IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2018] UKUT 252 (LC)
Case No: LRX/91/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charges – Landlord's application for interim service charges over 6 yr period – amount demanded approximately twice actual expenditure – substantial arrears of payment of service charges by tenants in block including the Tenant who had paid nothing in respect of flat and 12 other flats in block over the 6 yr period – Certificates in accordance with lease defective in that no certificate of "Service charge due" – F-TT upheld demands in full - Held – (1) Certificates not a condition precedent to liability for interim service charges – (2) Landlord had not established that demands were reasonable proportion of anticipated expenditure – demands not reasonable within s19(2) Landlord & Tenant Act 1985 – demands reduced by 50%. Appeal allowed in part.

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

WIGMORE HOMES (UK) LIMITED **Appellant**

- and -

SPEMBLY WORKS RESIDENTS ASSOCIATION LIMITED **Respondent**

Re: Flat 7, Spembly Works,
13 New Road Avenue
Chatham
ME4 6AZ

His Honour John Behrens and Mr Peter McCrea FRICS

Royal Courts of Justice, Strand, London WC2A 2LL
on
17 July 2018

Ms Annette Cafferkey instructed by Scott Cohen for the Appellant
Mr Jonathan Upton instructed by Bradys for the Respondent

The following cases are referred to in this Decision:

Warrior Quay v Joaquim (LRX/42/2006)
Clacy and Nunn v Sanchez [2015] UKUT 387 (LC)
Pendra Loweth Management v North [2015] UKUT 91 (LC)
Elysian Fields v Nixon [2015] UKUT 427 (LC)
Urban Splash Work Ltd v Ridgway [2018] UKUT 32 (LC)
Knapper v Francis [2017] UKUT 3 (LC)

DECISION

Introduction

1. This is an appeal against a decision of the First-Tier Tribunal ("the F-tT") dated 16 June 2017. The parties are respectively the Tenant and the Landlord of Flat 7, Spembly Works[1], 13 New Road Avenue, Chatham ME4 6AZ ("Flat 7"). We shall refer to them as such in this decision.

2. The application to the F-tT concerned the interim service charges payable for Flat 7 for each of the years between 2010 and 2016. By its decision the F-tT decided that the following sums were payable:

Year	Amount Due
2009/2010	£338.65
2010/2011	£1,472.17
2011/2012	£1,409.30
2012/2013	£1,409.30
2013/2014	£1,409.30
2014/2015	£1,409.30
2015/2016	£1,392.48

3. The Tenant had challenged those awards on a number of technical grounds principally relating the failure by the Landlord to supply certificates of annual expenditure ("Certificates") in accordance with clause 6.2 and Sch. 4 of the lease. The F-tT rejected the challenges but on 2 February 2018 the Deputy President granted the Tenant limited permission to appeal.

4. The appeal was argued before us on 17 July 2018. The Tenant was represented by Ms Annette Cafferkey instructed by Scott Cohen and the Landlord by Mr Jonathan Upton instructed by Bradys. Both Ms Cafferkey and Mr Upton produced full and helpful skeleton arguments. We are grateful for these and their oral submissions.

History

5. Spembly Works is a former office and factory building converted into 33 residential flats in about 2000. It has a long and troubled history of disrepair.

6. There have been a number of tribunal decisions including a decision of the F-tT in October 2014 in respect of the service charge payable for years ending 2011, 2012 and 2013 for flat 2. The F-tT in that case found that the service charges payable were £21,395.20, £24,510.80, and £22,865.34 respectively. However, as the F-tT in this case pointed out the 2014 decision on sums payable addresses different questions from those that arise in demands for interim payments from 2010 to 2016.

[1] The lease describes the building as "Spembley House", but this appears to have been superseded by "Spembly Works", from which the respondent derives its name, which is listed at Companies House. We have used Spembly Works throughout.

7. The original landlords Construction Link Limited suffered from serious financial difficulty before 2010. Of the 33 flats, 13 remained unsold until 2010 when the Tenant bought all 13 from fixed charge receivers.

8. As its name suggests the Landlord is the residents' association owned or managed by some of the tenants. Until about 2011 the premises were managed by Caxtons (a well-known firm of Kent managing agents). By 2012 the Landlord had taken over the management of the premises.

9. In December 2015 the Landlord commenced County Court proceedings for the recovery of interim service charges and ground rent for the period from 2010 to 2016. Following a defence filed by the Tenant the service charge element of the claim was transferred to the F-tT in July 2016.

