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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UE/LSC/2014/0103**
Property	:	**Hollies House, 230 High Street, Potters Bar, Herts EN6 5BL**
Applicants	:	**Ms Maria Hajinicolas Flat 2** **Mrs Jean Marrinan Flat 3** **MR Benabo Settlement Flat 10** **ACG Estates Flats 11 and 16** **Mr Sowari Wilcox Flat 14** **Ms Susan Gilbert Flat 18**
Representatives	:	**Ms Hajinicolas, Mrs Marrinan, Ms N Benabo, Mr Wilcox and Ms Gilbert**
Respondent	:	**Venus Tradelinks Limited**
Representative	:	**Mr Alastair Panton Counsel**
Type of Application	:	**To determine service charges payable – section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge John Hewitt** **Mr Neil Maloney FRICS FIRPM MEWI** **Mrs Lorraine Hart**
Date and venue of Hearing	:	**Monday 12 January 2015** **The Royal Chace Hotel, Enfield**
Date of Decision	:	**12 March 2015**

DECISION

Decisions

1. The decisions of the tribunal are that:

   1.1 The service charges are payable in accordance with the annual accounts issued by the respondent and no adjustments are required;

   1.2 The respondent's application for a costs order pursuant to rule 13 is refused; and

   1.3 The applicants' application for an order pursuant to section 20C Landlord and Tenant Act 1985 (the Act) is refused.

2. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([A]) is a reference to the page number of the hearing files provided to us by the applicants for use at the hearing. Reference to a number in square brackets ([R]) is a reference to the page number of a witness statement (and exhibits) of Mrs Lucy Katsanotnis which was handed to us at the inspection.

Procedural background

3. On 23 October 2014 the tribunal received an application from the applicants [A98]. The application was made pursuant to section 27A of the Act as regards service charges and pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as regards variable administration charges. The applicants also made a related application under section 20C in respect of any costs which the respondent might incur in connection with the proceedings.

4. Directions were given on 24 October 2014 [A173]. These we were varied by a letter dated 18 December 2014 [A176]. Further directions were given on 13 January 2015 with regard to written submissions on the section 20C application.

5. The application form was not as clear as it might have been and original direction 1 required the applicants to set out the nature of their case in some detail. They were also required to state whether they had taken the opportunity to inspect supporting documentation which the respondent had offered. This direction was not followed despite the applicants being given additional time.

6. The parties were notified that the inspection and hearing would take place on 12 January 2015.

7. The respondent made an application to cancel the hearing on the footing that the applicants' case was not in order and the respondent did not know what case it had to meet. The parties were notified that the hearing would go ahead as scheduled and that any procedural

issues would be dealt with first when both parties would be able to make representations and when such further directions would be given as may be appropriate.

8. On 7 and 8 January 2015 the tribunal received two sets of different papers from the applicants. The covering letter (dated 4 January 2015) with the first set of papers gave a broad indication of the range of issues which the applicants had. The files were page numbered 1- 176.

9. On the morning of 12 January 2015 we had the benefit of an inspection of the subject property. Present were:

Applicants		**Respondent**	
Ms Susan Gilbert	Flat 18	Mr Alastair Panton	Counsel
Ms Maria Hajinicolas	Flat 2	Mrs Lucy Katsanotnis	Director
Mr Sowani Wilcox	Flat 14	Mrs Susan Lawson	Prop manager
		Mr Lambros Alexandrou	Caretaker

10. We were shown around the development and a number of physical features, both internal and external, were drawn to our attention. In the course of this exercise it became clearer what the issues were that the applicants wished to raise. Following discussion within the respondent's team it emerged that they might be able to copy several sets of further documents material to the application and to bring them to the venue for the hearing.

11. The subject property, now known as Hollies House, appeared to have been constructed as offices and was subsequently developed and adapted in or about 2004/5 to provide a mix of residential units and some commercial space, the latter of which is located mostly on the ground floor.

The Property comprises 24 residential units and six commercial units, one of which is occupied by the respondent.

The 24 flats have been sold off on long leases. The flats are not uniform in size although all are two-bedroom flats.

There is some under cover parking and some open parking spaces. There are small landscaped areas at the extreme perimeter of the development.

Access to the development is at street level into a fairly large lobby area containing mail boxes and which leads to a communal stairway and passenger lift access to the residential upper parts.

