as to how the service charge is calculated.
4. On 13 October 2014, Mr. Cheyne applied to the Tribunal to determine his liability to pay and the reasonableness of the service charges which he had been asked to pay for the years ended 31 December 2012, 2013

and 2014. For each of the 3 years, he asked the Tribunal to determine his liability to pay the cost of heating the hall at the Property which is used by flats 1 to 5 only, his liability to pay the cost of directors' insurance taken out by the Company and he asked the Tribunal to consider the reasonableness of the reserve fund maintained by the Company. The application also included an application for an order pursuant to section 20C of the *Landlord and Tenant Act 1985 (as amended)* ("the 1985 Act").

5. On 12 November 2014, the Tribunal issued directions providing for both parties to exchange written statements of case and for the application to be listed for hearing.

### **The Law**

6. The law relating to determination of the amount of service charges payable by a leaseholder is primarily set out in sections 18, 19, and 27A of the 1985 Act. In brief, if the parties to a lease cannot agree the amount of service charges payable, either the landlord or the tenant may apply to the Tribunal to make a determination. In making that determination, the Tribunal will consider whether the charge is recoverable under the terms of the lease and, if it is, whether the amount claimed has been reasonably incurred and whether the services or works were carried out to a reasonable standard. Where a service charge is payable before the costs are incurred, no greater amount than is reasonable is payable.
7. Section 29 of the *Tribunals, Courts and Enforcement Act 2007* ("the 2007 Act") provides that the costs of all proceedings in the First-tier Tribunal shall be at the discretion of the tribunal in which the proceedings take place. Rule 13 of the *Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169)* ("the Tribunal Procedure Rules") makes further provision for the award of costs in tribunal proceedings. The tribunal may make an order for costs if a person has acted unreasonably in bringing, defending or conducting proceedings.
8. A tenant may ask the Tribunal to make an order under section 20C of the 1985 Act. The Tribunal may make such an order if it considers that it is just and equitable in the circumstances. If an order is made, it prevents the landlord from seeking to recover through the service charge any costs which it has incurred in connection with the application.
9. The full text of the statutory provisions referred to in this section is set out in the appendix to this decision.

### **The Lease**

10. The Tribunal had before it a copy of a lease dated 4 October 1988 made between Heronsgate Limited as landlord, the Company as manager and Betty Nicolas as tenant ("the Lease").

11. By the Lease, the landlord demised Flat 7 to Betty Nicolas for a term of 125 years from 25 March 1988 at a yearly rent of £25.
12. By clause 3(c) of the Lease, the lessee covenanted with the lessor to contribute and pay 10.5% of "*the costs expenses and outgoings and other matters mentioned in the Fifth Schedule hereto in the manner therein set forth*".
13. By clause 4(c) of the Lease, the lessor and the Company covenanted with the lessee to "*observe and perform the stipulations and conditions in the Sixth Schedule hereto*".
14. The first part of the 5<sup>th</sup> schedule sets out the mechanism for calculating the service charge. It is in a common form. It provides for the lessor to estimate the service charge for each calendar year as soon as possible in that year and for the lessee to pay the service charge by 2 equal instalments on 25 March and 29 September in that year. At the end of the year, the lessor is obliged to prepare an account of the actual costs incurred during the year and to calculate the lessee's actual service charge for that year. Any balance payable by the lessee is payable forthwith to the lessor. If the lessee has paid too much, any balance is credited to the lessee. Paragraph (h) provides that all sums paid by the lessee are to be held in trust for the lessee until applied towards the lessee's contribution towards the costs.
15. The second part of the 5<sup>th</sup> schedule sets out the costs, expenses, outgoings and other matters for which the service charge shall be paid. The only paragraphs relevant to this decision are paragraphs 1, 4 and 8 which provide:
  1. *The expenses incurred by the Lessor in carrying out its obligations under the Sixth Schedule of this Lease and any work or provision of any service which the Lessor may in its discretion consider necessary or beneficial for the lessees of the flats even if such works or services are not expressly authorised or required as a term of this Lease.*
  4. *The fees and disbursements paid to any accountant solicitor or other professional person in relation to the preparation auditing or certification of any accounts of the costs expenses outgoings and matters referred to in this Schedule the formation and registration of the Company and its subsequent management and running and the collection of the Service Charge and payments due hereunder and the rent reserved by this Lease and the leases of the other flats in the Property.*
  8. *Such sum as shall be estimated by the Managing Agents (or if none the Lessor whose decision shall be final) to provide a reserve to meet part or all of all sums or any of the costs expenses outgoings and matters mentioned in the foregoing paragraphs which the*