The lease

10. The lease which is dated 22 January 2010 is for a term of 125 years from 1 June 2003 at an initial rent of £250 p.a. The relevant lease provisions are as follows:

> By Clause 1:
>
> "The Service Charge" means 1/33rd of the expenditure incurred by the Landlord in performance of its obligations in this lease;"
>
> By Clause 5.1
>
> The Tenant covenants with the Landlord:
>
> "To pay to the Landlord on the date hereof a proportionate sum on account of Service Charge to the next following 24th March or 28th September and thereafter on 25th March and 29th September in each year such sum as the Landlord shall consider is fair and reasonable on account of the Service Charge and forthwith on receipt of the Certificate (as hereinafter defined) to pay to the Landlord any balance of *the* Service Charge then found to be owing Provided Always that any overdue Service Charge may be recovered by the Landlord as if the same were rent in arrears."
>
> By Clause 6
>
> The Landlord covenants with the Tenant
>
> "6.1 To provide and perform the services Provided Always that:-
>
> 6.1.1 (the employment of managing agents)
>
> 6.1.2 the Landlord shall not be liable to the Tenant in respect of:-
>
> 6.1.2.1 (interruption of services)
>
> 6.1.2.2 any failure on the part of the Landlord to provide any of the Services or discharge any of its obligations hereunder unless and until the Tenant shall have notified the Landlord in writing of the facts giving rise to the failure and the Landlord shall thereafter have failed within a reasonable length of time to remedy the same and then in

such a case the Landlord shall be liable to compensate the Tenant only for the loss or damage sustained by the Tenant after such reasonable time has elapsed

6.2 As soon as practicable after the end of each financial year (herein after defined) of the Landlord to furnish the Tenant with an account of the Service Charge payable for amounts carried forward from previous financial years (if any) and to carry forward to the next financial year any amount which may have been overpaid by the Tenant as the case may require for the purpose of this clause:-

6.2.1 The expression "the financial year" of the Landlord shall mean the period from 25 March to 24 March next following or such other annual period which the Landlord may in its sole discretion from time to time determine as being that in which the accounts of the Landlord either generally or relating to the Estate shall be made out

6.2.2 The amount of Service Charge shall be ascertained and certified annually by a certificate of the annual expenditure ("the Certificate") signed by the Landlord or the managing agents so soon after the end of the financial year of the Landlord as may be practicable and shall relate to such years in manner hereinafter mentioned

6.2.3 The Certificate shall contain a fair summary of the Landlord's expenditure and outgoings as incurred in the financial year of the Landlord and the Certificate shall be final and binding on the Tenant except in the case of manifest error

6.2.4 A copy of the Certificate of each such financial year shall be issued to the Tenant and the Tenant may by prior appointment with the Landlord within twenty eight days of the issue of the Certificate inspect the vouchers and receipts in respect of the expenditure and outgoings for the financial year"

…

The Fourth Schedule

Services to be provided and obligations to be discharged by the Landlord

…

"11. To keep full accounts and records of all sums expended in connection with the matters set out in this Schedule and to prepare and serve on the tenants of all apartments in the Building from time to time the Certificate and such other documents as are required to be served by the Landlord on the Tenant."

Demands

11. The Landlord sent demands for payment of the interim service charge to the Tenant in each of the relevant years. The demands were described as "Interim Invoices" and sought payment for six-month periods.

12. A summary of the demands in the Appeal bundle can be seen from the following table:

Invoice Date	Due Date	Amount of demand	Period of Demand
22/07/2010		338.65	22.1.10 – 5.4.10
13/08/2010	24/03/2010	736.14	6 months to September 2010
30/09/2010	24/09/2010[2]	736.13	6 months to 23 March 2011
08/07/2011	24/03/2011	704.65	6 months to 23 September 2011
31/10/2011	24/09/2011[3]	704.65	6 months to 23 March 2012
02/07/2011	24/03/2012	704.65	6 months to 23 September 2012
15/11/2012	24/09/2012	704.65	6 months to 23 March 2013
18/06/2013	24/03/2013	704.65	6 months to 23 September 2013
31/10/2013	24/09/2013	704.65	6 months to 23 March 2014
02/05/2014	24/03/2014	704.65	6 months to 23 September 2014
16/09/2014	24/09/2014	704.65	6 months to 23 March 2015
19/05/2015	24/03/2015	704.65	6 months to 23 September 2015
30/09/2015	24/09/2015	696.24	6 months to 23 March 2016

13. There is also a document in relation to the service charge for April 2010 to March 2011 which summarises the expenditure at £48,585 and attributes a proportion – $^{1}/_{33}$ – or £1,472.27 to Unit 7.

