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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0014/07/22

In the Matter of Flat 4, 52 Clive Road, Canton, Cardiff, CF5 1HG

And in the Matter of an Application under Section 27A Landlord and Tenant Act 1985

Applicant:		**Jane M Proctor**
Respondents:	**(1)**	**Gareth William Austin**
	(2)	**Jason Hadyn Austin**
	(3)	**David Iwan Wyn Jeffreys**
Tribunal:		**Colin Green (Legal Chair)** **Mark Taylor MRICS (Surveyor Member)** **Dr. Angie Ash FRSA (Lay Member)**
Date of Hearing:		**20th January 2023 and 14th March 2023**

DECISION

(1) The Respondents' application to strike out is dismissed.

(2) The Applicant's contributions to the annual building insurance premium for the Property for the years 2014 to 2022 were not payable.

(3) For the following service charge years, the amounts payable by the Applicant by way of final service charge are as follows:

(a) 2014: £36.19

(b) 2015: £90.29

(c) 2016: £48.84

(d) 2017: £42.50

(e) 2018: £146.86

(f) 2019: £37.67

(g) 2020: £307.87

(4) For the service charge years 2021 and 2022, the amounts payable by the Applicant as an Interim Charge (payment on-account in advance) are as follows:

(a) 2021: £500.00

(b) 2022: £500.00

(5) No determination is made as to the final service charge for the years 2021 and 2022.

REASONS

Introduction

1. This application has been made by Mrs. Proctor, the Applicant, under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), seeking determination of the service charge for the years 2014 to 2022 inclusive in respect of the above flat ("Flat 4"). 52 Clive Road ("the Property") is a building that has been converted into five self-contained flats. The freehold reversion of 52 Clive Road has been vested in the three Respondents since May 1998 under title number WA94844. The lease of Flat 4 was assigned to Mrs. Proctor in about 2012, and the Respondents also own the leases of the other four flats, the most recent having been acquired in about March 2022.

2. The hearing took place remotely on 20 January and 14 March 2023. Mrs. Proctor appeared in person and the Respondents were represented by the Third Respondent, Mr. Jeffreys, who is also a partner in the firm of T. Llewellyn Jones, Solicitors. The Tribunal was provided with documents in bundles from both parties plus some additional documents, and heard evidence from Mrs. Proctor and Mr. Jeffreys, each of whom was given the opportunity to ask questions of the other and were questioned by the panel. Mark Taylor, the surveyor member, inspected the Property prior to the first hearing date.

The Lease

3. Within the Respondents' bundle is a copy of a lease dated 20 December 2004, ("the Lease"). Under the Lease, Flat 4 was demised for a term of 99 years from 1 October 2004.

4. Clause 4(4) contains the Tenant's covenant to pay:

> *"The Interim Charge and Further Interim Charge (as appropriate) and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto all such charges to be recoverable in default as rent in arrears"*

5. Clause 5(4) contains the Lessors' repairing covenant, but the details are not relevant to the issues in dispute other than to note that clause 5(4)(h) contains provision for a

reserve fund and under 5(4)(c) the Lessors covenant to insure the Building "in the joint names of the Lessors and the Tenant".