*Managing Agents (or if none the Lessor) anticipate will or may arise during the remainder of the term granted by this Lease.*

16. The 6<sup>th</sup> schedule sets out the obligations of the lessor which include maintenance and decoration of the structure of the Property and the common parts. The common parts are defined in the 3<sup>rd</sup> recital to the Lease and include the main entrance hall, stairs and landing of the Property. At paragraph (b) of the 6<sup>th</sup> schedule there is an obligation “to keep clean and reasonably lighted the Common Parts”. At paragraph (c) of the 6<sup>th</sup> schedule there is an obligation to insure the building and the lessor’s fixtures. This does not include an obligation to take out directors’ insurance.

### **The Inspection.**

17. The Tribunal inspected the Property on 16 December 2014 in the presence of Mr. Cheyne and Mrs. Gauvain who is the leaseholder of Flat 6 at the Property and secretary of the Company.
18. The Tribunal inspected the interior of the hallway at the Property which is on ground and first floor level. The hall has a high vaulted ceiling reaching up to the roof level of the Property. Within the hall is a staircase leading to the first floor. Access to the hall is gained through a porch. Access to flats 1 and 2 is from the ground floor of the hall. Access to flats 3, 4 and 5 is from the first floor landing of the hall. Parts of flats 4 and 5 are on the second floor.
19. The Tribunal noted that the hall and staircase was carpeted and appeared to be maintained and decorated in good condition. The Tribunal noted the single electrical heater on the ground floor which heats the hall. The heater was fitted with a thermostat. The Tribunal noted the presence of a thermometer on the half landing of the stairs which recorded a temperature of 15°C at the time of the inspection. The Tribunal noted a chandelier with tungsten candle lamps as well as wall lights.
20. The Tribunal walked around the exterior of the Property and noted the location of the entrances to flats 6, 7, 8 and 9. The Tribunal noted the complexity of the roof structure and the areas of timber fascias and windows which would require periodic decoration. The Tribunal noted the main pitched tile roof appeared to be in fair condition with some replaced roof tiles. The Tribunal noted the extensive gardens including several trees and an area of tarmac for car parking.

### **The Hearing**

21. The hearing took place at the Red Lion Hotel, Milford Street, Salisbury on 16 December 2014. Mr. Cheyne appeared in person. The Company was represented by Mrs. Gauvain, the Company Secretary. The leaseholders of the remaining flats in the Property, with the exception of flat 4, were either present or represented at the hearing.

## The Evidence and submissions

22. Both parties had filed written statements of case with supporting documents. Mr. Cheyne had filed a reply to the Company's case. Mrs. Gauvain objected to the fact that she had not been able to respond to issues raised by the reply. The Tribunal informed her that she was able to make her reply orally at the hearing.
23. It was agreed by both parties that the leaseholders of flats 6, 7, 8 and 9 each contribute 10.5% of the total costs recovered through the service charge and flats 1 to 5 each contribute 11.6%.
24. Mr. Cheyne submitted that when construing the Lease, the Tribunal should follow the principles set out at paragraph 7.163 of *Woodfall on Landlord and Tenant*. He said that that paragraph was supported by the decisions of *Gilje v Charlegrave Securities [2001] EWCA Civ 1777* and *Cadogan Estates Limited v 27/29 Sloane Gardens Limited [2006] EWLands LRA/9/2005*.
25. **Heating of the hall:** Mr. Cheyne submitted that the cost of heating the hall was not recoverable through the service charge as the cost of heating was not covered by paragraph (b) of the 6<sup>th</sup> schedule. In so far as the Company sought to rely on the exercise of its discretion under paragraph 1 of the 5<sup>th</sup> schedule, he said that the service provided must benefit all of the leaseholders and not just one or a majority of them. He said that he gains no benefit from the heating of the hall as he has no reason to use the hall.
26. Mr. Cheyne said that the cost of electricity for heating the hall formed a major part of the cost of electricity to the Company, that the amount of electricity used was excessive and that the hall was kept at an excessively high temperature (he said that it reached an internal temperature of 21 or 22°C by the end of the day). Mr. Cheyne had carried out an exercise of calculating the cost of the electricity used to heat the hall so as to calculate how much should be refunded to him if his submission was accepted. However, Mr. Cheyne accepted that there was no evidence before the Tribunal as to what would be the reasonable cost of heating the hall if the cost is recoverable through the service charge.
27. Mrs. Gauvain's initial position was that Mr. Cheyne was not contributing to the cost of heating the hall because that was taken into account in the larger proportion of the service charge paid by the leaseholders of flats 1 to 5. She accepted that the Company had included the cost of electricity for heating the hall in the service charge and she accepted that the cost of heating is not included in paragraph (b) of the 6<sup>th</sup> schedule. She said that the Company relies on the exercise of its discretion under paragraph 1 of the 5<sup>th</sup> schedule. She said that heating the hall was for the benefit of all leaseholders because without heating, the hall would be damp and that would increase the cost of maintenance of the structure and decorating of the hall which were items which were recoverable through the service charge. She relied on