14. It will be seen from a comparison between the demands and the award of the F-tT that the F-tT held that the interim invoices were payable in full. It will also be seen that the estimated service charge for each of the years from 2011 – 2015 was the same.

15. Each of the demands was dated and sent out after the due date for payment. The F-tT rejected an argument that this made them invalid holding in effect that time for service of the demands was not "of the essence". There is no appeal from that part of the decision.

Accounts

16. This is not a case where the Landlord made no attempt to comply with its obligations to provide service charge accounts. They were produced in respect of every year. The F-tT found, on the balance of probability that the accounts were served on the Tenant relatively shortly (some months) after they were dated.

17. In each year the account comprised four pages, of which three are relevant. Page 1 contained a short report from the Independent Accountants who had prepared the report to the tenants of Spembly Works indicating that it contained a summary of costs in relation to service charge expenditure and, on occasions, adding comments of their own.

18. Page 2 comprised a summary of Income and Expenditure. However, the principal item of income was not the income received but the income demanded, since the accounts were prepared on an accruals basis. An important feature of the case is that Income demanded was

[2] According to the lease this date should have been the quarter date (29 September). This is the date on the invoice. Nothing turns on this discrepancy.
[3] On the face of both this invoice and that dated 15 November 2012, the due date is incorrectly stated to be March rather than September, but in the end, nothing turns on this.

substantially more than the expenditure giving rise to a notional surplus between the income demanded and the actual expenditure.

19. Page 3 was a balance sheet showing the assets and liabilities. The largest and fastest increasing item shown as an asset were debtors. This can only refer to those tenants who were not paying the service charges demanded. Whilst it showed that there was a significant surplus that surplus was almost entirely represented by the debtors. The amounts of cash held at the bank were modest.

20. The table below demonstrates these points:

Date of account	Year end	Demand £	Other income £	Debtors £	Surplus £	Cash at bank £	Expenses	%
04/08/2011	24/03/2011	48,585	531	37,454	26,091	7,089	23,025	47.39%
14/11/2013	24/03/2012	46,507	879	68,582	21,739	5,269	25,647	55.15%
14/03/2014	24/03/2013	46,507	151	104,965	23,117	4,443	23,541	50.62%
Sep-14	24/03/2014	46,507	594	130,149	20,654	2,204	26,446	56.86%
02/12/2015	24/03/2015	46,507	0	168,044	14,764	931	31,742	68.25%

21. The final column shows the ratio of the expenses to service charges demanded for the year in question. Thus, to take the year ending 24/3/2012 as an example – £25,647 is 55.15% of £46,507. It will be seen that the 2012 accounts were not produced for over 19 months. All other accounts appeared within a year of the year end and one set appeared within 6 months.

22. It will be seen from these figures that debtors increased at the rate of approximately £30,000 per annum, that the cash at the bank decreased from £7,000 to less than £1,000, that an identical figure was demanded for each year between 2012 and 2015 and that the actual expenses incurred were between £23,000 in 2010/2011 and £32,000 in 2014/2015.

23. It was common ground at the hearing that the Tenant had not made any contribution to the service charge between 2010 and 2016. As it was also the Tenant of 12 other units it was responsible for over £18,000 of the debtors each year.

Certificates

24. Page 2 of the accounts contained a passage under the heading "certificate" which read:

> "In accordance with the Lease s 6.2.2 Spembly Works Residents Association Limited as managing Agents present the above statement of expenditure and outgoings of the Landlord for the year to …"

25. The certificates for the years ending 24 March 2011 and 2015 were signed on behalf of the Landlord; those for the years ending 24 March 2012, 2013 and 2014 were not.

Compliance with the lease

26. As can be seen from the above this is not a case where no attempt has been made by the Landlord to comply with its obligations under the lease. Furthermore, one is bound to have some sympathy for the Landlord – a Residents Association – faced with a large number of tenants who were simply not paying the service charge for a building in a poor state of repair.

