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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**1. LON/00AN/LSC/2015/0192** **2. LON/00AN/LDC/2015/0073**
Property	:	**Flats A,C and E** **11 Woodstock Grove** **London W12 8LE**
Applicant	:	**Dr P S Bluemel**
Representative	:	**Goldline Limited** **Acting by Ms Evans**
Respondent	:	**Flat A : Mr E & Mrs J Lovatt** **Flat C: Ms P Livada** **Flat E: Ms K McCann**
Representative	:	**Ms K Gray of counsel**
Type of Application	:	**1. Liability to pay service charges** **2. Dispensation with consultation requirements**
Tribunal Members	:	**Judge Pittaway** **Mr N Martindale FRICS** **Mr C Piarroux JP CQSW**
Date and venue of Hearing		**5 and 6 October 2015**
Date of Decision	:	**2 November 2015**

DECISION

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DECISION

Decision

LON/00AN/LSC/2015/0192 (the "First Application")

1. In relation to the application for the determination as to liability to pay and reasonableness of service charge case reference the tribunal determine that;

   For the year to 26 September 2014

   The respondents are only liable to pay by way of service charge the following sums referred to in the Service Charges Income and Expenditure Accounts

1.1. Insurance premium	£1,219.81
1.2. Scaffolding hire	£ 450.00
1.3. Management fees	£ 100.00

   and no part of any of the other sums demanded by the applicant in the service charge demands.

   For the period from 27 September 2014

   The respondents are not liable to pay by way of service charge either of the sums referred to in the Interim Service Charges Income and Expenditure Accounts and are not liable to pay any part of the other sums demanded by the applicant in the service charge demands.

2. With specific reference to the payments of £620.00 demanded from each respondent for each of the service charge years in question (which sums were not referred to in the Accounts, only in the service charge demands) the tribunal find that these were demands for a payment into the reserve fund, incorrectly described as "maintenance charge" in the demands.

   There is no evidence that these sums have been expended by the applicant. Accordingly where any respondent has made this payment/ these payments to the applicant the applicant will need to account to 11 Woodstock Grove Freehold Limited for these sums when the freehold is transferred to it. To the extent that the sums have not been paid to the applicant the tribunal determine that the sums are not payable to the applicant but to 11 Woodstock Grove Freehold Limited once the freehold has been transferred to it.

LON/00AN/LDC/2015/0073 (the "Second Application")

The tribunal is not satisfied that it is reasonable to dispense with the consultation requirements of section 20ZA Landlord and Tenant Act 1985.

Section 20C Costs

The tribunal determines that it would not be just or equitable for any of the costs incurred or to be incurred by the applicant in connection with the proceedings before the tribunal to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the respondent tenants.

Rule 13 Costs

The tribunal order that the applicant reimburses the respondents for the unnecessary costs which they incurred by reason of the applicant bringing the Second Application and the additional costs incurred by reason of the applicant's unreasonable behaviour in connection with the proceedings

Background

1. The specific items for determination in First Application are

    1.1. For the year 27/09/2013 to 26/09/2014

        1.1.1. service charges in relation to the inspection of the roof and erection of scaffolding;

        1.1.2. administration charges in relation to county court costs.

    The application and Directions relative to this application had also referred to service charges in relation to building insurance but the respondents confirmed to the tribunal that these did not require determination as they accepted the sum that had been demanded for insurance in the year to 28/9/2014.

    1.2. For the part year 27/09/2014 to 26/2/2015

        1.2.1. service charges in relation to building insurance; and

        1.2.2. service charges in relation to the hire of scaffolding.

2. The Second Application is an application to dispense with the requirement to consult the lessees from all or some of the consultation requirements imposed by section 20 of the 1985 Act in respect of

    2.1. roof repairs and maintenance; and

    2.2. maintenance works to the floor of the lower basement exterior court area and exterior stairs leading to the raised ground floor entrance hall

3. Directions were issued in respect of the First Application on 2 June 2015 (**"First Directions"**) and in respect of the Second Application on 30 June 2015 (**"Second Directions"**). The First Directions required the provision by the applicant of the relevant bundle of documents, with one

copy to the respondents and four copies to the tribunal, with both parties providing four copies of their relevant bundles to the tribunal by that date if they were unable to agree a single bundle. The Second Directions provided for the all documents exchanged in accordance with those Second Directions to be included in the same bundle. No bundle having been received by the respondents from the applicant, Comptons Solicitors LLP, solicitors to the respondents, sent the tribunal three copies of a hearing bundle (received by the tribunal on 2 October) and stated that a copy had been served on the Applicant.