12. On 13 January 2015 directions were given for the parties to file and serve written representations on the applicants' section 20C application in relation to any costs which the respondent might incur in connection with these proceedings.

13. In response to those directions the tribunal has received a statement of case from the applicants dated 29 January 2015 and a statement of case in answer from the respondent dated 5 February 2015.

14. Subsequent to the hearing the tribunal has received:

14.1 an email dated 23 January 2015 from Ms Hajinicolas to the effect that due to work commitments she did not wish to take any further active part in proceedings. That position is noted but Ms Hajinicolas will remain as one of the joint applicants and she will be bound by the outcome of the application; and

14.2 a letter dated 6 March 2015 from Ms Gilbert. The gist of the letter is that the ornamental has still not been replaced and evidently it will be a further 'couple of weeks' and that on 5 March 2015 there was a breakdown in the lift and the person in it at the time was unable to use the telephone in the lift.

Evidently the new set of instructions on how to use the lift telephone that Ms Lawson mentioned at the site visit has still not been placed in the lift.

It was not obvious that Ms Gilbert had copied this letter to the respondent. It relates to matters post the hearing and the matters raised do not have any direct bearing on the reasonableness of the historic service charges which were the subject of the section 27A application. For these reasons we have not taken into account in this decision the matters raised in this letter.

The lease and service charge regime

15. Before dealing with the issues raised during the course of the inspection and hearing, it is convenient to summarise the lease and the service charge regime.

16. It is clear from the official copy of the register of the freehold title [R15] that the leases of the flats were granted and registered at Land Registry between August 2004 and September 2005.

17. We were told that in broad terms the leases were in common form.

18. The sample lease provided to us is that for flat 10. It is dated 8 June 2005 [A118].

19. The provisions that are material to the issues before us may be summarised as:

19.1 The term granted was 150 years from 1 June 2004;

19.2 The tenant is obliged to contribute to the certain costs incurred by the landlord in connection with the whole building – defined as the Service Charge;

19.3 The tenant is obliged to contribute to the certain costs incurred by the landlord in connection with the residential part of the building – defined as the Additional Service Charge;

19.4 The contributions payable are as follows:

	Service Charge	Additional Service Charge
Flats 2,3,6,7,10,11,14,15,18,19,22, & 23	3.50%	4.95%
Flats 4,5,12,13,20 & 21	2.50%	3.69%
Flats 1,8,9,16,17 & 24	2.12%	3.08%

19.5 The various costs to which the tenants must contribute are set out in clause 3.4 and are in broadly standard form. They were not in contention.

19.6 The accounting period is to 31 December.

19.7 The tenant is to pay sums on account of the Service Charge and the Additional Service Charge by way of four equal payments on the usual quarter days. The amount of the on account payment is broadly the actual amount payable for the preceding year subject to certain adjustments for non-recurring expenditure or that of a non-annual nature.
The details are set out in clause 3.2(b)(ii and iii) and were not controversial.

19.8 As soon as convenient after the end of each accounting period the landlord is to provide the tenant with an account, or a certificate, showing the costs incurred and the amount of the Service Charge and Additional Service Charge payable.

19.9 If the amount of the Service Charge and/or the Additional Service Charge payable exceed the amount paid on account the balance is due and payable on the next quarter day. If the amount is less, the overpayment is credited to the tenant's account. The details are set out in clause 3.4(b)(iv) and were not controversial.

The hearing

20. The hearing commenced at 11:20. In addition to those present at the inspection the applicants were joined by Mrs Marriman of Flat 3 and by Ms Natalie Benebo who is not herself a lessee but whose family trusts have interests in two flats. Evidently Ms Benebo has some experience in

property management and we were informed that Ms Benebo would take the role of lead advocate on behalf of the applicants. That said during the course of the hearing all of the applicants who wished to speak or make observations were given the opportunity to do so and most did so.

The issues the applicants wished to raise were clarified to be:

The lift;
Electrics;
Maintenance/caretaker;
The overall increases in costs year on year;
Water charges;
An alleged conflict of interest;
The service charge percentage contributions; and
General questions.

21. Mr Panton said that the respondent was willing to deal with these matters at the hearing and did not wish to renew an application for a postponement.