6. The Fifth Schedule contains the Service Charge provisions and provides as follows:

> *"1. In this Schedule the following expressions have the following meanings respectively:*
>
> *(1) "Total Expenditure" means the total expenditure incurred by the Lessors in any Accounting Period [1 January to 31 December] in carrying out his obligations under clause 5(4) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the forgoing (a) the cost of employing Managing Agents (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder and (c) the cost incurred by the Lessors in contributing towards the cost of maintaining and repairing the land coloured orange on plan number one (1) and number two (2) annexed hereto and (d) interest charged upon Bank Accounts maintained for the purpose of the management of the Building*
>
> *(2) "The Service Charge" means such share of the Total Expenditure as is specified in paragraph 6 of the particulars [one-fifth]…*
>
> *(3) The Interim Charge means such sum to be paid on account of the Service Charge in respect of each accounting period as the Lessors or his Managing Agents shall specify at their discretion to be a fair and reasonable interim payment*
>
> *2. In this Schedule any surplus carried forward from previous years shall not include any sums set aside for the purposes of Clause 5(4)(h) of the Lease*
>
> *3 …the Interim Charge shall be paid to the Lessors by equal payments in advance on the First day of January and the First day of July in each year and in case of default the same shall be recoverable from the Tenant as rent in arrear*
>
> *4 In the event that the cost to the Lessors of performing the obligations of the Lessors hereunder (to the extent that the same are ultimately recoverable from the Tenant) shall at any time during the accounting period exceed the interim charge then the Lessors shall be entitled by notice in writing served upon the Tenant to require payment by the Tenant to the Lessors within seven days thereafter of a further Interim Charge ("the Further Interim Charge")*
>
> *5. If the Interim Charge paid by the Tenant in respect of any Accounting Period exceeds the Service [Charge] for that period the surplus of the Interim Charge so paid over and the Service Charge shall be carried forward by the Lessor and credited to the account of the Tenant in computing the Service Charge in succeeding Accounting Periods as hereinafter provided*
>
> *6. If the Service Charge in respect of an Accounting Period exceeds the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus for previous years carried forward as*

aforesaid then the Tenant shall pay the excess to the Lessors within twenty eight days of service upon the Tenant of the Certificate referred to in the following Paragraph and in case of default the same shall be recoverable from the Tenant as rent in arrear

7. As soon as practicable after the expiration of each Accounting Period there shall be served upon the Tenant by the Lessors or their Agents a certificate signed by such Agents (and where appropriate endorsed by Accountants) containing the following information:

(a) The amount of the total expenditure for the Accounting Period

(b) The amount of the Interim Charge and Further Interim Charge (if any) paid by the Tenant in respect of that Accounting Period together with any surplus carried forward from the previous Accounting Period

(c) The amount of the Service Charge in respect of that Accounting Period or of any excess or deficiency of the Service Charge over the Interim Service Charge and Further Interim Charge (if any)

8. The said certificate shall be conclusive and binding on the parties hereto but the Tenant shall be entitled at his own expense and upon prior payment of any costs to be incurred by the Lessors or his Agents at any time within one month after service of such certificate to inspect the receipts and vouchers relating to the payment of the Total Expenditure."

7. In summary, the Service Charge payable by the Tenant is one-fifth of the Total Expenditure (as defined by paragraph 1(1)) for each accounting period – 1 January to 31 December. There is an Interim Charge by way of payment on-account in advance of the Service Charge which must be a fair and reasonable interim payment, payable in equal payments on 1 January and 1 July each year. (In fact, for the service charge years in question it has been demanded as a single annual sum payable on 1 January.) There is also provision for a Further Interim Charge but that was not invoked for the years in question so no further mention will be made of it.

8. As soon as practicable after the end of each service charge year, a Certificate is to be served on the tenant containing the following information:

(1) The amount of the Total Expenditure for the Accounting Period.

(2) The amount of the Interim Charge paid by the tenant together with any surplus carried forward from a previous Accounting Period.

(3) The amount of the Service Charge for the Accounting Period and of any excess or deficiency of the Service Charge over the Interim Charge.

In other words, a standard reconciliation exercise. Where there is an excess of the Interim Charge over the Service Charge, that surplus is to be carried over to the credit of the tenant's account. If a deficiency, that is to be paid to the lessors within 28 days of service of the Certificate on the tenant.

9. It should be noted that there is no requirement that the Certificate and the calculations on which it is based should be dealt with by an accountant or that there should be audited accounts, as claimed by Mrs. Proctor. It is to be signed by managing agents where used, and "where appropriate endorsed by Accountants", which the

Tribunal construes as meaning where accountants have been used. In the Tribunal's view, preparing the certificate in a case involving five flats would be a relatively straightforward exercise and would not necessarily require the services of accountants.