27. However, there can be no doubt that there was a failure to comply with the obligations in the lease. In particular:

a) In so far as any of the certificates were not signed by the Landlord there was a breach of cl 6.2.2.

b) Whilst each certificate does certify the annual expenditure in accordance with the second part of cl 6.2.2 there is no annual certificate of "the amount of the service charge" in accordance with the first part of 6.2.2 and 6.2.

c) Equally, there is no reference to "any amount which may have been overpaid by the Tenant" referred to in cl 6.2. However, as Mr Upton pointed out, the Tenant had in fact paid nothing and thus cannot have overpaid.

28. There was no evidence before the F-tT that the Tenant had complained in writing about any of these matters before December 2015. It was common ground between Counsel at the hearing that the only effect of cl 6.1.2.2 was to limit any possible claim by the Tenant resulting from the Landlord's breaches. It did not affect any other remedies it might have. Equally it was not relevant to the Landlord's claim for the interim service charge.

Other documents

29. A number of other documents were before the F-tT. One was a document sent on behalf of the Landlord sometime after 1st November 2016. This document purported to give the Tenant a credit in respect of the surplus for each of the years between 2011 and 2016. In each case the credit was $^1/_{33}$ of the amount shown in the accounts as the surplus. For example in the year ending 24 March 2013, the surplus was £23,541.34, and the credit shown for the year in the later document was £700.51.

30. On 22 October 2014 the F-tT handed down a decision in an application by the Tenant of Unit 2 under s 27A of the Landlord and Tenant Act 1985 and determined that the service charge for the whole of Spembly Works for the years ending 23 March 2011, 2012 and 2013 to be £21,395.20, £24,510.80 and £22,865.34 respectively.

31. On 22 December 2015 (after the issue but before service of the County Court proceedings) solicitors for the Tenant wrote to the Landlord's solicitors. That letter contains a complaint about the lack of certificates and receipts.

The decision of the F-tT

32. The F-tT dealt with a large number of matters in its comprehensive decision. In substance it upheld each of the demands in their entirety. In so doing it rejected a number of arguments made on behalf of the Tenant. It will be necessary to revisit some of the arguments later in this judgment. It considered that the demands for each of years were reasonable.

Permission to appeal

33. On 2 February 2018 the Deputy President (Martin Rodger QC) granted permission to appeal in relation to the single issue of certification for the following reason:

> "[I]t is arguable that the practice of the landlord in not issuing service charge certificates showing any overpayments from previous years was relevant to the

> issue which the FTT was required to consider under section 19(2), namely whether the interim service charges were reasonable in amount. The applicant may not challenge the facts found by the FTT in paragraphs 77 to 79, but has permission to appeal on the role of the certificates in the contractual scheme, the sufficiency of the documents relied on and the consequences of their having been prepared without details of overpayments from previous years. Nor may the applicant challenge the FTT's conclusion in paragraph 119 that the 2010/11 budget was reasonable, which was open to it for the reasons it gave."

34. In fact, as demonstrated above, this is not a case where there were actual overpayments by the Tenants; rather it is a case where the sums demanded by way of interim payments (but in many cases not paid) were in excess of the expenses for the relevant year. In our view this is within the scope of the permission granted by the Deputy President. It is not affected by the fact that the Tenant had not in fact paid anything in respect of the demands.

Role of the Certificate

35. There have been a number of decisions on the question of whether a valid certificate is a condition precedent to the recovery of moneys due in respect of a service charge or an interim service charge. These include *Warrior Quay v Joaquim* (LRX/42/2006), but more recently *Clacy and Nunn v Sanchez* [2015] UKUT 387 (LC), *Pendra Loweth Management v North* [2015] UKUT 91 (LC), *Elysian Fields v Nixon* [2015] UKUT 427 (LC) and *Urban Splash Work Ltd v Ridgway* [2018] UKUT 32 (LC).

36. In the Tribunal's recent decision of *Urban Splash* the Deputy President summarised the effect of the decisions in paras 75, 76 and 77 of his decision:

