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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/OOHH/LSC/2015/0022
Properties	:	5 Upton House, Sharkham Court, Brixham TQ5 9GT and 3 Berry Head House, St Marys Drive, Brixham TQ5 9FH
Applicants	:	Mr and Mrs D P Boxall
Representative	:	Mr D P Boxall
Respondents	:	Millwood Homes (Devon) Ltd Sharkham Village Management No.1 Limited
Representative	:	Mr L Chittenden
Type of Application	:	Section 27A and 20C of the Landlord and Tenant Act 1985 (Liability to pay service charges) Tenants' application for the determination of reasonableness of service charges for the years 2011 to 2014.
Tribunal Member(s)	:	Judge A Cresswell Mr T E Dickinson FRICS
Date of Decision	:	7 September 2015

DECISION

The Application

1. This case arises out of the tenants' application, made on 18 March 2015, for the determination of liability to pay service charges for the years 2011 to 2014 inclusive.

Preliminary Issues

1. The Tribunal, at a Case Management Hearing ("CMH") on 27 April 2015, has identified the following issues to be determined:

   - Elements of the service charge demands for the years 2011/12 to 2013/14; the accounting year is 1 April to 31 March. At the CMH, the Applicants identified the reserve fund demands for the buildings at each property and the costs of the window cleaning (this discrete aspect did not form part of the Applicants' statement of case) and "common parts" at 3 Berry Head House.
   - Whether the works are within the landlord's obligations under the leases/whether the cost of works are payable by the leaseholder under the leases. The Applicants assert that there is no provision in the leases for demanding a reserve fund payment for the buildings, that their windows have not been cleaned and yet they have been charged (this discrete aspect did not form part of the Applicants' statement of case) and that they have been asked to pay for works associated with "common parts" to which they have no access.
   - Whether an order under Section 20C of the 1985 Act should be made.

2. There were a number of issues raised by the Applicants in their statement of case and in the voluminous set of papers submitted by the parties (some 700 pages or so inclusive of papers submitted in various emails), which were not formally considered by the Tribunal when reaching its decision on the issues identified at the

Case Management Hearing (see above and below). Those issues are not dealt with substantively in this determination and, if to be pursued further, will need to be the subject of further application(s).

Inspection and Description of Properties

3. The Tribunal inspected the properties on 27 August 2015 at 1000. Present at that time were Mr Boxall and Mr Chittenden. Both of the properties in question comprise recently constructed ground floor apartments in three storey blocks of six flats. Whilst 5 Upton House is accessed through a communal entrance lobby; 3 Berry Head House has its own outside entrance to the northwestern side of that block leading off the parking court.

Summary Decision

4. This case arises out of the tenants' application, made on 18 March 2015, for the determination of liability to pay service charges for the years 2011 to 2014 inclusive. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 service charges are payable only if they are reasonably incurred. The Tribunal has determined that the Respondents have not demonstrated that the Applicants are required to pay service charges in respect of the common parts within Berry Head House; have shown that contributions to a Reserve Fund can be demanded in respect of the Estate inclusive of the Buildings, but has not shown that the sums demanded for the Reserve Fund were demanded in accordance with the principles of the RICS Code (see below).
5. The Tribunal allows the Applicants' application under Section 20c of the Landlord and Tenant Act 1985, thus precluding the Respondents from recovering their costs in relation to the application from Mr and Mrs Boxall by way of service charge.

Directions

6. Directions were issued following the Case Management Hearing on 27 April 2015. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, at the request of the parties.
7. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.

8. This determination is made in the light of the documentation submitted in response to those directions and the submissions made in correspondence following the CMH and in the light of the Inspection.

The Law

9. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

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

11. In reaching its Determination, the Tribunal also takes into account the Second Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. At the Inspection, Mr Chittenden responded that the guidance provisions of the Code are followed by the Respondents. Of particular note to the issues here are the following extracts from the Code:

12.