10. Although there have been Interim Charges for each of the years in question, for most of that period there has been no reconciliation and service of a Certificate, so that the service charge itself has not been calculated. Relatively recently, however – precisely when was disputed – Mr. Jeffreys produced a document headed "Maintenance and Estate Accounts: 52 Clive Road" ("the Maintenance Accounts") the most recent version of which covers the years 2005 to 2020 (pages 109-112 of the Respondents' bundle). There are four columns: identifying the date (year), income (the Interim Charge), expenses (Total Expenditure), and the balance. In the Tribunal's view, although it might not have been intended as such this document qualifies as a Certificate under the provisions of paragraph 7 of the Fifth Schedule so far as the years 2014 to 2020 are concerned albeit that it was compiled and served some years after the beginning of this period.

Strike out

11. By way of a preliminary issue, Mr. Jeffreys sought to have several of the years in issue (it was unclear precisely how many) struck out from the Tribunal's consideration on the footing that payment had been made in each year without dispute and therefore taking issue with them at this late stage was frivolous or vexatious or otherwise an abuse of process of the Tribunal.

12. Section 27A of the 1985 Act provides that:

> *"(4) No application under subsection (1) or (3) may be made in respect of a matter which –*
> *(a) has been agreed or admitted by the tenant…*
> *(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment."*

13. Mr. Jeffreys relied on the decision of *Cain v Islington* [2015] UKUT 0117 (LC), where the issue arose whether the leaseholder was time barred from being able to challenge the reasonableness of the service charges which he had discharged in respect of the periods 2001/2002 to 2006/2007. It was held that, given the leaseholder had not challenged the service charge payments over circa a ten year period, the leaseholder should be regarded as having agreed or admitted the constitution of the service charge and that the application was barred by virtue of section 27A(4). HHJ Gerald commented that:

> *"Looking at the reasoning behind this provision, no doubt the reason why the making of a single payment on its own, or without more, would never suffice is that such will often be insufficiently clear but also, in the peculiar area of landlord and tenant, it is common enough for tenants to pay (even expressly disputed) service charges so as to avoid the risk of forfeiture and preserve their home and the value of their lease. But*

the reason why a series of unqualified payments may, depending on the circumstances, suffice is because the natural implication or inference from a series of unqualified payments of demanded service charges is that the tenant agrees or admits that which is being demanded. Putting it another way, it would offend common sense for a tenant who without qualification or protest has been paying a series of demanded service charges over a period of time to be able to turn around and deny that he has ever agreed or admitted to that which he has previously paid without qualification or protest."

14. The Tribunal does not consider that this is the position in the present case where payment of the Interim Charges – payments on-account – have been made but until provision of the Maintenance Accounts by Mr. Jeffreys, no Certificate had been served setting out the actual service charge for any of the years in question, and no demand has been made for a balancing payment. The Maintenance Accounts were served as the result of complaints by Mrs. Proctor about the lack of information concerning the service charge, she has not accepted their accuracy, and has disputed the recoverability of certain items. Therefore, payment of the Interim Charges cannot be taken as an acceptance of final service charge figures at a time when they had not been calculated, that were disputed once calculations were provided, and where no payment has been made by reference to such figures. For this reason, the Tribunal does not consider it appropriate to strike out any of the years 2014 to 2022.

15. Mr. Jeffreys believed that the strike out application was the only issue to be determined at the hearing and although he had requested this beforehand, no direction had been made limiting the hearing in this way. Nevertheless, after the Tribunal had given its decision on his application, he was prepared to continue with a full hearing on the remaining issues, and because the hearing went part heard, resuming on 13 March, he had the opportunity of providing any additional documents on which he wished to rely.

Insurance contributions

16. Mrs. Proctor's one-fifth contribution to the building insurance premium has been invoiced separately from the Interim Charge, although it falls within the definition of "Total Expenditure" under paragraph 1(1) of the Fifth Schedule to the Lease and the definition of "service charge" in s. 18 of the 1985 Act. She has complained that the insurance was not in joint names, as required by clause 5(4)(c) of the Lease. Mr. Jeffreys accepted this but stated that at some point Mrs. Proctor's interest was noted on the policy, and that for 2023 (which falls outside the Tribunal's determination) the insurance is in joint names. The Tribunal considers that the reasoning in *Green v. 180 Archway Road Management Co Ltd* [2012] UKUT 245 (LC) (a copy of which was supplied to the parties) applies here. In that case the question arose whether the respondent was entitled under the terms of the lease to require the appellant to pay a proportion of the insurance premiums paid by the respondent for insuring the building for certain periods. The covenant to insure the building was "in the joint names of the Lessor and Lessee" and that had not occurred. Therefore, there had been no insurance as required by the lease, and noting the tenant's interest on the policy

did not amount to a policy in joint names, so there was no liability to contribute towards the premiums.