> "75. None of the authorities relied on by [counsel for the appellant] [i.e. *Pendra*, *Elysian Fields*, and *Clacy*] establishes any principle of general application. The sole statement of principle on which he relies was from *Emmet & Farrand on Title* at paragraph 26.596 which cited *Clacy* and *Elysian Fields* for the proposition that "the provision of certified accounts will not generally be a condition precedent to liability to pay service charges." By contrast the general statement of principle recorded in *Woodfall: Landlord and Tenant* at paragraph 7.180 is to the opposite effect:
>
> "Where a lease provides for the amount payable to be certified by the landlord's surveyor or accountant, the issue of a valid certificate will usually be a condition precedent to the tenant's liability to pay."
>
> 76. I do not agree that the cases referred to in *Emmet & Farrand on Title* establish the suggested principle for which they are cited. On the contrary, each of those decisions turns on the particular language used in the lease under consideration. The review of earlier decisions in *Clacy* demonstrates that different leases adopt different approaches.
>
> 77. It may well be the case that, ordinarily, non-compliance with a certification regime will not prevent a landlord from recovering service charges payable *on account* (as in both *Pendra Loweth* and *Elysian Fields*) but, if so, that is because payments on account are likely to be set by reference to an estimate of future expenditure, rather than by the definitive certification of past expenditure. Even on account charges may require certification before they become payable (as in *Rexhaven Ltd v Nurse and Alliance & Leicester Building Society* (1996) 28 HLR

> 241). In every case the function and significance of the certificate will depend on the terms of the agreement."

37. Ms Cafferkey valiantly sought to argue that certification was a condition precedent to the Tenant's liability to pay an interim service charge under cl 5.1. She pointed out that the liability to pay the interim service charge and to pay the balancing charge were both in Clause 5.1 linked by the word "and". She sought to distinguish the authorities (such as *Pendra Loweth* and *Elysian Fields*) by pointing to differences in the wording from those in cl 5.1. She submitted that when the whole of the clause is looked at certification is a condition precedent.

38. The Tribunal cannot accept that argument. In our view and in agreement with the F-tT the meaning of clause 5.1 is clear. There is nothing in the first half of the clause which makes the payment of the interim charge dependant on certification; that requirement is only imposed for the balancing charge. The fact that the two halves are in the same clause does not affect the position. In this case the interim payment is set by reference to what the Landlord shall consider fair and reasonable and not by reference to what may be certified.

39. As was pointed out in para 42 of *Elysian Fields* the Tenant is not without a remedy if the Landlord fails in its obligation to certify the balancing charge.

> "The remedies potentially open to the Tenants were …, either (i) an action for damages or (ii) an action for specific performance or for an account or (iii) an application to [the F-tT] under the Landlord and Tenant Act 1985 for the determination of the service charges payable."

Interim Service Charge

40. Before considering the claims for the individual years it is worth making a number of points about the Interim Service Charge.

41. First, it is defined in cl 5.1 as a proportionate sum on account of Service Charge … as the Landlord shall consider is fair and reasonable on account of the Service Charge. The Service Charge itself is defined by reference to the expenditure incurred by the Landlord in performance of its obligations in the lease. Thus, the interim service charge must also be a proportionate part of the estimated expenditure. In our view that proportion cannot be greater than 100%. In other words, as a matter of construction the interim service charge cannot be higher than 100% of the estimated expenses.

42. Second, by virtue of s 19(2) of the Landlord and Tenant Act 1985 ("the 1985 Act") where a service charge is incurred before relevant costs are incurred no greater amount than is reasonable is so payable. Thus the sum claimed must be objectively reasonable.

43. Third, the absence of proper certification may be relevant to the question of reasonableness. In para 51 of *Pendra* the Deputy President said this:

> "Clearly, at the commencement of the lease it would have been impossible for the obligation to pay the estimated service charge to be made conditional on the preparation of audited service charge accounts. In subsequent years, unless the provision of a notice of the sum payable was to be delayed until well into the year to which the sum related, it would be a practical impossibility for the Estimated Service Charge in one year to be based on the audited accounts in the immediately preceding year. The absence of proper accounts for previous years may, of course, provide grounds for treating the estimate with circumspection or even

> suspicion; it may make it easier to justify a reduction under s. 19(2) on the basis that there is little to suggest the estimate is reasonable; but as a matter of contract the payment of the Estimated Charge is not conditional on the provision of audited accounts."

44. In so far as Mr Upton submitted otherwise we do not accept his submissions and prefer the submissions of Ms Cafferkey.

45. Fourth, it is clear from *Knapper v Francis* [2017] UKUT 3 (LC) that the reasonableness of the demand has to be assessed by what is known at the time the Tenant's liability arises. In this case all of the invoices were dated after the due date specified in the lease. Accordingly, the relevant date for assessment is the date of the invoice.

46. An application under s 27A concerning service charges based on end of year accounts showing sums actually incurred is different from an application concerning an interim service charge. In an application under s 27A of the former type the F-tT is determining the reasonableness of the costs incurred. In an application concerning an interim service charge the F-tT is assessing the reasonableness of the estimate assessed at the time liability arose. Thus we agree with the F-tT that the 2014 decision is in no way decisive.