4. Both sets of Directions warned of the consequences of failure to comply with the Directions; namely that the Tribunal could refuse to hear all or part of the party's case and that orders may be made for that party to reimburse costs or fees thrown away as a result of such default.

5. The Second Directions issued in respect of the Second Application provided for the tribunal to inspect the property prior to the start of the hearing. The tribunal inspected the property at 10 a.m. on 5th October. The property is a period terraced house converted into three flats. Flat A is on the lower ground floor. Flat C is on the raised ground floor and Flat E is on the upper two floors. The tribunal had access to Flat A and Flat E but not Flat C.

6. The Directions in respect of the Second Application provided for the hearing to commence at noon. At that time Ms Gray and her clients Ms McCann and Mr Lovatt were in attendance. Dr Bluemel did not attend the hearing. Ms Evans, representing Goldline Limited, Dr Bluemel's managing agents, had indicated she would attend but was not in attendance. The start of the hearing was delayed until 12.30 but then started in the absence of Ms Evans. The tribunal adjourned for lunch at 1.58pm by which time Ms Gray had presented the respondents' statement of case in respect of both applications. Ms Evans was present by the time the hearing recommenced at 2:45.

7. When questioned by the tribunal as to the failure to provide a hearing bundle in accordance with the Direction Ms Evans stated that she was not a solicitor and that she wished to leave on health grounds. She appeared agitated, at times insisting on standing when invited to sit. She did not accept the opportunity offered to her by the tribunal to leave if she felt unwell.

8. Ms Evans sought to place various papers before the tribunal. The tribunal referred Ms Evans to the Directions and in particular to the warning referred to at paragraph 4 above.

9. Ms Evans insisted that Goldline Limited had not received the bundle sent to it by the respondents' solicitors, although the tribunal had received their copies of the bundles. As it was by then 4pm the tribunal provided Ms Evans with one of their copy bundles, and adjourned the hearing until 10am on 6 October, to give Ms Evans a chance to consider the same. They

requested the applicants to provide another bundle for the tribunal for the re-start of the hearing at 10 a.m. the next day.

10. Ms Gray had provided the tribunal at the start of the hearing on 5 October with her skeleton argument and provided a copy to Ms Evans on her arrival.

11. The tribunal advised both parties that they would start hearing evidence from the witnesses at 10am on 6 October and that they would not postpone the start of the hearing for late attendees.

12. The hearing recommenced at 10a.m. on 6 October. Ms Gray, Ms McCann and Mr Lovatt were in attendance. Ms Evans was not; she arrived at 11.10 a.m. by which time the tribunal had heard the evidence of the witnesses. Ms Gray made her closing submissions in relation to the two applications, Ms Evans being reminded that she should not interrupt the tribunal. Ms Evans, with the assistance of questioning by the tribunal, then made closing submissions, regretting the absence of certain information that was not before the tribunal.

Evidence

1. The Tribunal had before it the hearing bundle provided by the respondents. This included the papers attached to the First Application, which included a Service Charge and Income and Expenditure Account Report for the year ended 26 September 2014 (sic) and Interim Service Charges Income and Expenditure Account Report for the period 27 September 2014 to 26 February 2015, various invoices in support of sums set out in those accounts and demands for service charge for the two years in question from Goldline Limited, sent from an accommodation address in London.

2. Mr Lovatt and Ms McCann gave evidence at the hearing. They were not cross-examined as Ms Evans was not in attendance when they gave their evidence. The tribunal questioned them on aspects of their evidence.

3. The tribunal have had regard to the above evidence in reaching their determination and comment on specific aspects of it in their reasons below.

4. In relation to the application for costs the tribunal had regard to Ms Gray's submissions at the hearing, and Ms Evan's submissions in response.

Reasons for the Tribunal's decision

The First Application

1. Ms Gray drew the tribunal's attention to the discrepancy between

   1.1. the expenditure shown in the Service Charge Income and Expenditure Account Report for the year to 26 September 2014 and the interim Service Charge Income and Expenditure Account Report for the period from 27 September 2014 to 26 February 2015

   1.2. the demands sent to the respondents; and

   1.3. the sums evidenced by the invoices available to the respondents and included in the bundles before the tribunal.

