Neutral Citation Number: [2021] EW Misc 12 (CC)

Case No: 10BS011C

IN THE COUNTY COURT AT BRISTOL
BUSINESS AND PROPERTY WORK
ON APPEAL FROM THE COUNTY COURT AT EXETER
(DDJ DAVY)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 06/08/2021

Before :

HHJ PAUL MATTHEWS

- -

Between :

(1) ELSAYED MOHAMED ALY	**Claimants/**
(2) DIANA ALY	**Respondents**
- and -	
(1) ANDREW WICKHAM	**Defendants/**
(2) JANE WALKER	**Appellants**

- -
- -

Leslie Blohm QC (instructed by **Fursdon Knapper**) for the **Appellants**
Sancho Brett (instructed by **Laker Legal Solicitors**) for the **Respondents**

Hearing date: 3 August 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ Paul Matthews :

Introduction

1. This is my judgment on an appeal, by appellant's notice dated 17 February 2020, against the order of Deputy District Judge Davy made in the County Court at Exeter on 20 January 2020. It appears from the documents before me that the judge gave an extempore judgment, but this has not been transcribed. When I raised this point at the stage of permission to appeal, I was referred to the judge's order, which annexes written reasons, or conclusions. I have accordingly proceeded on the basis that these represent the reasons for the judge's decision.

2. The decision of the judge was given in the context of claims brought separately against the two defendants (now the appellants), in respect of various matters, including service charges arising under leases (containing very similar terms) of holiday lodges situated at Forest Park Lodges, High Beckington, Umberleigh, Devon. The claims were originally issued on 17 December 2018 in the County Court Business Centre, but were then transferred to the County Court at Exeter, where they were consolidated by an order dated 5 March 2019.

The leases

3. The main facts are not in dispute, and are as follows. Each of the appellants holds a lease for 999 years from 1 January 2003 of a holiday lodge at Forest Park Lodges, High Bickington, Umberleigh, Devon. Both leases were granted in April 2004, by the then lessors to the original lessees (none of the current parties). The appellants are the current lessees, and the respondents are the current lessors.

4. Each lease contains covenants on the part of the lessor to maintain the common parts of the estate, maintain communal facilities and provide communal services and such like (clause 5(2)(a)(b)). Each lease also contains an obligation on the part of the lessor to maintain a refuse collection point (clause 5(3)).

5. Each lessee covenants to pay the rent (clause 4(1)) and (separately) to pay for all electricity gas and water supplied to the Demised Premises and to indemnify the lessors against any charge in respect of the same (clause 4(2)(ii)).

6. Each lease contains (in clause 1) a reddendum which, so far as is material, is in the following terms:

> "[The Lessee] **Paying therefore** [sic] during the Term and so in proportion for any [part] less than a year:-
>
> > [i] until the 31st December 2005 the clear rent of **FIVE HUNDRED POUNDS** (£500.00) per annum and in every year thereafter the greater of Five Hundred Pounds or that sum multiplied by the Index Of Retail Prices maintained at HM Government on 1st October in the previous year and divided by the amount of the said Index on 1st January 2003 [such figure being **178.4**] to be paid in advance on 1st January clear of all deductions whatsoever the first of such payments in respect of the period the date hereof until the 31st December next to be made on the execution hereof and

[ii] by way of further and additional rent a service charge in consideration of the Lessors covenants hereinafter contained payable equally in advance on the 1st January in each year such charge being the greater of either:-

(a) The sum of **TWO HUNDRED AND FIFTY POUNDS** [£250.00] per annum or if greater the sum of £250.00 multiplied by the index of retail prices maintained by HM Government on the 31st October immediately preceding the end of such period and divided by the amount of the said index on 1st January 2003 [such figure being **178.4**] *or*

(b) A sum which shall be one twentieth of the sum calculated in accordance with the Fourth Schedule hereto, and payable in accordance therewith

[iii] such value added tax as may from time to time be payable on the said rents"