22. In terms of procedure it was agreed with the parties that the respondent would give evidence on each issue. Given the overlap of responsibilities where appropriate Mrs Katsanotnis, Ms Lawson and Mr Alexandrou would give evidence jointly and the applicants would have opportunity to ask questions of them and to make their points subject by subject.

23. Before moving on we should record that the landlord and its staff operate from an office on the ground floor of the building. In the original directions dated 3 October 2014 the applicants were directed to state whether any of them had examined the supporting documentation in respect of items of expenditure and if not why not. The applicants did not comply with that direction. At the hearing it emerged that the reason was that the landlord had offered facilities to inspect and discuss the documentation during normal office hours but none of the applicants were willing take time off work to do so.

24. Given the manner in which information emerged during the course of the hearing we have no doubt that if the applicants had taken up the landlord's offer the issues between the parties would have been clarified and some resolved without the need for the tribunal to have spent so much time dealing with the application to the detriment of the public purse.

The lift

25. The general thrust of the case for the applicants was that approximately £20,836 has been spent on the lift since 2007, the service is unreliable with frequent breakdowns, that the emergency telephone is not always answered promptly and that a decorative ceiling panel has been removed but not replaced.

26. Ms Lawson and Mrs Katsanotnis took us carefully through the relevant records and history concerning the lift. The respondent acquired the freehold reversion in September 2005.

It is believed that Hollies House was originally constructed as an office block in the 1960s or 1970s. Ms Lawson produced a report [R25] dated 25 November 2014 from Industrial Lift Services & Crown Elevators Ltd (ILS) which gave some history about the lift.

When the redevelopment took place in 2004 to create the 24 self-contained flats the lift was not renewed but underwent a partial modernisation to include a new control panel, lift car refurbishment, replacement of signalisation and replacement of the door operator. However the main gear, lift car sling and associated equipment were not replaced and appear to be consistent with a design of the 1960s/70s.

The report went on to explain that the control panel, which was of Greek design, is now ten years old and was responsible for the recent spate of breakdowns, which is not uncommon for kit of that age.

The report recommended that customers should budget to modernise lifts between 10 to 15 years due to parts becoming obsolete and not supported by the manufacturers. If parts are not readily available they may have to be specially made with associated cost and delay implications.

The report also recommended at the very least replacement of the motor and gear and ideally the control panel to one of British manufacture so as to ensure readily available parts when required.

26. Ms Lawson told us that the lift undergoes an engineering inspection twice per year and housekeeping and maintenance repairs are carried out ad hoc as needed. Ms Lawson said that repairs are carried out as promptly as possible but sometimes there was delay when breakdowns occurred at weekends. Some of the applicants raised specific questions about some breakdowns which had occurred in the past.

27. Ms Lawson told us that the long term strategy for the lift has been given close attention. Ms Lawson received advice suggesting that the current lift mechanism should be serviceable until 2019/20 but would require ad hoc repairs as required. In April 2013 tenants were consulted about options available. At that time there was little appetite for immediate replacement of the lift. Accordingly the respondent decided to defer replacement until 2019/20 and in the meantime to give consideration to a reserve fund to build up funds to cover the cost of a new lift. However allied to this strategy Mrs Katsanotnis told us that the respondent had sought planning permission to build on top of Hollies House. If permission is granted and the new build is carried out a new lift will be required. The respondent proposes to bear the whole cost of

the new lift to reflect the disturbance and inconvenience to the leaseholders whilst the building works are carried out.

28. Ms Lawson also told us that the respondent had changed lift service contractors to ILS who were local and were able to provide a more timely and cost effective service.

29. Ms Lawson produced a summary of the historic cost of lift repairs as follows:

2007	£1,980
2008	£2,969
2009	£2,507
2010	£2,648
2011	£2,453
2012	£3,180
2013	£6,245
	£21,982

30. The applicants contended that such sum was unreasonable in amount and sought an adjustment of £2,775. No explanation of how this figure had been arrived at was made available.

31. We can readily understand and appreciate how frustrating it is when services such as a lift fail. However it is a fact of life that mechanical and electronic equipment can and does fail from time to time. This moreso where, as here, the equipment is quite dated and hence as time goes on becomes more and more unreliable.

32. We found that the oral and documentary evidence provided by the respondent shows that a reasonable and pragmatic approach has been taken to the management of the lift, including consultation with tenants about the timing and funding of a new lift. We consider that approach to be well within the range of options open to a responsible landlord acting reasonably.