   The tribunal therefore worked from the Service Charge Income and Expenditure Account Reports cross referring to the invoices for evidence as to the sums expended.

   They then had regard to the sums demanded by Goldline Limited of the tenants.

2. The tribunal considered the costs itemised in the Service Charges Income and Expenditure Account Report for the year to 26 September 2014 against the evidence with which they had been provided.

   2.1. *Waiting time for roofer* £50.00

   Ms Gray submitted that the respondents did not know to what this cost related. Ms Evans said that a builder had made this charge when he was unable to obtain access to the property because the tenant(s) were not there to let him in. She was unable to provide evidence that the tenant(s) had been given sufficient or appropriate notice of his intention to attend at the property, and was unable to provide an invoice or receipt from the builder; only a copy of a bank receipt for the deposit of this sum into an unidentified account at the Walton on Thames Church Street branch of Barclays Bank PLC.

   The tribunal had no evidence before it that Ms Evans had made sufficient effort to advise the tenants that access was sought, that a builder had attended or that a builder had been paid and that the sum was therefore not payable by way of service charge.

   2.2. *Scaffold for roofer* £450.00

   Scaffold Hire £121.50

   Scaffold Hire £202.50

   The bundle included invoices for the first two of these payments but not the third (which invoices were addressed to Ms Evans and not Goldline Limited). Ms Gray submitted that these costs were not reasonable as no work had been carried out for which the scaffolding was required. Ms Evans explained that the scaffolding was necessary if work was to be carried out to the roof. She explained that the scaffolding had remained in

place for as long as it had (the parties were agreed it had been in place for approximately six months) pending completion of the necessary consultation process before the work to the roof was carried out.

The tribunal consider that it was reasonable to erect the scaffolding on the basis that it may have been necessary to obtain proper access to the roof and if it was anticipated that the consultation process and placing the building contract would be completed shortly after its erection. It was not reasonable to leave it in place for six months. The tribunal therefore consider that the cost of erecting and dismantling the scaffold to be payable by way of service charge and a cost for this of £450 to be reasonable; but not the additional invoices which relate to "extra hire of scaffold" for a further 32 weeks.

2.3. *Legal fees* £350.00.

Ms Gray disputed that any legal fees had been incurred. When asked about the receipt from Goldline Limited for this amount (on an invoice that also referred to "cost of dealing with toilet issue at flat 11A/11E (Ms Evans)") Ms Evans explained that they were costs incurred by lawyers in Nigeria as Goldline Limited is a Nigerian company and that the "toilet issue" had been dealt with out of Nigeria.

The tribunal are unable to accept any part of this cost as reasonable without any supporting evidence that it had been incurred (there was no invoice from any firm of lawyers) or as to how it was made up. In particular they refer to paragraph 12 of the First Directions which explicitly requested

"a detailed breakdown of the claim for legal costs, which must include a schedule of work undertaken, the time spent, the grade of fee earner, his/her hourly rate, a copy of the terms of engagement; supporting invoices for solicitor's fees and any disbursements, Counsel's fee notes with details of the year of call, time spent and hourly rate:"

None of which information had been provided.

2.4. Goldline Ltd's costs re Ms McCann's Court Cases £5,026.19

Ms Evans explained that these were legal costs in relation to the preparation of 3 court hearings (Ms McCann submitted that there had only been two hearings) incurred by Goldline Limited in Nigeria on behalf of Dr Bluemel and Goldline's defence of Ms Mc Cann's county court claim for the return of £716 owed to her by Dr Bluemel. Although the Receipt in the bundle refers to 68 hours of work at £65 per hour there is no detail in respect of these costs as requested in paragraph 12 of the First Directions, referred to at paragraph 2.3 above. Ms Evans disagreed with the proposition put to her by the tribunal that these costs seemed to be disproportionate to the amount claimed by Ms McCann.

The tribunal note that the county court made no costs' award, Ms Mc Cann's evidence that Ms Evans provided no papers when attending the first hearing and that there is no distinction made as to which legal costs

relate to the claim against Dr Bluemel and which to the claim against Goldline Limited.

The tribunal are unable to accept these costs as substantiated. Even if they had been substantiated they are unreasonable; they are disproportionate to the sum being claimed.

2.5. *Managing agent fees* £1,000.00

Clause (v) (8) of the landlord's covenants in the various leases provides that the Landlord will

"employ a firm of Managing Agents to manage the Building and discharge all proper fees charges and expenses payable to it."