17. For the same reasons, in the present case the Tribunal finds that there is no liability on the part of Mrs. Proctor to contribute to the building insurance premium for the years 2014 to 2022 so that her payment of one-fifth of the premium must be credited to her service charge account.

Service charge

18. Under s. 27A(1) of the 1985 Act, the Tribunal can determine if a service charge is payable, and under s. 19(1) it is only payable for works that have been done or services that have been performed to the extent that they have been reasonably incurred or to the extent that the services or works are of a reasonable standard. The Tribunal will consider the years 2014 to 2020 and 2021 and 2022 separately.

19. In respect of the years 2014 to 2020, as mentioned above, the Maintenance Accounts constitute a Certificate under paragraph (7) of Schedule 5 to the Lease. It should be noted however, that although paragraph (8) provides that "The said certificate shall be conclusive and binding on the parties hereto", those words are void under s.27A(6) of the 1985 Act as they would exclude the jurisdiction of the Tribunal, see: *Windermere Marina Village Ltd v Wild and others* [2014] UKUT 163 [LC]:

> *"An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*
> *(a) in a particular manner, or*
> *(b) on particular evidence, of any question which may be the subject of an application under subsection (1) or (3)."*

Accordingly, the figures contained in the Maintenance Schedule are not binding on the parties and are subject to scrutiny by the Tribunal.

20. Pursuant to the Tribunal's directions of 25 July 2022 ("the Directions") Mrs. Proctor prepared a Scott Schedule, but her comments tend to address the invoices for the Interim Charge, that contain no breakdown as set out in the Maintenance Accounts. The Respondents provided no Scott Schedule in respect of the years 2014 to 2020 so it is only the Maintenance Accounts to which the Tribunal can have regard for those years in terms of specific expenditure.

21. The Schedule attached to this decision contains a table that deals with each of the service charge years. The first column is the year in question, the second the amount of the Interim Charge (with Mrs. Proctor's one-fifth share in brackets), and the third the service charge items shown in the Maintenance Account allowed by the Tribunal (with Mrs. Proctor's one-fifth share shown in brackets).

22. Although no invoices, receipts, or bank statements were provided by the Respondents, the Tribunal was prepared to accept the figures given for the electricity to the common parts, which is separately metered ("E"), and the annual Electrical/Fire Certificate ("FC").

23. Other items for the period in question have proved more troublesome. For each of the years 2014 to 2017 and in 2019 there is a figure for "Administration General" of £480.00. For 2018 and 2020 it is £600.00. These are charges in respect of administrative work carried out in managing the Property, and do not fall within the limited definition of "administration charge" in paragraph 1(1) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Accordingly, it must be established that charges for such work can be included in the service charge under the terms of the Lease.

24. Most, if not all, of any administration work will have been carried out by Mr. Jeffreys, one of the landlords, or members of staff at T Llewellyn Jones solicitors, his firm. There is no reason why Mr. Jeffreys should not carry out such work at his office, or elsewhere, but there is nothing in the definition of "Total Expenditure" in paragraph 1(1) of the Fifth Schedule to the Lease that would give rise to his entitlement to charge for doing so. There is no management agreement making his firm managing agents for the Property and no invoices from him or his firm to the Respondent landlords charging for such services. From 2019 there is reference on demands for Interim Charges to AJA Properties Cardiff Limited ("AJA") as the managing agent. AJA is a company of which Mr. Jeffreys and the other Respondents are the sole directors and shareholders, and which has no employees or a bank account. There is no written management agreement between the Respondents and AJA and no invoices from AJA billing for work as a managing agent. The fact that Mr. Jeffreys is a director, and has carried out administrative work, is not sufficient.