33. Whilst we acknowledge that there have been fluctuations in the cost of repairs and maintenance to the lift in recent years we consider these to be within the range that may be expected with ageing equipment.

34. We find that there was no evidence presented to us on which we could reliably conclude that the costs of repairs and maintenance of the lift were unreasonably incurred or were unreasonable in amount. There was no evidence on which we could properly have made an adjustment of £2,775 as proposed by the applicants.

Electrics

35. The applicants stated that these were not now in issue.

Maintenance/Caretaker

36. The gist of the applicants' case is that they did not really know what the caretaker, Mr Lambros Alexandrou, did and on what basis he was paid so that they could not judge whether the service provided was value for money. The applicants had some generalised complaints to make such as landscaping and litter picking was not always undertaken regularly, the lift floor was often dirty and light bulbs were not changed as promptly as they might be.

37. Ms Lawson told us that Lambros was employed by the respondent on a full time basis and a proportion of the cost of employment was re-charged to the service charge account. The arrangement is that Lambros is expected to spend 4 hours per day, five days per week, at a cost of about £10 per hour on the residential part of the building. He does not have a detailed job specification or regular schedule of duties and is expected to carry out common parts cleaning, gardening, general maintenance including redecoration of the common parts. He is also available to give assistance or provide access for outside contractors who attend the site. Ms Lawson said that whilst no detailed time records are kept she has a perception that Lambros spends more time on the residential part of the building than is reflected in the apportionment of the cost of employing him

38. Lambros gave evidence. He told us that he broadly had a cleaning routine but he was often called away at short notice to deal with a pressing issue, such as a failure in the lift or a spillage of liquids in the common parts.

39. Ms Hajinicolas told us that Lambros was very good and there was no complaint about his work. Ms Gilbert was critical of the quality of some of the recent common parts redecorating but considered this to be down to a management direction given to him rather than any personal shortcomings on his part.

40. In very broad terms the annual accounts show that over the years 2008/12 the annual caretaking costs were, on average about £6,500. If shared equally across the 24 flats this equates to £5.20 per week per flat. Bearing in mind that the caretaker is on site 5 days per week it seems to us that such costs are not obviously unreasonable in amount.

41. There was no reliable evidence presented to us on which we could properly conclude that the costs were unreasonably incurred or were unreasonable in amount.

Overall increases year on year

42. There was a general complaint by the applicants that year on year there had been a steady increase in the costs which they did not understand. The applicants' statement of case asserts the following changes:

2007 +7%
2008 +28%
2009 +3.5%

2010 -2.7%
2011 + 8%
2012 +1%
2013 +8.9%

43. We did not undertake any calculations to ascertain whether those percentages are accurate. Such increases as there may have been do not, in our judgment, suggest that costs have been unreasonably incurred or are unreasonable in amount. It is for the applicants to identify costs which they challenge. It not sufficient for tenants simply to assert in a general way that the costs are too high. Where a tenant seeks a determination he or she must show that either the cost or the standard was unreasonable. Thus the challenge must be to specific costs incurred and it is for the tenant to identify which specific costs are challenged and broadly why. It is then for the landlord to adduce evidence to support the costs claimed and if it cannot do so it may be appropriate for the tribunal to make adjustments.

44. There was nothing raised under this topic that suggested to us we should make any adjustments to the annual service charge accounts.

Water charges

45. It appears that water is provided to the residential part of the building by Affinity Water, which appears to be a utility company. Evidently the supply is metered and the cost of consumption is ascertained and billed. The cost incurred is recharged to the relevant service charge account. Due to an error on the part of Affinity Water (and/or its predecessors) the meter was misread for several years – the final digit on the meter was omitted. This led to a significant under billing of the quantity of water consumed

46. The error came to light in December 2012 and Affinity Water sought to levy on the respondent a very substantial charge in an endeavour to recoup the years of undercharging.

47. Ms Lawson told us that she took professional advice on the claim, including advice from the Consumer Council for Water. In the light of the advice received Ms Lawson negotiated with Affinity Water and was able to get the claim reduced to cover the past six years only, adjustments were made in respect of tenants who had assigned their leases in that period and that the bulk of the balance of £18,000 should be repayable by instalments amounting to £3,600 per year for five years.