The tribunal understand that the managing agent is Goldline Limited. From Ms Evans' evidence and the accounts before the tribunal it is clear to it that Goldline Limited do not charge an annual management fee; rather they appear to charge for the cost to them of providing specific services to the tenants. The tribunal were not asked to consider any management fee for Goldline Limited's management services, only certain fees charged by Ms Evans to Goldline Limited. The tribunal understand from Ms Evans that she is employed by Goldline Limited, but had no information before them as to the fee arrangement between Goldline Limited and Ms Evans.

Ms Evans stated that the costs of £1,000.00 were for her attendance at the property on two occasions (9/5/2014 and 12/5/2014) *"with architect regarding leaks, roof damage and valuation for enfranchisement of freehold by leaseholders."*

Costs in connection with the enfranchisement may not be charged to the service charge; see paragraphs 107 to 109 of the tribunal decision in case LON/00AN/OCE/2014/0068 et al dated 27 October 2014.

Ms Evans explained that her basis for charging £500 per day was *"I was very cross and charged £1000"*.

The tribunal do not consider Ms Evans basis of charging to be reasonable. Goldline Limited's management fees should not depend on arbitrary figures someone employed by them and Ms Evans provided no acceptable evidence to justify her basis of charging.

2.6. *Attending three court cases by Ms Evans* £180

Ms Evans explained that these were charges for mini cabs to the county court. No evidence or supporting invoices/receipts were provided to substantiate these charges. The tribunal note that no costs were awarded in the county court.

The tribunal do not consider it reasonable to seek to include these as a service cost.

2.7. *Ms Evans' expenses re leak of Saniflo and damage to roof caused by substandard work.*

There was clearly a difference of opinion between the applicant and respondents as to what had caused the leak and who had carried out work to the roof. The tribunal do not however consider the cause of the leak to be relevant to the consideration of the reasonableness of Ms Evans' expenses. Whatever the cause of the leak it is clear that there was some dialogue between Ms McCann and Ms Evans in connection with it, presumably because Ms Evans represents/ is employed by Goldline Limited and therefore it is not unreasonable for Goldline Limited to levy a management fee in this connection.

Ms Evans offered no explanation as to how the sum demanded was arrived at.

From their own knowledge as an expert tribunal and on the basis of the evidence before it as to the very limited level of management service provided by Goldline Limited the tribunal considers that a management fee in the region of £100 would have been reasonable.

3. The tribunal then considered the costs itemised in the Interim Service Charges Income and Expenditure Account Report for the year from 27 September 2014 against the evidence with which they had been provided.

3.1. Hire fee for scaffold £108.00

The tribunal do not consider this to be a reasonable charge payable by way of service charge for the reason given above at paragraph 2.2.

3.2. *Building insurance* £1,072.36

Ms Gray submitted that the respondents were obliged to effect their own insurance as Goldline Limited, acting by Ms Evans, had refused to provide evidence that the landlord had insured the Building. Ms Evans submitted that the evidence of insurance had been provided to the tenants but there was nothing to substantiate that in the bundles before the tribunal and on balance the tribunal preferred the evidence before them that the respondents had tried on a number of occasions to obtain confirmation from Ms Evans that the Building was insured (including contacting the brokers through whom she had effected insurance in the previous year) without success and that they were obliged to effect their own insurance to ensure that they were not in breach of the obligations under their respective legal charges on the flats.

The tribunal note that clause (v) (1) of the landlord's covenants in the leases provides that the landlord will at all times

".....whenever required produce to the Lessee (but not more than once in any one year) the policy or policies of [such] insurance and the receipt for the last premium for the same...."

This Goldline Limited failed to do on the applicant's behalf. The tribunal determine that it is unreasonable of the applicant to expect the tenants to pay for insurance for the year to 26 September 2015 that they were unaware existed until August 2015 and where they had been obliged (by reason of the failure of the applicant to observe its above mentioned covenant under the leases) to effect and pay for its own insurance.

4. The tribunal then had regard to the sums demanded by Goldline Limited, by reference to the demands sent to Mr Lovatt for the year to 26 September 2014.

   4.1. In September 2013 Mr Lovatt had received a demand for

   4.1.1. £760 for "Building insurance and administration cost"; and

   4.1.2. £620.00 for "Annual payment into Reserve Fund (Service Charge)"; described in the reminder as "maintenance charge".