a letter dated 5 February 2014 from Mr. D McKillop FRICS of McKillop Gregory Surveyors and Estate Agents. The letter had been written following instructions from Mr. Cheyne to inspect the hall and to advise. In the letter, Mr. McKillop said that he could find no evidence of damp in the hall but that there was a lack of natural ventilation. He continued

*"I fear if the radiator was turned off completely, that the hall would become damp and there are certain dead areas which may be affected by condensation, especially with the lack of external ventilation.*

*I therefore recommend that the radiator is kept on at a reduced temperature at reduced hours and the ventilation improved to reduce the risk of condensation damage."*

28. Mr. Cheyne said that there was no evidence of damp in the hall, that there is only one outside wall (which is partially protected by the porch) and that the risk of damp was minimal. He did not accept that if there was a risk of damp, the provision of heat in the hall would be for the benefit of all leaseholders.
29. **Directors' insurance:** Mrs. Gauvain said that the directors, who are members of the Company, serve without any reward. The Company had been advised to take out directors' insurance in 2005 and had had such insurance since then. It was to protect the directors against claims of negligence or fraud. She accepted that it was not provided for by the terms of the Lease. She said that the members had agreed to the insurance being taken out and, as a matter of common sense, the cost was recoverable as part of the service charge.
30. Mr. Cheyne said that the cost was not recoverable through the service charge as it was not specified in the 6<sup>th</sup> schedule.
31. **Reserve fund:** Mr. Cheyne accepted that the Company was entitled to maintain a reserve fund. He had no objection to the principle of a reserve fund but he considered that the Company was not calculating the amount required in a proper manner. He thought that if the reserve fund continued to accumulate at the present rate, the amount of the reserve fund would greatly exceed the anticipated expenditure. He had tried to explain to the Company how the reserve fund should be calculated without success. Mr. Cheyne accepted that any money currently in the reserve fund should be retained in the reserve fund and not refunded to leaseholders but he wanted a proper calculation carried out for future years.
32. A copy of the draft service charge budget for 2014 which included actual expenditure for 2012 and 2013 was at page 36 of the Tribunal's bundle together with a budget projection to 2017 at page 35. Mrs. Gauvain explained how the Company prepared its budgets. She said that they looked at the actual expenditure in the previous year and then made an estimate of future expenditure. Although they were aware of the need for external decorations to be carried out every 6 years, there

was no specific item in the budget for the reserve fund. The Company overestimated the cost of current year's expenditure in the hope of producing a surplus which was then added to reserves at the end of the year.

33. **Costs:** Mr. Cheyne asked the Tribunal to make an order for the Company to pay his costs incurred in connection with the application and to make an order for reimbursement of the fees which he had paid. He also asked the Tribunal to make an order under section 20C of the 1985 Act. He said that he should not be out of pocket as a result of his efforts to ensure that he paid what was properly due and his efforts to improve the financial conduct of the Company. He gave details of the costs and expenses which he had incurred.
34. Mrs. Gauvain submitted that no such orders should be made. She said that the matter could have been dealt with on written submissions without a hearing but Mr. Cheyne had insisted on a hearing. She said that the Company had not incurred any costs other than the costs of some advice which it had obtained from solicitors.