Part 9 Reserve funds

9.1 *Reserve funds are often permitted by the lease. A reserve fund is a pool of money created through the payment of service charges which are not immediately needed towards repairs, maintenance or management, etc. but which are collected and retained to build up sums which can be used to pay for large items of infrequent expenditure (such as the replacement of a lift or the recovering of a roof) and for major items which arise regularly (such as redecoration of the common parts). A reserve fund also helps to spread costs between successive tenants and can, if the leases/tenancy agreements allow, be used, on a temporary basis, to fund the cost of routine services, avoiding the need to borrow money. Legislation ensures that the money in a reserve fund, as is the case with service*

charge funds and advance payments, is held on trust – see paragraph 10.7. ☐

9.2 *The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy does not make any other provision, is to take the expected cost of future works and divide it by the number of years which may be expected to pass before it is incurred. However, it is advisable to have new estimates of the cost of replacing the item from time to time and to adjust payments into the fund to match costs. If the fund is invested prudently, the interest earned will itself help to meet rising costs. Tax will be charged on the interest income (see also Part 11).*

9.3 *You should be able to justify the contributions to reserves by reference to the work required, the expected cost and when it is to be carried out. Experience of similar work should be used in support of the calculations. It is not considered appropriate for specifications and tenders to be obtained merely to support the reserve allocation. These will be required at the time the work is to be carried out. It should be indicated to tenants that the figures may vary when the work is undertaken.*

9.4 *Although some tenants may be able to achieve better returns on money they retain and invest themselves, one of the purposes of reserves is to facilitate the carrying out of expensive non-annual items of work. Unless money is accumulated collectively there is always the likelihood of work not being carried out due to lack of funds. Even if tenants intend to live at a property for a short period they can achieve financial benefit on sale by pointing out to purchasers the existence and extent of the reserve fund.*

9.10 *You should review contributions annually and base the amount you request from tenants on current up-to-date forecasts including fees and VAT.*

9.11 *Where funds accumulated are considered to be low, having regard to future commitments, you should indicate this to tenants.*

9.12 *A reserve fund can have benefits for both landlords and tenants alike.*

13. *"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the* ***Yorkbrook*** *case* **(Yorkbrook Investments Ltd v Batten** (1986) 19 HLR 25) *make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.":* **Schilling v Canary Riverside Development PTE Limited** LRX/26/2005 at paragraph 15.

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

evidence made available: **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

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

Ownership and Management

16. The Respondents are respectively the owner of the freehold and its management company, TMS South West Limited, being employed by the latter as its agent by which the property is managed for it.

The Lease

17. The leases for the 2 properties are similar in terms. The Applicants hold Flat 5 Upton House under the terms of a lease dated 2 June 2011 and Flat 3 Berry Head House under the terms of a lease dated 14 December 2012, which leases were made between Millwood Homes (Devon) Limited as lessor and Mr and Mrs Boxall as lessees.

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

19. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the

time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.

16. For present purposes, I think it is important to emphasise seven factors:

23. Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. Even if (which it is unnecessary to decide) a landlord may have simpler remedies than a tenant to enforce service charge provisions, that is not relevant to the issue of how one interprets the contractual machinery for assessing the tenant's contribution. The origin of the adverb was in a judgment of Rix LJ in McHale v Earl Cadogan [2010] EWCA Civ 14, [2010] 1 EGLR 51, para 17. What he was saying, quite correctly, was that the court should not "bring within the general words of a service charge clause anything which does not clearly belong there". (120. I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services.)

20. Lord Neuberger's final point above is a reference to the doctrine of "contra proferentem", which had been understood to require an ambiguity in a clause in a lease to be resolved against a landlord as "proferor".

Flat 5 Upton House

21. The preamble to this lease states: "A The Demised Premises form part of the Building and the Estate".

22. Clause 2 is headed "Definitions" and says:

"2.1 In this lease unless the context otherwise requires the following expressions shall have the following meanings respectively:

"Building" means the building constructed on the estate and edged purple on plan 1 containing (six) residential flats of which the Demised Premises forms part including (without limitation) the roofs gutters pipes foundations doors floors and all walls bounding the flats.

"Estate" means the Landlord's development shown edged blue on plan 2 and known as Sharkham Village, Saint Mary's Bay, Brixham, Devon including the roads, driveways, pathways and amenity space being the whole of the land now or formerly comprised in HM Land Registry Title Number DN357856".