7. The Fourth Schedule provides as follows:

"CALCULATION OF SERVICE CHARGE

1. The Lessors shall from time to time determine and give notice to the Lessee of the amount of the service charge and this sum shall be payable as the service charge on the succeeding payment being the 1st day of January in each year in respect of the year commencing the 1st day of January

2. The Lessors Accountants as soon as practicable after the 1st day of January in each year shall certify the amount of the service charge and if such charge shall be greater than the sum paid in advance in any year of the Term by the Lessee as previously provided the balance of the said sum shall be a debt due and owing to the Lessors and payable with the service charge for the ensuing year and conversely if such charge shall be less than the sum so paid the balance shall be held to the credit of the Lessee and shall be taken into account in determining the service charge for the ensuing year

3. The said Certificate shall contain a summary of the Lessors expenses which shall constitute the following: –

(a) the cost of complying with the Lessors covenants contained in Clause 5(2) and Clause 5(3) of the Lease (in respect of which the Lessors shall be entitled if appropriate to charge for their own time at a reasonable rate)

(b) the cost of cleaning and where necessary lighting the areas used in common by the Lessee and other Lessee [sic] and the Lessors

(c) the cost of gardening and landscaping the Estate and the Retained Land

(d) the cost of providing and maintaining any service or amenities that may be requested in writing by a majority of the Lessee [sic] of the Lodges comprised on the Estate and which may be provided by the Lessors at such request

(e) the fees of the Lessors Accountants

(f) the cost of management which shall not exceed the management allowance permitted from time to time by any appropriate government Department and which in any event shall not exceed 5% of the cost of the services otherwise provided"

This litigation

8. There was litigation before the First-Tier Tribunal Property Chamber in relation to the service charges under these leases for 2016, 2017 and 2018. This was determined by that tribunal on 3 May 2018. The present parties, together with other lessees, were parties to those proceedings. It was not argued before me that that decision had any issue estoppel effect in relation to the matters before me. The present claims were originally issued in respect of sums decided by the tribunal to be owing to the respondents but remaining unpaid. However, they appear to have been amended after January 2019 to include claims based on invoices dated 1 January 2019, and addressed separately to each of the defendants. The sums sought in each invoice included a sum in respect of service charges due on 1 January 2019, namely £398.70, being the sum of £250 adjusted to take account of movements in the retail prices index, in accordance with paragraph (ii)(a) of the reddendum in the lease. This appeal is concerned only with the service charge element.

9. The claims were tried over two days in the County Court at Exeter. As I said, there were other matters in issue apart from service charges. In relation to service charges, however, the decision of the judge below was to allow the claims against each defendant in the sum of £398.70. Her reasons are set out at the end of the order as follows:

> "The Claimants are entitled to charge the Defendants for service charges in respect of the Claimants' expenses listed in paragraph 3 of the Fourth Schedule to the Leases.
>
> The Leases state that the tenants are liable to pay as further and additional rent a service charge in advance on 1st January each year such charge being the greater of either: – (a) the sum of £250 per annum multiplied by the relevant RPI or (b) the sum which shall be one twentieth of the sum calculated in accordance with the Fourth Schedule to the Lease. The Claimants must charge the higher figure.
>
> In working out which of (a) or (b) is the higher figure, the landlord must have reference to Schedule 4. In determining actual expenditure under Schedule 4, the balance of any credit or debit from the previous year must be taken into account.
>
> To the extent that the £250 multiplied by RPI is the higher figure, the charge is classed as a fixed charge and Sections 18 to 30 Landlord and Tenant Act 1985 do not apply to it. There is no legal basis for considering the reasonableness of the charge in any particular year.
>
> If the Claimants seek to charge actual expenditure being 1/20 of a sum calculated in accordance with Schedule 4, i.e. because it is higher than the sum of £250

> multiplied by RPI, then the Court would be entitled to look at the reasonableness of the charge and sections 18 to 30 of the 1985 Act would apply.
>
> It is not in dispute that the sum of £250 multiplied by RPI totals £398.70 for the period subject to the amount claimed.
>
> The Claimants are entitled to the amount claimed in the sum of £398.70."