### **Conclusions**

36. As is so often the case with management companies which are run by the leaseholders for their own benefit, they are run by mutual consensus without too much concern for the precise terms of the leases. It may be that the system for calculating the service charge operated by the Company had worked well for a number of years and had received approval by all the current leaseholders. Over the years, the leaseholders had agreed to the cost of heating the hall and of directors' insurance being recovered through the service charge. The Company had been generous in its estimates of annual expenditure in the hope of running a surplus which could be retained in a reserve fund which would be used to pay for major expenditure such as external decorations. This avoided substantial fluctuations in the amount of service charge payable by the leaseholders year by year and kept costs to a minimum.
37. Such a system may work well but it falls down when one or more of the leaseholders dissents. That is what has happened here. In those circumstances, the Company has no option other than to return to operating in strict accordance with the terms of the Lease.
38. The Tribunal accepts Mr. Cheyne's submissions on the law. Paragraph 7.163 of Woodfall sets out the law very clearly. When determining whether or not a service charge is payable, the Tribunal looks at the terms of the relevant lease and construes those terms. If the lease does not provide for the landlord to recover a particular cost through the service charge, the landlord cannot recover that cost through the service charge. If the lease provides for recovery of a particular item of cost through the service charge, the Tribunal then considers whether the cost was reasonably incurred and whether the service or work provided was to a reasonable standard.



39. **Heating of the hall:** The Tribunal accepts Mr. Cheyne's submissions that the terms of the 6<sup>th</sup> schedule of the Lease do not provide expressly for recovery of the cost of heating the hall through the service charge. The Tribunal must therefore consider whether the Company may rely on the exercise of its discretion under paragraph 1 of the 5<sup>th</sup> schedule. The Tribunal accepts Mr. Cheyne's submission that such services must be for the benefit of all the leaseholders and not just one or a majority of them.
40. The only evidence before the Tribunal in relation to the benefit to be gained from heating the hall is contained within the letter from Mr. McKillop. Mr. McKillop does not say that there is any damp within the hall but the Tribunal accepts his view that the hall might become damp if the heating were turned off. The Tribunal is satisfied that if the hall were to become damp, there would be additional costs incurred by the Company in dealing with damp in the hall and redecorating the hall. The cost of that work would fall to be recovered from all leaseholders through the service charge. The Tribunal is satisfied that the provision of heat in the hall is a service which is necessary or beneficial for the leaseholders of all the flats. The Tribunal concludes that the cost of heating the hall is a cost which may be recovered by the Company through the service charge.
41. Mr. Cheyne did not raise as a specific issue whether, in the event that the Tribunal did make such a finding (that the cost of heating the hall is recoverable through the service charge), the actual cost incurred was not reasonable. Mr. Cheyne had made a calculation of the cost of electricity consumed by heating the hall but he made no submissions as to what part of that cost was reasonable if heating is necessary. As Mr. Cheyne did not raise this issue and, in the absence of any evidence as to what cost of electricity would be reasonable, the Tribunal makes no determination on the reasonableness of the cost of electricity for heating the hall other than to say that it is recoverable in principle provided that the cost incurred is reasonable.
42. **Directors' insurance:** The Tribunal accepts Mr. Cheyne's submissions that this item does not fall within the terms of the 6<sup>th</sup> schedule. It is not open to the Company to rely on agreement at the AGM of the Company or on common sense. If the Lease does not allow for the recovery of an item through the service charge, then it cannot be so recovered.
43. The Tribunal considered whether this cost is covered by paragraph 4 of the 5<sup>th</sup> schedule. Although that paragraph refers to the "*formation and registration of the Company and its subsequent management and running*", the only costs which are recoverable are "*the fees and disbursements paid to an accountant, solicitor or other professional person*". The Tribunal does not consider that payment of an insurance premium falls within that provision.

44. The Tribunal concludes that the cost of the directors' insurance policy is not a cost which may be recovered through the service charge in any of the years ended 31 December 2012, 2013 or 2014. The Tribunal was told by Mr. Cheyne that the premium in 2012 was £126.41 and the premium in 2014 was £138.91. No figure was given for 2013. The Tribunal has not seen any evidence to verify these figures. Whatever the amounts, the premiums should be removed from the service charge and an amended account should be prepared.
45. The cost of directors' insurance may be a proper expense to be incurred in the running of the Company and as such it may be recoverable from the members of the Company but that is not the same as saying that it is recoverable as part of the service charge. The Tribunal has no jurisdiction to determine whether the cost is recoverable from the members of the Company as an expense of running the Company.
46. **Reserve fund:** The terms of the Lease clearly entitle the Company to maintain a reserve fund for future expenditure. It is clearly a sensible idea to operate such a fund. However, if the Company is to maintain a reserve fund, it should do so in accordance with the terms of the Lease.
47. The amount required to be contributed by the leaseholders to the reserve fund should be considered each year and should form part of the budget for each year. This will involve the directors in considering what expenditure may be incurred in future years for which provision should be made. There should be a proper future maintenance plan so that leaseholders can see what items are being budgeted for and at what cost. The directors may find it helpful to refer to Part 9 of *The Royal Institution of Chartered Surveyors Service Charge Residential Management Code (2<sup>nd</sup> edition) (ISBN 978-1-84219-168-2)* which provides some useful guidance on reserve funds.
48. The Company has been operating in contravention of the terms of the Lease because it has been providing a generous budget for current year expenditure in the hope of producing a surplus and then taking that surplus to the reserve fund at the end of the year. The reserve fund should be a specific item in the budget for each year. At the end of the year, any surplus in the service charge account should be credited to the leaseholders in accordance with paragraph (c) of the 5<sup>th</sup> schedule.
49. Mr. Cheyne is not asking the Tribunal to determine that the amounts paid into the reserve account are unreasonable. He accepts that whatever is in the reserve account at the end of 2014 should remain in that account. He wants the system to be operated properly for the future. In the circumstances, the Tribunal is not required to make a determination as to the reasonableness of the contributions to the reserve fund in the years ended 31 December 2012, 2013 or 2014 and it does not do so. It is hoped that the guidance given above will assist for future years.