23. The Service Charge provisions are detailed in Schedule 4 of the lease and follow a typical pattern of interim and final payments. Part 2 of Schedule 4 sets out the relevant percentages as follows:

"1.1 the Part A Proportion of the amount attributable to the costs in connection with the matters mentioned in Part A of Schedule 6 hereto and of whatever of the matters referred to in Part C of Schedule 6 hereto are expenses properly incurred by the Company which are relative to the matters mentioned in Part A of Schedule 6 hereto.

1.2 the Part B Proportion of the amount attributable to the costs in connection with the matters mentioned in Part B of Schedule 6 hereto and of whatever of the matters referred to in Part C of Schedule 6 hereto are expenses properly incurred by the Company which are relative to the matters mentioned in Part B of Schedule 6 hereto."

24. Schedule 6 sets out the Company's obligations subject to reimbursement. Part A is headed "Building Costs", Part B is headed "Estate Costs" and Part C is headed "Costs applicable to Parts A and/or B".

Part B (Estate Costs) makes reference to works associated with roads, pathways, parking spaces, sewers, drains, service media, keeping the estate insured and to gardens and hard paved areas and says this:

"The Landlord or the Company may alter or modify the services referred to in this Schedule and/or provide additional services if such alteration, modification or additional services is or are in the reasonable and proper opinion of the Landlord reasonably necessary or desirable in the interest of good estate management or for the benefit of the tenants or occupiers of the building."

Paragraph 14 of Part C details "Such sums as shall be reasonably considered necessary by the Landlord or the Company (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Estate".

Flat 3 Berry Head House

25. This lease has a similar preamble to that of 5 Upton House detailed above, similar descriptions and references to costs incurred by the Landlord and recoverable as such.

26. Schedule 2 of the lease details "the Included Rights" and specifically says at Paragraph 3.3:

"The right at all times to use the common entranceway, entrance halls, landings, passages and staircases in the Building for the purpose of gaining access to and egress from the Demised Premises"

27. Schedule 6 sets out the Company's obligations subject to reimbursement. Part A is headed "Building Costs". Paragraph 3 says:
"As often as may be necessary to maintain repair cleanse and renew (except to the extent that the Tenant covenants in this lease to make good any want of repair)"
"3.3 the passages staircases landings lifts entrances and the other parts of the Building including the ceilings enjoyed and used in common with all or any of the tenants and occupiers of the Building".

28. **Common Parts at Berry Head House**
The Applicants assert that costs relating to paragraph 3.3 of Part A of Schedule 6 cannot be demanded from them as a service charge because those parts are not by them "enjoyed and used in common with all or any of the tenants and occupiers of the building", They are not, because of the wording of Paragraph 3.3 of Schedule 2, given a right of access to those parts of the building. Put another way, those parts may be common parts for four out of the six tenants or occupiers, but they cannot be common parts which the Applicants are entitled to enjoy. Their own entrance to their own flat is separate from the entrance door and common parts used by the other tenants or occupiers to access their flats.

29. During the inspection, Mr Boxall showed the Tribunal members a key to the external door through which four out of the six tenants or occupiers gain access to their flats, which he said had been provided to him by the Respondents, but which he had never used or needed to use. He pointed out an electricity meter within his flat. Mr Boxall says that the electricity meters in the common parts are the property of the utility companies and it is those companies which have right of access to those meters.

30. **The Respondents** argue that the Applicants are required to pay one sixth of the "common parts" building costs because the contractual provisions in Schedule 6 are quite clear. They point out that the electric meters for all flats are located in the communal areas. The Applicants, they say, entered into the lease in the knowledge

of its provisions and the Respondents operate service charges in accordance with Schedule 4.