25. Also of concern is the fact that the same figure of £480.00 has been used over several years with no explanation as to how it has been calculated. This suggests to the Tribunal that it has been arrived at not based on actual time spent and was created retrospectively when the Maintenance Account was prepared for the years under consideration. Similarly for the two years at £600.00. Therefore, none of the "Administration General" entries have been allowed.

26. For each of the years 2014 to 2020 there is a figure for "Maintenance/Repairs" of £280.00. The difficulty here is that there is no evidence of how that figure has been arrived at or supporting invoices, receipts, or bank statements. Again, like the repeating figure of £480.00 for "Administration General" this seems to be a retrospective figure, calculated by estimate – the likelihood of these costs being identical in each year throughout the period under consideration is remote – and none of the "Maintenance/Repairs" entries have been allowed.

27. In 2015 there is an entry for "Sundries (callout)" at £95.00. This was not specifically challenged by Mrs. Proctor and will be allowed.

28. For 2018 there is an excess payment of £500.00. This arises in respect of damage caused to Flat 4 from a leak from another flat. A claim was made by the Respondents on the building insurance, but Mrs. Proctor contended that they should not have made an insurance claim and therefore their excess payment was not reasonable. The Tribunal considers that since the Respondents' insurer did pay, which is not done lightly, there must have been a genuine insurance claim and therefore the excess is

properly chargeable as a service charge expense. For the avoidance of doubt, this is a quite separate issue from Mrs. Proctor's liability to contribute to the building insurance premium, dealt with above.

29. For 2020 there is a figure of £4,495.00 for external works carried out at the rear of the Property. The Tribunal is satisfied that the works were carried out and at that cost. There is an invoice from AJA to Gareth Austin, the First Respondent, presumably invoicing him for work that the builder invoiced AJA, though that invoice is not available. There was initially concern from Mrs. Proctor that the works had not been undertaken at all, due to paucity of information provided by the Respondents. The inspection by the panel member and further evidence from Mr. Jeffreys was sufficient to evidence that the works were in fact undertaken. There is no evidence to suggest that they were not carried out to a reasonable standard or that the sum charged was unreasonable.

30. Section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (Wales) Regulations 2004 contain provisions that require a consultation process to be followed in respect of, amongst other things, "qualifying works", that is, works in respect of which each tenant will have to contribute more than £250.00 by way of service charge. In a case such as the present the details concerning, and timetable for, the relevant consultation process in respect of such works is contained in Part 2 of Schedule 4 to the 2004 Regulations. Failure to observe the consultation requirements will limit each tenant's liability to contribute to the cost of the qualifying works to the sum of £250.00, but under section 20ZA of the 1985 Act the Tribunal is empowered to dispense with all or any of the consultation requirements on application by the landlord.

31. It is not disputed that in the present case the consultation requirements were not followed. Mr. Jeffreys said that the works were required on an emergency basis and there was insufficient opportunity to do so, and that the price paid was lower than two other quotes that had been obtained. Nevertheless, the consultation provisions will have applied and absent an application under s. 20ZA for dispensation the Tribunal is bound to limit the amount recoverable from Mrs. Proctor to £250.00.

32. Concerning the years 2021 and 2022, there is Mrs. Proctor's Scott Schedule in respect of those years, with its general observations. The Respondents did provide a Scott Schedule limited to those two years, but it does not refer to any specific items of expenditure. There is no service charge Certificate for either of those years as the Respondent's Maintenance Accounts end with 2020. There is a witness statement from Mr. Jeffreys dated 18 November 2022 that addresses certain charges for 2022 but one would not have expected final figures for that year to be available in November, or even January 2023 when the first hearing in this matter took place.

33. In the light of this, there is insufficient material before the Tribunal on which it can properly determine the final service charge figures for either 2021 or 2022. All that it can do is determine whether the Interim Charge for those two years is payable as a reasonable pre-estimate of likely expenditure for the forthcoming year, to be assessed

at the time the Interim Charge was rendered. For both years, the Interim Charge is £500.00 x 5 (£2,500.00). In the Tribunal's view this is a reasonable sum having regard to the extent of works that may need to be carried out to the Property, as set out in the report from Gold Crest Chartered Surveyors obtained by Mrs. Proctor, and that a reserve fund for such works may be required.