10. As I have said, the appellants sought to appeal this part of the decision by appellant's notice dated 17 February 2020. On 27 February 2020 I gave permission to appeal generally. At the hearing of the appeal on 3 August 2021, remotely using the MS Teams videoconferencing platform, Mr Leslie Blohm QC appeared for the appellants, and Mr Sancho Brett of counsel appeared for the respondents. Given the wealth of written material, I am grateful to both of them for their helpfully economical oral submissions.

The issues on the appeal

11. Although there are seven grounds of appeal, one of them (the second) was withdrawn at the hearing. The remaining grounds of appeal resolve themselves into two issues. The first concerns the true construction of the lease itself, and in particular whether it is open to the landlord to charge £250 (revised for RPI) every year, even if the actual expenditure of the landlord on the services covenanted to be provided never exceeds that figure. The true construction of a written document such as a lease is of course treated as a question of law, and not a question of fact or discretion: *Pioneer Shipping Ltd v BTP Tioxide Ltd* [1982] AC 724, 735G-736H; *Carmichael v National Power plc* [1999] 1 WLR 2042, 2048-49, HL. The second issue is the question of construction of the Landlord and Tenant Act 1985, section 18, as to whether the charge made by the second part of the reddendum is or is not a service charge within the meaning of that section, and therefore attracts or does not attract the benefit and protection of the following sections of that Act. That too is a question of law.

The first issue

12. The rules of construction for the interpretation of a lease (or other written agreement) have been reiterated by judges on a number of occasions in recent times. Of these, I was referred only to *Arnold v Britton* [2015] AC 1619, SC, but in any event it does not appear that there was any difference between the parties on the relevant rules. It is sufficient for present purposes to refer to what Lord Neuberger said in his judgment in that case at [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. … "

The appellants' submissions

13. The appellants submit that the charge being made by way of additional rent in the second part of the reddendum is a single charge, described as a "service charge", which is the greater of two alternative calculations. In addition to being a service charge in name, it is one in substance as well, because it is the consideration for the landlord's covenants to provide the services set out in clause 5 of the lease and also to reimburse the other expenses set out in paragraph 3 of the fourth schedule. The appellants say that it is plainly an *estimate* of future expenditure, because it is payable on 1 January in each year in respect of expenditure to be made in that year. But the alternative formulation of that estimate in paragraph (a) of the second part of the reddendum simply represents a minimum sum to be demanded, a 'floor' as it was described at the hearing.

14. The appellants go on to refer to the terms of the fourth schedule, under paragraph 1 of which the landlord must tell the tenant before 1 January in any year the amount of the service charge payable for the year beginning on that day. Under paragraph 2 of that schedule, the landlord's accountants must as soon as possible after 1 January in each year certify the amount of the service charge, meaning the service charge for the *previous* year. There is then a balancing provision, by which the actual amount of the service charge for the previous year as certified is compared to the estimated amount of the service charge actually paid for the previous year. If the actual amount exceeds the estimated amount, the balance is a debt due on the following 1 January. If the estimated amount exceeds the actual amount, the balance is for the credit of the tenant and "shall be taken into account in determining the service charge for the ensuing year".

The respondents' submissions

15. The respondents agree that the terms of the lease are clear, and should be given their natural meaning. They also agree that the landlord in demanding payment of the service charge on 1 January is obliged to charge the higher of the two possible sums, (a) and (b), and that the sum arrived at under (a) constitutes a 'floor'. But they do not agree that any credit in favour of a tenant obtained under paragraph 2 of the fourth schedule could be applied against that 'floor' in any year, so as to reduce the amount payable below that 'floor'. They say that the tenants knew when they took their leases that they would pay at least the 'floor' level of service charge every year. They point to the wording of reddendum (ii) as using the formula (a) "*or*" (b), and say that the use of the word "or" is significant. They also submit that the balancing provision is to be found in paragraph 2 of the fourth schedule, and that schedule deals only with the calculation for the purposes of paragraph (b) of the second reddendum, and not paragraph (a). As a result, they submit that the landlord must give credit to the tenant or any accumulated balances exceeding the 'floor', but not below it.