31. **The Tribunal** notes that difficulties have arisen here, in part, due to a lease which could have been better drafted. The Tribunal is aware that "common parts" does not have a strict legal definition; usually 'common parts' are treated as being all those parts of a property and any associated land which the lessee or occupier has a right to use in common with others. At the most basic level, this may include only the main entrance to a property and any steps leading up to that entrance, and the hallway and any staircase that could be used to gain access to the leased premises. All, however, depends upon the wording of the individual leases. Here, the internal "common parts" of the Building are detailed by paragraph 3.3 of Part A of Schedule 6 as being "the passages staircases landings lifts entrances and the other parts of the Building including the ceilings". However, the Applicants' lease in respect of 3 Berry Head House gives them no right to enjoy and use the listed parts "in common with all or any of the tenants and occupiers of the building" because they are entitled only by paragraph 3.3 of Schedule 2 "to use the common entranceway, entrance halls, landings, passages and staircases in the Building for the purpose of gaining access to and egress from the Demised Premises" and the common parts of the Building described and listed in the lease simply do not facilitate such a method of entry to or exit from their property.

32. This contrasts with the position at 5 Upton House, which flat can only be accessed via the common entrance to the flats in that Building, where the tenant could be expected to contribute a proper share to the maintenance of the common parts enjoyed and used by that tenant in common with the other tenants and occupiers. Properly, the Applicants make no complaint about the similar service charge made for 5 Upton House.

33. The Applicants' assertion does make sense, the Tribunal believes, because it would not be a very attractive clause to a prospective tenant to expect that tenant to contribute to what could be considerable costs relating to works for which four of the six other flats took benefit and he/she took no benefit whatsoever, and is an entirely reasonable way of interpreting the lease.

34. The presentation by the Respondents to the Applicants of a key to the external door which gives access to four of the six flats and the electricity meters cannot alter the clear terms of the lease.

35. The Tribunal finds that the assertion by the Applicants as to the meaning of the terms of the lease is *"what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean."*
It follows that the sums claimed from the Applicants by way of service charge for maintenance, etc. of the internal common parts of 3 Berry Head House are not payable by the Applicants under their lease.

36. **The Reserve Funds**
The Applicants assert that a reference to a contribution to a Reserve Fund in paragraph 14 of Part C of Schedule 6 appears out of place amongst items of actual expenditure. Paragraph 14, Mr Boxall points out, contains no reference to "Buildings". Further, Paragraph 14 is not an obligation on the Landlord or Company under the terms of the lease for which reimbursement can be charged and could not fall within the lease's definition of "Expenditure on Services". Contribution to a reserve fund is not an "Expenditure", a "Cost" or a "Reimbursement". Paragraph 14 is an "unfair term" as the wording indicates that the Respondents can determine the sums they charge without any reference to the tenants as to the reasonableness or otherwise of the sums charged. This is evidenced by a failure by the Respondents to use the reserve fund for a specified item of major works.
The actual contributions to the reserve fund are excessive, in any event, and represent a significant percentage of actual costs for works to the building.

37. **The Respondents** say that Paragraph 14 of Part C of Schedule 6 allows the Respondents to demand a payment to a reserve fund because "Estate" is defined widely by the leases to include the entire Sharkham Village development, as can be seen in the definitions sections. The leases make clear that the reserve funds are to

be treated as Expenditure of Services in accordance with Schedule 4 Part 1 Paragraph 1.

The item of expenditure referred to by the Applicants above did not constitute Qualifying Major Works.

There are no historic reserves and future liabilities include major repairs and renewals to the Building and passenger lift. The percentages of actual works represented by the Reserve Fund quoted by the Applicants are not agreed. "The percentages are variable dependent on the expenditure from Reserves in any one Financial Year".

The stance of the Respondents in relation to the demands towards a reserve fund is supported by letters from the tenants of 4 Upton House and 6 Upton House.

The monies are held in trust.

38. **The Tribunal** finds that the Respondents are able to collect and hold sums for a Reserve Fund for Buildings as well as other Estate costs, but that the Respondents have not approached their responsibilities in a wholly correct manner, as the Tribunal now explains.

39. The preamble to both leases details how "Estate" is not a term to be understood simply to relate to land and pathways and the like. Paragraph A of the preamble to the leases details how all 6 flats (because all leases are in similar form) form part of the Building and of the Estate.

It is very common for a lease to separate out definitions for different purposes in that lease and not unknown, as here, for a level of confusion to result.

40. The Applicants point to the definition of "Estate" at Clause 2.1 as excluding the Buildings on the Estate, but that is to ignore the normal everyday meaning of the word "development". Ask any reasonable "man in the street" to describe the developments here and they are, the Tribunal finds, first likely to mention the buildings upon the land bounded by the area detailed within the relevant Title document.