50. **Costs:** The Tribunal may only make an order for costs against a party under Rule 13 of the Tribunal Procedure Rules. A wasted costs order under section 29(4) of the 2007 Act is not appropriate here as there are no legal representatives against whom such an order could be made. An order under Rule 13(1)(b) can only be made against the Company if the Tribunal is satisfied that the Company has acted unreasonably in defending the application. Although the Tribunal has determined that the Company has not been complying with the terms of the Lease in 2 respects, that does not mean that the Company has acted unreasonably in defending the application. The Tribunal is satisfied that although the Tribunal may have been misguided in its interpretation of the Lease, it has not acted unreasonably in connection with this application. The Tribunal declines to make an order for costs against the Company.
51. Under Rule 13(2) of the Tribunal Procedure Rules, the Tribunal may make an order for reimbursement of fees paid by a party. The Tribunal does not consider that it is appropriate to make such an order in this application. Although Mr. Cheyne has succeeded on 2 issues, he has failed on the issue relating to heating of the hall which appears to have been the main issue in this application. The Tribunal makes no order for reimbursement of fees.
52. The Tribunal may make an order under section 20C of the 1985 Act if it considers that it is just and equitable to do so in the circumstances. The Tribunal notes that the Company is a company run by the leaseholders for their own benefit without any profit. The directors do not receive any remuneration. It is clear to the Tribunal that the directors have acted in what they believe to have been the best interests of the leaseholders and they have endeavoured to keep the costs incurred by the leaseholders to a minimum. Unfortunately, in so doing, they have overlooked some provisions in the Lease. Mr. Cheyne was perfectly entitled to raise the issues which he has raised and it may be that in the absence of a positive response, he had no alternative other than to make this application. However, taking into account all the circumstances, the Tribunal does not consider that it would be just and equitable to make an order under section 20C and it does not do so.

### **Right of Appeal**

53. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
54. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.

55. The parties are directed to Regulation 52 of the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169*. Any application to the Upper Tribunal must be made in accordance with the *Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme  
Judge of the First-tier Tribunal  
Dated 8 January 2015

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (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.

#### **Section 19**

- (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.

#### **Section 27A**

- (1) An application may be made to the appropriate 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 the appropriate 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 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.

## **Tribunals, Courts and Enforcement Act 2007**

### **Section 29**

- (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.
- (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may -
  - a. disallow, or
  - b. (as the case may be) order the legal or other representative concerned to meet,
 the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
- (5) In subsection (4) "wasted costs" means any costs incurred by a party -
  - a. as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

- b. which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
- (6) In the section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.
- (7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.

**The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169**

**Rule 13**

- (1) The Tribunal may make an order in respect of costs only –
- a. under section 29 (4) of the 2007 act (wasted costs) and the costs incurred in applying for such costs;
  - b. if a person has acted unreasonably in bringing, defending or conducting proceedings –
    - i. in an agricultural land and drainage case,
    - ii. a residential property case, or
    - iii. a leasehold case; or
  - c. in a land registration case.
- (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.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs –
- a. must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and the person against whom the order is sought to be made; and
  - b. may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends –
- a. a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - b. notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

- (6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by –
  - a. Summary assessment by the Tribunal;
  - b. agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
  - c. detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph 7(c) as if the proceedings in the Tribunal had been proceedings in court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.