Discussion

16. In my judgment the appellants are right on this point. Paragraph 1 of the fourth schedule requires the landlord to tell the tenant what is the amount of service charge demanded for the forthcoming year. It is plainly an estimate, because the real costs are not then known. After the end of any given year, the landlord's accountants will work out and certify what was the actual amount of expenditure. Since the current year during which they are doing the work is still ongoing, this has to be a reference to the previous year's service charge and not to the current year's service charge. Paragraph 2 then contemplates the comparison between the estimated service charge which was payable at the beginning of the previous year and the actual costs incurred during that year. , and the resolution of that comparison.

17. This latter operation is binary. If the actual service charge is greater than the sum paid in advance in the previous year, then the excess will be due from the tenant in the "ensuing year". I take that to mean the year beginning on the next 1 January. It will be added to whatever would otherwise be estimated and charged for the following year. If on the other hand the actual service charge is less than the sum that was paid in advance for the previous year, then the balance will be held to the credit of the tenant "and shall be taken into account in determining the service charge for the ensuing year". So it will be deducted from whatever would otherwise be estimated and charged for the following year.

18. I note that the draughtsman of the lease has used the word "determining" rather than "calculating" or some other similar word. I note further that paragraph 1 of that schedule requires the landlord to "determine and give notice" to the tenant of the (estimated) service charge to be paid on 1 January in any year. In my judgment, taking a credit into account "in determining the service charge for the ensuing year" under paragraph 2 is a reference to the landlord's obligation to "determine and give notice to" the tenant under paragraph 1.

19. The respondents however say that the fourth schedule cannot affect paragraph (a) of the second reddendum, as that schedule concerns only the calculation of the sum under paragraph *(b)*. But paragraph 1 of that schedule plainly is not confined to the sum calculated under paragraph (b) of the second reddendum. Moreover, the respondents accept that balances will be held to the credit of the service charge *exceeding* the floor. But that means that they accept that they will reduce paragraph (b) of the second reddendum. I can see no good reason why they should not also reduce paragraph (a), if that is the higher sum of the two. I also do not see any reason why the use of the word "or" instead of "and" in part 2 of the reddendum should change the result of the analysis. On the contrary it seems perfectly consistent with it.

20. Accordingly, I consider that the judge below fell into error on this point, and that the scheme set out in the lease in respect of service charges is this:

    (1) By 1 January in each year, the landlord determines the estimated amount of service charge for the year beginning on that day, by comparing the sums produced by paragraphs (a) and (b), being obliged to take the higher one, and then notifying the tenant of the determination.

    (2) During the course of that year the landlord's accountants will work out and certify the actual amount spent on services during the previous year.

(3) The actual amount spent during the previous year will be compared with the estimated amount charged at the beginning of that year. If it is greater than the estimated amount, the balance will be a debt due from the tenant to the landlord on the following 1 January.

(4) If it is less than the estimated amount, the balance will be to the credit of the tenant and will go to reduce the estimated service charge payable on the following 1 January, whether that estimate is produced by paragraph (a) or paragraph (b) of the second reddendum. If it is (a), then the 'floor' will be reduced accordingly.

The second issue

21. The second issue is whether the estimated service charge made payable on each 1 January by the second reddendum is a 'service charge' within the meaning of section 18 of the Landlord and Tenant Act 1985. That section provides as follows:

> "(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."

22. There is no doubt in the present case that the charge sought to be made by the second part of the reddendum constitutes "an amount payable by a tenant of a dwelling as part of or in addition to the rent … which is payable, directly or indirectly, for services, repairs, maintenance **[**improvements**]** or insurance or the landlord's costs of management". The fact that it relates to future or estimated costs does not matter, as the references in subsection (2) to "estimated costs" and costs "to be incurred" and the reference in subsection (3) to costs "to be incurred" make clear. The dispute between the parties here centres on section 18(1)(b), namely whether this charge is one "the whole or part of which *varies or may vary* according to the relevant costs" (emphasis supplied).