41. Although paragraph 14 of Part C of Schedule 6 makes no specific reference to Buildings, the term "Estate" is inclusive of the term "Buildings" as the Tribunal has explained. It is significant too that paragraph 14 does not refer to "Estate Costs", the heading of Part B, but rather to "items of future expenditure to be or expected to be incurred at any time in connection with the Estate" which the Tribunal finds has a wider meaning than "Estate Costs".

The Tribunal's interpretation is, it finds, *"what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean."*

42. The Tribunal does not agree that such a term requiring service charge payments towards a reserve fund is in any way unfair. It would be the operation of such a provision that could be unfair, but any unfairness, as with all elements of the service charge, is amenable to challenge at this Tribunal.

The Respondents are able, even if the terms meant other than the Tribunal has determined them to mean, to "alter or modify the services referred to in this Schedule and/or provide additional services if such alteration, modification or additional services is or are in the reasonable and proper opinion of the Landlord reasonably necessary or desirable in the interest of good estate management of for the benefit of the tenants or occupiers of the building."

43. As the Tribunal has detailed above, a Reserve Fund for Buildings as well as other aspects of an Estate is recognised as being for the benefit of both landlord and tenants (see the extract from the Code above), so that it would be difficult to criticise the Respondents for creating such a reserve if there was a need to do so because the reading of the leases advocated by the Applicants otherwise required them to so act. Although the Applicants would prefer to invest their money until an item of large expenditure arose, that is not best practice as the Code points out. Nor is it at all normal practice in modern leases, which generally endorse the Code guidance, which recognises that it is for the benefit of the tenants and the landlord that a Reserve Fund is maintained.

44. The Respondents have not, however, approached the requirements for a Reserve Fund in an approved or constructive manner. There was no evidence available to

the Tribunal to show that any particular items of future expenditure had been identified as of major significance, had been costed and a calculation been made of the sums required proportionately from the tenants to meet those future costs. Nor was there any evidence to show that the tenants had been involved by the Respondents in such an exercise. Nor was there sufficient evidence before the Tribunal so as to allow it sensibly to attempt to calculate what reasonable sums could be demanded from the Applicants by way of Service Charge towards a Reserve Fund. That being the case, the Tribunal has avoided attempting any such calculation.

45. The Tribunal recognises the importance of a Reserve Fund and, accordingly, wishes to provide the parties with an opportunity to resolve the issues of identifying relevant items, their anticipated cost and the proportional contribution (following the Code guidance) which would be required of an individual tenant. Accordingly, within 42 days of the sending of this Decision to the parties, the parties are each to indicate to the Tribunal whether the issues in the preceding sentence are agreed between them or whether the parties require the Tribunal to make a further Decision. In the latter case, each party would be at liberty to present written submissions to the Tribunal, each party limited to 4 pages of typed A4 (size 12 font) and 30 supporting pages of documentation. The sequence would be for the Respondents to send their submissions and supporting documents to the Tribunal and Applicants within 28 days of the sending to them of this Decision and for the Applicants to provide their submissions and supporting documents to the Tribunal and Respondents within 14 days after receiving the Respondents' submissions and supporting documents.

Section 20c Application

46. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings. In the Directions following the Case Management Discussion was the following:

47. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ... ... leasehold valuation tribunal, ...are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

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

49. *"An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*□ (**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)).

50. No specific submissions were made by either party relating to the Section 20C application, but the Applicants explained why they had made the claims and the Respondents agreed that the matters required resolution by the Tribunal.

51. The Tribunal finds it just and equitable that the Applicants brought these claims before the Tribunal and reflects that the claim in relation to the common parts at Berry Head House was successful. There was some room for argument about the validity of the Reserve Fund requirements because of the way the lease was drafted and the claims revealed a situation where the Reserve Fund demands do not accord with the guidance of the Code. Taking a rounded view, the Tribunal

allows the application under Section 20c of the Landlord and Tenant Act 1985. It directs that the Respondents' costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the Applicants for the current or any future year.

A Cresswell (Judge)

APPEAL

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

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

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

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