47. As already noted the F-tT upheld each of the invoices in its entirety. It considered each of the years separately. However it noted in para 43 that there was an absence of witness statements or explanation of approach to budgeting or service charges. Thus, there was no direct evidence from the Landlord as to how it arrived at the figures in its demands. Equally there were no budgets of expenditure nor any direct evidence of what factors the Landlord took into account when making the demand.

48. Thus, as Ms Cafferkey pointed out the F-tT's conclusions were based on inference. It is plain from paras 120 – 122 that the F-tT was critical of the Tenant in failing to file any evidence or to challenge the demands earlier. It also made the point that that the Landlord was entitled to budget on the basis that the Tenant would meet its obligations under the lease.

49. In the Tribunal's view there are a number of problems with the F-tT's decision.

50. First, there was an increasing amount of knowledge available to the Landlord of the level of actual expenditure at Spembly Works at the time of demands. The conversions date from 2000. It is true that the Landlord did not take over management until 2011 but there is no reason to believe that it would not have had some idea of the actual expenditure incurred historically by the date of the first demand. At that time the properties were being managed by Caxtons. By August 2013 the Landlord would have had the 2011 accounts. By November 2013 the 2012 accounts. In 2014 the Landlord had the 2013 accounts and the decision of the F-tT in respect of the years 2011 – 2013. In addition the Landlord knew the amount of cash held and the amount of arrears. All of this shows a consistent pattern of expenditure at approximately 50% of the demand.

51. Second, the fact that the amount demanded for each year was precisely the same is a clear indication that the Landlord did not carry out a careful assessment each year and that the figure claimed was not based on a genuine estimate of the likely expenditure.

52. Third, the onus must be on the Landlord to establish the reasonableness of the estimate. It may or may not be reasonable for the estimate to turn out to be approximately twice the expenditure in any given year. It is for the Landlord to justify it. Furthermore, when this

happens on a consistent basis it becomes more and more difficult to justify. In this case the Landlord did not give any explanation. The F-tT appear to have thought that the expenditure would have been higher if there had been no arrears and to have justified the demands on that basis. In our view this was an inference not open to the F-tT in the absence of evidence and an inference which became increasingly difficult to justify as time went by.

53. For these reasons we cannot accept that the amounts claimed in the demands was reasonable within the meaning of s 19(2) of the 1985 Act. Accordingly, the decision of the F-tT cannot stand and the appeal must be allowed. In the result the Tribunal must either remit the matter to the F-tT for a fresh determination or remake the decision[4]. At one time in the course of argument both parties took the view that the matter would have to be sent back to the F-tT. However, their position changed during the course of the hearing. In the end Mr Upton invited us to re-make the decision and Ms Cafferkey's position was neutral.

54. We are conscious that remission of the matter to the F-tT will involve the parties in considerable additional expense. We accept that it is possible that at a rehearing the Landlord might be able to adduce further evidence in relation to his estimates. However we think it unlikely that there will be much better evidence available after this length of time. Furthermore, as the Landlord has specifically requested us to remake the decision it must necessarily be on a somewhat robust basis. In all the circumstances we have decided to accede to the Landlord's request and remake the decision.

55. We are conscious that reasonableness is to be judged by the information at the date of the demand. We are also conscious that more information as to actual expenses became available as time went on.

56. In all the circumstances we propose to allow the claim for 2009/2010 in its entirety. It was submitted in late 2011 and there is an undated document setting out the expenses for that year. However, in our view all of the other claims fall to be reduced. Doing the best we can we propose to reduce them by 50%.

57. Thus we would award:

Year	Amount Due
2009/2010	£338.65
2010/2011	£736.08
2011/2012	£704.65
2012/2013	£704.65
2013/2014	£704.65
2014/2015	£704.65
2015/2016	£696.24

S 20C

58. The parties have indicated that they wish to make written submissions on any S20C order following receipt of our substantive decision and we will allow them to do so.

[4] Under s12 Tribunals Courts and Enforcement Act 2007.

59. In response to our draft decision, counsel have agreed the following timetable:

Appellant's submission to be filed and served by Friday 31 August

Respondent's submission to be filed ad served by Friday 14 September

Appellant's reply to be filed and served by Friday 21 September.

Dated: 3 August 2018

John Behrens

His Honour John Behrens

P D McCrea FRICS