Reserve fund

34. Mrs. Proctor relied on a letter dated 2 October 2012 written by the solicitor acting for the seller of Flat 5 to her solicitor concerning Mrs. Proctor's proposed purchase. The relevant part of the letter is as follows.

> *"We have been speaking to Iwan Jeffreys of T Llewellyn Jones today. He has apologised for the delay in providing the information requested and we hope that we will have a written reply in the course of next week.*
> *Whilst the delay in obtaining this information is frustrating what we have learnt from the conversation today is as follows:*
> *…*
>
> - *There is currently a reserve of some £2,000.00 although in addition to this the Estate of Jason Terence Davies is currently owing some £1,200.00 in arrears of maintenance charge which would boost the reserve fund as well as arrears of buildings insurance and costs in relation to the Court Proceedings referred to in the Restriction registered against the title to Flat 4."*

35. Mrs. Proctor raised the question as to what had happened to the reserve fund and why it was not used to meet payments rather than an Interim Charge. Mr. Jeffreys evidence was that he did not remember the details of the conversation with the author of the above letter, but he would not have referred to a reserve fund as there has never been such a fund in respect of the service charge for the Property (although provision is made by clause 5(4)(h) of the Lease). The Tribunal accepts this explanation, and it may be that the seller's solicitor mistook money owing as amounting to a reserve.

36. As noted above however, it may be necessary to have a reserve fund to cover future works to the Property.

Court proceedings

37. There have been two sets of County Court proceedings in respect of the recovery of Interim Charge payments disputed by Mrs. Proctor. There was considerable dispute as to precisely what happened in those proceedings, but the Tribunal is satisfied that no final determination was made in respect of issues it must decide, that any payment made by Mrs. Proctor was under protest, and under s. 27A(5) of the 1985 Act (see above) a payment would not, of itself, constitute an admission of liability.

Statutory requirements

38. Paragraph (2) of the Directions identifies whether there has been compliance with certain statutory provisions as issues to be determined by the Tribunal. The consultation requirements of s. 20 of the 1985 Act have been addressed above. In addition, there are the following.

(1) Section 21B of the 1985 Act (Notice to accompany demands for service charges): under this provision a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges as prescribed by regulations, in this case the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (Wales) Regulations 2007. A tenant who has received a demand without such a summary may withhold payment. Although there was some dispute it was eventually accepted by the parties that demands for the Interim Charges in 2021 and 2022 have been made accompanied by the relevant statutory information. This was not the case in respect of the demands for the Interim Charges for 2014 to 2020, but the issue is academic as payment was made by Mrs. Proctor and she must be entitled to be credited with such payments. The statutory requirement will of course, apply to any demands for the final service charge figure for the years 2021 and 2022 if there should be an excess over the Interim Charges for those years and a balancing payment is sought from Mrs. Proctor. Whether a balancing payment is due will have regard to the extent to which her service charge account is in credit at that point.

(2) Section 20B of the 1985 Act (Limitation of service charges: time limit on making demands). Section 20B(1) provides:

> *"If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred."*

These provisions do not apply to any of the Interim Charges as on-account payments in advance do not relate to any costs which have been incurred: rather they relate to costs which *will be* incurred. It follows that if the on-account demands exceed the actual expenditure (as is the case here for the years 2014 to 2020 – see the attached Schedule) s. 20B has no application. It is only if the on-account payments are insufficient and a balancing payment is required that s. 20B arises, see: *Gilje v. Charlesgrove Securities Limited* [2003] EWHC 1284 (Ch) and *Holding and Management (Solitaire) Ltd v. Sherwin* [2010] UKUT 412 (LC). Therefore, in principle the issue might arise in respect of any demands for balancing payments for the years 2021 and 2022, but the Tribunal has only determined the recoverability of the Interim Charges for those years, and it is not currently known whether any such demands will be made, after Certification as required by the Lease and having regard to the credit to Mrs. Proctor's service charge account at that time.

(3) Section 20C of the 1985 Act (Limitation of service charges: costs of proceedings): this will be dealt with below.