   4.2. It was accepted by the respondents that the service charge costs were split between the three flats as to one third each. On the basis of an insurance premium of £1,219.81, being the figure shown on the Certificate of Insurance from Gallagher Heath for the year to 26 September 2014 (rather than the sum of £1,244.81 shown in the Service Charge Income and Expenditure Account Report) each flat is liable for £406.60 as a contribution to the insurance premium. This means that Goldline Limited were charging an "administration cost" for effecting the insurance of £353.40 per flat; namely 87% of the actual insurance cost.

   The tribunal consider that this "administration cost" is misnamed by Goldline Limited; it would appear to be a charge for management fees not administration charges. The tribunal consider them to be disproportionate and unreasonable and in the absence of any explanation from Ms Evans as to what they relate determine the element of the charge attributable to the "administration cost" to be unreasonable and not payable.

   Ms McCann was charged £250 extra by way of administration costs. In the absence of any explanation from Ms Evans as to why the applicant made this additional charge the tribunal consider this to be unreasonable and not payable.

   4.3. As to the £620 demanded of each respondent in each of the periods in question, in the absence of any explanation from the applicant as to what this sum related (and the requirements of the First Directions in this regard were ignored by the applicant), Ms Gray believed (incorrectly as it transpired) it to be managing agents fees and addressed the tribunal on that basis. However from questioning Ms Evans at the hearing it is clear to the tribunal that the £620 demanded annually of each tenant is by way of a

contribution to a reserve fund. Clause (v) (c) of the lessee's covenants in the flat leases provides

"in calculating the maintenance charge the Lessor's Surveyors or Managing Agents shall be entitled to make such provision as he or they consider reasonably necessary for reserves to be applied in or towards the annual cost in the next succeeding or any subsequent accounting period or periods."

The tribunal have no evidence before it to determine the reasonableness or otherwise of this sum.

The sums might reasonably have been required by way of reserve in the years to 26 September 2014 and 2015 in relation to the roof works, that all parties are agreed are required, but as the freehold is about to be transferred to 11 Woodstock Grove Freehold Limited the tribunal determine that these sums, or such other sums as that company might reasonably consider necessary, should be transferred to 11 Woodstock Grove Freehold Limited and not Goldline Limited.

The Second Application

5. Ms Gray submitted that the application should be struck out.

6. Ms Gray further submitted that

6.1. the applicant had failed to comply with the tribunal's directions and had not provided a proper statement of case setting out why dispensation should be granted;

6.2. the work had not been carried out so that this is a an application for a prospective dispensation which are normally only awarded where the work needs to be carried out urgently

6.3. that the tribunal should follow the approach taken in

Daejan Investments Limited v. Benson and others 2013[UKSC] 14 (**"Daejan"**) and consider whether the tenants would be prejudiced by the dispensation.

6.4. If dispensation was granted on the evidence before the tribunal the applicant would be free to award the contract to an unknown contractor for an unknown price; which would be clearly prejudice the respondents.

6.5. That the consultation process having started there was no need to make the application; that the work had been outstanding for three years so that it could not argued that it was necessary to carry out the work urgently; and

6.6. that it was inappropriate in circumstances where the freehold was about to transfer from the applicant to 11 Woodstock Grove Freehold Limited; and that indeed the beneficial interest might have already transferred by reason of the vesting declaration of 7 September 2015.

7. The tribunal do not accede to Ms Gray's request that the application be struck out, in the absence of any representations by Ms Evans in response to this request.

8.

8.1. From the tribunal's questioning of Ms Evans it became apparent that she had made the Second Application because she considered that the landlord was unable to obtain access.

8.2. However Ms Evans then stated that she had made the application because the consultation process was getting nowhere, but she then made it clear that she was continuing with the consultation process.

8.3. On being questioned further by the tribunal it was apparent that Ms Evans did not intend to have regard to the observations made by the tenants in relation to their preferred contractor for the proposed works and that she had "lined up" another contractor.

8.4. Ms Evans did not seem to take cognisance of the fact that the freehold was shortly (if not already) vesting in another freeholder other than the applicant.

9. From their inspection of the property (including viewing the roof through the rooflight on the top floor) the tribunal agree with Ms Gray that the works are not so urgent as to necessitate dispensation with the consultation requirements and that the tenants would be prejudiced by the dispensation.