The authorities

23. I was referred by the parties to two principal authorities on the meaning of this provision. The first of these was the decision of George Bartlett QC, sitting in the Lands Chamber of the Upper Tribunal, in *Re Southern Housing Group Limited* [2011] L&TR 7. In that case the tenancy agreement between the parties provided for charges to be made for services which were supplied, although these could be changed from time to time. The landlord had power to recalculate and to change the service charge by giving notice to the tenant, but had not in fact exercised this power. It was argued by the landlord that the charge was a fixed charge and not capable of variation according to the relevant costs, unless and until the landlord served a notice to change it, which it had not done.

24. The tribunal rejected this argument:

> "12. While it is the case that cl.1.10 does not require that the service charge should vary according to the cost of the services, it provides that the landlord may change the service charge more than once a year if there is a material charge to the service provided or the costing of services provided. Thus under this provision the service charge may vary according to the relevant costs. Moreover under cl.1.9 there is express provision that, if the cost of providing services in any one period is higher or lower than the income receivable during that period in respect of such services, the surpluses and deficits will be apportioned between the tenants and the surpluses or deficits subtracted from or added to the service charge payable for the following 12 months. [Counsel for the landlord] says that the amount payable in each year will be a fixed amount—fixed by the notice served under cl.1.10—and the fact that the fixed amount for one year will reflect the surplus or deficit in the previous year does not make the service charge for either year a variable service charge. I cannot agree. The amount payable as the service charge is that stated in cl.1.1 (£27.93), which can be varied by notice to reflect the surplus or deficit referred to in cl.1.9. Such variation will be one made in accordance with the relevant costs."

25. The second case was the decision of Martin Rodger QC, also sitting in the Lands Chamber of the Upper Tribunal, in *The Anchor Trust v Waby* [2018] UKUT 370 (LC). In that case the leases concerned contained a provision for a service charge depending on the costs incurred in providing the relevant services in the first year, then only to be varied subsequently by applying an index to the first year's cost so as to produce that for the following year, and so on. In considering this question, the tribunal was referred to the decision of the Court of Appeal in *Coventry City Council v Cole* [1994] 1 WLR 398. That was not a case on section 18 of the Landlord and Tenant Act 1985, but it dealt with other statutory provisions intended to protect tenants against variable charges.

26. Neill LJ (with whom Steyn and Rose LJJ agreed) explained why there was less need to protect tenants against fixed charges, even if operated by reference to an inflation index, as compared with variable charges. He said (at 408G-H):

> "The reasonableness of a fixed charge can be examined at the time when the long lease is being negotiated. Assuming the fixed charge is reasonable the tenant is protected over the whole period of the lease from fluctuating and unpredictable costs. His only exposure to risk is the risk attendant on clause which depends on inflation."

27. In *Waby* the tribunal held that the charge being made in the first year of the lease was a service charge, because it was variable by reference to the cost of providing the service. The tribunal went on to say:

> "52. After the first year the allowance the management ceased to be variable by reference to the cost of providing the service. With effect from 1 January 1995 the charge varied annually by reference to the Index of Retail Prices. The basis of the charge changed from costs actually incurred to a historic summit increased by reference to an index, i.e. it became the type of charge which the Court of Appeal in *Coventry v Cole* held was not a service charge.
>
> 53. Can a charge for a particular service be a service charge one year and not a service charge the next? I would answer that question affirmatively. A service charge is simply 'an amount payable' which otherwise satisfies the description in section 18(1); it is necessary to determine in relation to each amount payable whether it is or is not a service charge within the statutory definition if it is in respect of a matter within section 18(1)(a) and is capable of varying with the cost of services it will be a service charge; if it becomes variable otherwise than by reference to the landlord's costs there does not seem to me to be any reason by a change in the basis on which the charge is calculated should not have the effect that the charges no longer want to which section 18 to 30 of the 1985 Act apply…"

28. An important feature of *Waby* was that there was no balancing provision of the kind found in the leases in the present case. And the existence of such a provision in the *Southern Housing Group* case was one of the features that led the tribunal in that case to conclude that the charge there made was a service charge within s 18. I repeat these words from the citation above (at [24]):

> "The amount payable as the service charge is that stated in cl.1.1 (£27.93), which can be varied by notice to reflect the surplus or deficit referred to in cl.1.9. Such variation will be one made in accordance with the relevant costs."