48. By letter dated 8 April 2013 Mrs Katsanotnis informed all tenants of the agreed arrangements. In that letter Mrs Katsanotnis acknowledged there was an additional burden on tenants. To assist Mrs Katsanotnis said that she had reduced the 2013 flats management charge from £4,351 to £2,259 (a reduction of £2,092), had reduced the book-keeping charge from £2,040 to £1,020 and explained that those savings amounted to £3,132 per annum which was close to the annual arrears

payable to Affinity Water. Mrs Katsanotnis went on to say that she proposed to keep the charges at that level until the water charges had been paid off in full.

49. The applicants confirmed that they had received the above letter.

50. The gist of the complaint of the applicants was that the agreement with Affinity Water had been arrived at without any consultation with tenants, that the respondent and had failed to consult over a qualifying long term agreement and that they were not permitted to negotiate with Affinity Water direct.

51. We accept the evidence of Ms Lawson and Mrs Katsanotnis on the way in which the claim made by Affinity Water was made, managed and a compromise agreement arrived at. We reject the submission that the repayment plan amounted to qualifying long term agreement within the meaning of section 20 of the Act about which the respondent should have undertaken a consultation process. The arrangement was not an agreement for the supply of water over a period exceeding one year, it was an agreement to discharge a debt which had fallen due for payment. The deferred instalment payment plan was plainly beneficial to the tenants in general terms.

52. We find that the applicants' criticism of the respondent over this matter to be wholly unfounded. The supply contract is between Affinity Water and the respondent and thus they were the correct parties to discuss the underpayment. It would not have been appropriate or manageable for individual tenants to have negotiated direct with Affinity Water

We find that the compromise agreement arrived at was very favourable to the tenants and that the respondent went much further to safeguard the interests of the tenants than many landlords would have done.

Moreover by making generous concessions with regard to reductions in costs of management and book-keeping the respondent is, in effect, bearing a substantial share of the previously unbilled charges.

It seems to us that instead of being critical of the respondent arguably the applicants should be grateful for the stance it has taken.

53. In these circumstances there is no evidence before us on which we can properly find that the water charges were unreasonably incurred or are unreasonable in amount. Accordingly we find that no adjustments to the service charge annual accounts are appropriate as regards this expenditure.

Conflict of interest

54. The applicants suggested that there was a conflict of interest on the basis that the respondent self-managed rather than engage the services of a managing agent and thus may act in the best interests of the freeholder rather than the leaseholders. It was not made clear to us

what impact, if any, the engagement of a managing agent would have had on the amount of service charges payable.

55. We reject the submission that there was or is a conflict of interest.

56. The lease imposes covenants on the landlord to manage the building, to provide services and to keep and prepare accounts. Those covenants are personal. The landlord has to ensure that they are carried out and complied with. The landlord may, but is not obliged, to delegate all or some of its responsibilities to a managing agent. Even if a managing agent is engaged the managing agent is still an agent and not a principle so that all policy and strategic decision making remains with the landlord at all times. A managing agent might make recommendations to its principal but it remains for the principal to decide whether or not to accept them.

57. It may be that the applicants were under the misapprehension that a managing agent is independent of the landlord; it is not.

Service charge percentages

58. In their statement of case dated 4 January 2015 the applicants submitted that the tiered service charges were unreasonable and that as there are 24 two bedroomed flats all flats should pay the same amount in service charges.

59. At the hearing we were told that whilst there were three sizes of flats all were two bedroomed and that mostly the difference in size was due to the size/layout of the hallway such that any difference in living space was marginal.

60. We observe that all of the applicants (save for flat 16) occupy a larger flat so that if there were to be an adjustment the amounts payable by them would reduce. Of course the consequence of that is that those tenants with the smaller flats would have to pay more. No evidence was provided by the applicants to show that those tenants with the smaller flats were willing to pay an increased percentage.

61. There are several different ways in which a landlord can determine the percentage of service charges payable by each tenant. So far as we are aware there is no right or usual way; there are simply several different ways. A common and frequently adopted method is by reference to floor area. The respondent was not the landlord which granted the subject leases and there was no evidence before us as to what the reasoning was behind the method adopted. What is clear to us and what is rather unusual is that the sample lease provided to us sets out plainly the percentages attributed to each of the 24 flats. Thus the original lessee and each purchaser of an assignment of the lease can see exactly what the structure is before going ahead with a decision to purchase.