(4) Although not mentioned in the Directions, Mrs. Proctor raised the issue of whether the provisions of sections 47 and 48 of the Landlord and Tenant Act 1987 had been complied with. They have now in respect of demands for the Interim charges for 2021 and 2022, and, as with the prescribed information under s. 21B of the 1985 Act, since she has paid all prior Interim Charges (2014 to 2020) the issue is of no real importance for those years: the significant matter is the final service charge account which the Tribunal has now determined for those years, and no balancing payment will be due.

Orders sought

39. In Mrs. Proctor's email to the Tribunal of 22 November 2022, she states that she seeks various orders from the Tribunal.

(1) Reimbursement of service charges for 2014 to 2022. The Tribunal is not in a position to make an order for payment. On s. 27A applications its jurisdiction is declaratory only and no such orders can be made, see: *Termhouse (Clarendon Court) Management Ltd v Al-Balhaa* [2021] EWCA Civ 1881. The Tribunal has determined the service charges for 2014 to 2020, so that Mrs. Proctor would be entitled to credit in respect of the difference between the Interim Charges she has paid and service charges for those years, together with credit for her contribution to the building insurance premiums. An up-to-date statement of account between the parties will also depend on Certification and any demands made in respect of the years 2021 and 2022 (where the Tribunal has only determined whether the Interim Charge is payable) and how any credit is to be treated under the terms of the Lease. If Mrs. Proctor considers she is entitled to a refund however, that is something she would have to pursue in the County Court as a claim for money owed but the Tribunal makes no decision on that claim.

(2) Her solicitor and barrister fees in the two county court proceedings. This falls outside the service charge provisions of the Lease and Tribunal has no power to make such an order.

(3) Reimbursement of emergency plumber and repair works to Flat 4, which seems to relate to the matters dealt with at paragraph 28 above. Although the Tribunal can in certain cases treat tenant claims as a set-off against service charge liability, the panel did not consider that it was able to properly determine Mrs. Proctor's claim on the material available.

Section 20C

40. Under s. 20C of the 1985 Act, where the lease permits the recovery of costs as a service charge the Tribunal may order that some or all the costs incurred by the landlord in connection with the Tribunal proceedings are not to be included in the service charge payable by the tenant. The Tribunal may make such order as it considers equitable and regard will be had to what extent the tenant has been successful and the proportionality of any reductions, together with any other relevant factors.

41. Without deciding the point, it is arguable that the Respondents' legal costs of these proceedings (assuming Mr. Jeffreys is making a charge) might fall within the definition of "Total Expenditure" in the Fifth Schedule to the Lease. **If Mrs. Proctor wishes the**

Tribunal to make an order under s. 20C in respect of one-fifth of such costs being recovered by way of her service charge, she should serve written submissions by email to the Tribunal and Mr. Jeffreys by 5.00 pm on 23rd May 2023. Should they wish, the Respondents are entitled to reply by written submissions to be served by email on the Tribunal and Mrs. Proctor by 5.00 pm on 6th June 2023. There will then be a paper determination by the Tribunal on the issue.

Dated this 9th day of May 2023

C. R. Green
Tribunal Judge

SCHEDULE

Year	Interim Charge [Applicant's Share]	Service Charge [Applicant's Share]
2014	£1,000.00 [£200.00]	E: £105.95 FC: £75.00 £180.95 [£36.19]
2015	£1,000.00 [£200.00]	E: £100.89 FC: £75.00 Callout: £95.00 £270.89 [£90.29]
2016	£1,000.00 [£200.00]	E: £164.19 FC: £80.00 £244.19 [£48.84]
2017	£1,000.00 [£200.00]	E: £131.50 FC: £80.00 £211.50 [£42.30]
2018	£1,000.00 [£200.00]	E: £154.29 FC: £80.00 Excess: £500.00 £734.29 [£146.86]
2019	£2,000.00 [£400.00]	E: £108.33 FC: £80.00 £188.33 [£37.67]
2020	£2,000.00 [£400.00]	E: £203.28 FC: £86.00 £289.28

			[£57.86]
		Exterior Works	£250.00
			[£307.87]
2021	£2,500.00 [£500.00]	Not determined	
2022	£2,500.00 [£500.00]	Not determined	