The respondents' submissions

29. The respondents rely on *Waby* to show that a charge could be a "service charge" within section 18 in one year and yet not in another. In the present case, they argue that in every year that the landlord demands a payment of "service charge" on first January by reference to paragraph (a) of the second part of the reddendum, this is not capable of variation by reference to the landlord's costs, and hence is not protected by sections 18 to 30 of the 1985 Act. It is only if that charge is calculated by reference to paragraph *(b)* of the second part of the reddendum that those provisions have any application. The consequence is that the payment of the money sum of £250 as operated by reference to RPI is not subject to any test of reasonableness, even if the amount actually spent by the landlord on the services is far less than that.

Discussion

30. I reject this argument. I accept that *Waby* shows that a charge may satisfy the statutory test in one year but not in another. However, in that case that was because the formula itself changed after the first year. Here the formula does not change. There is only *one*

estimated service charge, to be demanded in advance, and the amount of it is calculated by reference to *actual* expenditure on services (paragraph (b)), albeit subject to a 'floor' below which (as a demand for payment in advance) it cannot go. That tells us nothing about what happens when the figures for the year are in, and the actual service charge can be calculated and compared to the estimate. What happens then is dealt with by paragraphs 1 and 2 of the fourth schedule. Section 18(1)(b) does not require that the charge *must* vary according to the relevant costs. It requires only that it "*may* vary" (emphasis supplied). And the *Southern Housing Group* case shows that, even if the variation occurs only because the landlord chooses to make it, nevertheless that charge "may vary" for this purpose.

31. The present case is in fact stronger than that, because, unlike the landlord's express power in that case, here it is not within the landlord's control as to whether the costs of complying with his covenants do or do not exceed the 'floor'. For example, a blockage in the sewers may necessitate expensive works of repair (see clause 5(2)(b)). In my judgment, the judge below fell once more into error on this point. This is clearly a case where the service charge "may vary according to the relevant costs". As a result, sections 18-30 of the 1985 Act apply.

Is the appeal academic?

32. The respondents argued that the appeal was academic. They relied on the statement of Viscount Simon LC in *Sun Life Assurance Company of Canada v Jervis* [1944] AC 111, where he said (at 114):

> "I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing lies between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties … I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue."

33. That was in fact a case where the Court of Appeal had given leave to appeal on the basis of an undertaking that the result of the appeal would not affect the respondent, either on the substance or in costs. The House of Lords took a dim view of being asked to spend time on an appeal which would make no difference to any of the parties. The respondents in the present case say that the landlord has to charge the *greater* of the two possible sums in the second part of the reddendum, (a) and (b). The landlord has sought to charge under (a), but, if (b) were greater, the appellants would in fact be worse off, not better off. And the respondents are not insisting on that. So (it is said) their appeal has no point.

34. But that is not a correct analysis of the present position. First of all, if the appellants' view of the lease is correct (as I have held), any balance in their favour under paragraph 2 of the fourth schedule will go to reduce the amount of estimated service charge sought on the next 1 January, even if it is based on the £250 plus RPI in paragraph (a) of the second part of the reddendum. That is a benefit to them.

Secondly, the appeal has resulted in the service charges (including the estimated service charge) being held to be subject to sections 18 to 30 of the 1985 Act, which imposes a requirement of reasonableness. That too is a benefit to them. This has not been an academic appeal.

Conclusion

35. Accordingly, I will allow the appeal against the decision of the judge below on both points. Whether I should remit the matter to that judge or to (say) the FTT, for consideration as to reasonableness of the sums demanded, is a matter upon which I should like to hear counsel, or receive written submissions, as well as in relation to other consequential matters.