Section 20C Costs

10. Ms Gray requested that the tribunal make an order preventing the applicant from seeking to recover any costs he has incurred in the proceedings from the tenants by way of service charge arguing that

10.1. either such costs were not in any event recoverable under the terms of the leases; or

10.2. in the alternative that the landlord's attitude in making inflated demands, employing a poor managing agent , and the paucity of evidence provided to the tribunal made it unreasonable to seek to recover such costs by way of service charge.

11. Ms Evans did not address Ms Gray's submissions. She merely stated that there was no reason why the landlord should not recover his costs merely because they were incurred in Nigeria.

12. Both Ms Gray and Ms Evans referred to the landlord's covenants contained in the leases at paragraphs (v) (7) and (9) of the leases for justification or otherwise as to recoverability of these costs by way of service charge. These provide

"(7) employ such persons or persons as shall be reasonably necessary for the performance of the covenants herein contained on the part of the Lessor..."; and

"(9) without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessor be necessary or advisable for the proper maintenance safety and administration of the building"

The underlining is that of the tribunal.

13. The tribunal do not consider, in the circumstances of these applications that the applicant's costs in these proceedings fall within either of the above clauses; they are not costs reasonably necessary for the performance of the landlord's covenants as set out in the lease; nor are they acts necessary or advisable for the maintenance safety and administration of the building.

14. Even if they do fall within either clause Ms Evans' behaviour has been such (bringing a misconceived application , failing to comply with directions and failing to attend hearings punctually) that it would be neither just nor fair if the applicant was allowed to charge his costs to the service charge.

Accordingly the tribunal determines that none of the costs incurred or to be incurred by the applicant in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the respondents.

Rule 13 costs

15. Ms Gray sought an order for costs under Rule 13 (b) submitting that the applicant had acted unreasonably and in an unprofessional manner in bringing and conducting the proceedings. The applications were those of the applicant, but the applicant had not complied with directions and had not provided the bundles as directed. Ms Evans, as the applicant's managing agent's representative had not arrived at any hearing on time, had behaved in a threatening manner, interrupted the tribunal and had necessitated the hearing being extended into a second day, with the additional cost to the respondents.

16. Ms Evans denied that her behaviour had been threatening. She accepted that she had not sent the relevant bundles but did not recognise that she had misbehaved. She referred to her ill health as an explanation for her late arrival (without providing any evidence as to such ill health despite being having been asked to do so). She claimed

to have sent information to the respondents (without being able to substantiate that she had) and claimed not to have received the hearing bundle.

17. The tribunal consider that the applicant has acted unreasonably in bringing the Second Application and that Ms Evans as his representative, had acted unreasonably in the conduct of the proceedings in relation to both applications. The tribunal order that the applicant reimburse the respondents for the unnecessary costs which they incurred by reason of the Second Application and the additional costs incurred by reason of Ms Evans behaviour in connection with the proceedings.

18. The tribunal will determine the amount of the costs by summary assessment. The tribunal therefore directs that the respondents provide to the tribunal (copied to the applicant) sufficient information to enable it to make such assessment. The applicant may make representations to the respondents and the tribunal as to the amount of costs claimed within 28 days of receipt of such information.

19. The tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the week commencing five weeks after receipt by it of the information requested from the respondents and irrespective of whether by then they have received representations from the applicant.

The law

20. The relevant law is copied in the Appendix to this decision.

Name: Judge Pittaway **Date:** 2 November 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 provisions 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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a)complied with in relation to the works or agreement, or
(b)dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2)In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3)This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4)The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a)if relevant costs incurred under the agreement exceed an appropriate amount, or

(b)if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5)An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a)an amount prescribed by, or determined in accordance with, the regulations, and
(b)an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6)Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7)Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2)The application shall be made—
(a)in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa)in the case of proceedings before a residential property tribunal, to that tribunal;
(b)in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c)in the case of proceedings before the Upper Tribunal, to the tribunal;
(d)in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Section 20ZA

(1)Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2)In section 20 and this section—

- "qualifying works" means works on a building or any other premises, and

- "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a)if it is an agreement of a description prescribed by the regulations, or

(b)in any circumstances so prescribed.

(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b)to obtain estimates for proposed works or agreements,

(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6)Regulations under section 20 or this section—

(a)may make provision generally or only in relation to specific cases, and

(b)may make different provision for different purposes.

Section 27A

(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 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.

Orders for costs, reimbursement of fees and interest on costs
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 in—
(i)
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.