62. The percentages payable by each of the applicants is the contractual percentage they signed up to and there is nothing obviously unfair about it. We see no justification for any changes. In any event we have no jurisdiction on an application under section 27A of the Act to make any variation to the percentages payable. Even if we had jurisdiction it is extremely unlikely that we would have exercised our discretion to do so.

General questions

63. In section 9 of the applicants' statement of case dated 4 January 2015 the applicants raised a number of general questions. These were dealt with by the respondent's representatives during the course of the hearing. As none of them has any impact on the amount of service charges payable by the applicants to the respondent we need not make any findings about them.

64. Suffice to say that if the applicants had taken up the respondent's offer to meet to discuss issues of common interest these matters would have been clarified and resolved without the need to involve legal representatives and the tribunal.

Costs

65. At the conclusion of the hearing Mr Panton made an application for costs under rule 13. The gist of his submission was that the applicants had acted unreasonably in pursuing the application. He said that the applicants had failed to follow most directions and had failed to put forward any meaningful figures challenging the service charges claimed by the respondent. Mr Panton speculated that if the applicants had followed the directions they would have abandoned the application long ago.

66. Given that the application had gone to a hearing Mr Panton conceded that no additional costs had been incurred over and above those that would have been incurred in any event.

67. The application was opposed by Ms Gilbert.

68. In relation to the section 20C application – see below – the applicants conceded that the terms of the leases enable the respondent to pass its costs of these proceedings through the service charge. For reasons which appear below we have refused the applicants' application for an order pursuant to section 20C. Thus in broad terms the respondent will be entitled to recover its costs reasonably and properly incurred through the service charge.

69. We are conscious that in general this tribunal operates in a no costs jurisdiction. However section 29 (4) Tribunals, Courts and Enforcement Act 2007 and rule 13 empower the tribunal to make orders for costs in limited circumstances.

70. Rule 13(1)(b) enables the tribunal to make an order for costs where a party has acted unreasonably in bringing, defending or conducting proceedings. We consider that the expression 'acted unreasonably' should be construed as being broadly similar to the provisions of paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which applied to leasehold valuation tribunals, which were also a no costs jurisdiction in general terms. Guidance on the application of paragraph 10 was given by HHJ Huskinson sitting in the Lands Tribunal in *Halliard Property Company Limited v Belmont Hall and Elm Court RTM Company Limited* who adopted, in broad terms, dicta of Sir Thomas Bingham MR in *Ridehalgh v Horsfield* [1994] 3 AER 848 regarding provisions of the Supreme Court Act 1981 concerning a wasted costs order.

71. In the light of this guidance we find that a costs order under rule 13 should only be made in exceptional circumstances and where unreasonable conduct has caused a party to incur more costs that he would otherwise have incurred had it not been for the unreasonable conduct.

72. In the context of the present case Mr Panton was not able to identify any additional costs referable to specific unreasonable conduct and in the light of this and that the applicants conceded that costs are recoverable through the service charge we refuse the application for costs under rule 13.

The section 20C application

73. As mentioned above the applicants made an application under section 20C in relation to costs incurred or to be incurred by the respondent in these proceedings. We have received written representations from both parties on the application.

74. In their detailed submissions the applicants make much reference to the respondent's alleged failure to repair and maintain the building. The application and the hearing was not really about those matters but about the reasonableness (or otherwise) of the costs claimed by the respondent. We prefer the representations made by Mr Panton and note his observation that *"The Applicant's Statement of Case dated 29 January 2015 is clearly drafted by someone who was not present at the tribunal hearing."*

75. The applicants' concede that the respondent has a contractual right to pass its costs of these proceedings reasonably and properly incurred through the service charge. Section 20C (3) enables the tribunal to make such order as it considers just and equitable in the circumstances. We therefore look hard to see if there is any conduct on the part of the respondent or any other circumstance which arises which should deprive the respondent of the contractual right which it has. We do not see any such circumstances. The applicants brought a rather misguided application. The applicants failed to comply with directions. The applicants failed to meet with representatives of the respondent to

inspect vouchers and supporting documents and to discuss matters of mutual interest. It seems to us that the respondent and its advisers did what they could to prepare for a hearing to deal with matters on which the applicants had made little effort to identify clearly what their case and position was.

76. In these circumstances we do not consider it would be just or equitable to make an order under section 20C and we have declined to do so.

Judge John Hewitt
12 March 2015