UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – SERVICE CHARGES – sufficiency of FTT's reasons for rejecting leaseholders' challenges to service charges - appeal allowed

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

BETWEEN:

DR KHALIFA BOUKADIDA

AND OTHERS

Appellants

-and-

PRIORY PLACE (ABBEY WOOD) RTM COMPANY LTD

PRIORY PLACE (ABBEY WOOD) NO.2 RTM COMPANY LTD

Respondents

Re: Chantry Close and Hermitage Close,
Abbey Wood,
London SE2

Martin Rodger QC, Deputy Chamber President

Royal Courts of Justice

17 June 2021

Qaseem Ahmed for the appellants
Richard Granby, instructed by Naylors, Solicitors, for the respondents

The following cases are referred to in this decision:

Flannery v Halifax Estate Agency's Limited [2000] 1WLR 377

English v Emery Reinbold & Strick Ltd [2002] 1 WLR 2409

Introduction

1. By a decision issued on 12 October 2020 following a hearing which had taken place more than seven months earlier on 9-10 March 2020 the First-tier Tribunal (Property Chamber) (the FTT) dismissed in their entirety the challenges brought by the appellant leaseholders against service charges levied by the respondent RTM companies in respect of two blocks of flats in Abbey Wood in South East London known as Chantry Close and Hermitage Close. The essence of this appeal, which is brought with the permission of this Tribunal, is that the FTT failed to deal at all with the substance of the appellants' challenges so that, after reading its decision, they were left without any coherent explanation why the FTT had rejected their case.

2. The background to the decision and, I have no doubt, the reason for the lengthy delay between the completion of the hearing and the publication of the FTT's determination was, of course, that the normal operation of courts and tribunals was disrupted for much of last year by the Covid-19 pandemic.

3. Chantry Close and Hermitage Close together comprise 162 flats arranged around a communal garden. They form part of a development known as Priory Place which was built in about 2003 and includes a third building managed by a housing association which is not concerned in these proceedings.

4. There are 21 appellants to this appeal, who between them own nine flats in Chantry Close and ten flats in Hermitage Close. The lead appellant, Dr Khalifa Boukadida, is the leaseholder of flat 6, 4 Chantry Close.

5. Dr Boukadida acquired his lease on 24 March 2004. It is for a term of 155 years and was granted to him by the developer of Priory Place, Barratt Homes Ltd. The third party to the lease was Holding & Management (Solitaire) Ltd which performed the functions of a maintenance company providing services and collecting service charges from the leaseholders. At some point after the development was fully let Barratt transferred its reversionary interest to Holding & Management (Solitaire) which then additionally became entitled to collect the ground rents reserved by the leases.

6. In 2013 a group of Priory Place leaseholders established two right to manage companies, one for each block. A single RTM company cannot acquire the right to manage more than one building, so the objects for which Priory Place (Abbey Wood) RTM Company Ltd was established were limited to managing Chantry Close, while Priory Place (Abbey Wood) No.2 RTM Company Limited was to manage Hermitage Close. In July 2014 the companies succeeded in acquiring the right to manage and took over responsibility for the provision of services and collection of service charges from Holding & Management (Solitaire). Both RTM companies appointed Prime Management Limited as their managing agent.

7. At the hearing of the appeal the appellant leaseholders were represented by Mr Qaseem Ahmed and the respondent RTM companies by Mr Richard Granby, both of counsel. I am grateful to them for their assistance.

The proceedings and their case management by the FTT

8. On 2 January 2019 Dr Boukadida and the other appellants, describing themselves as members of the Leaseholders' Association Group, applied to the FTT under section 27A, Landlord and Tenant Act 1985 (the 1985 Act) for a determination of the service charges payable by them in each of the four service charge years from 2014 to 2018 and for the then current year 2018-09. They also made separate applications for costs protection under section 20C, 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

9. Because of the way in which both parties approached the issues in the appeal it is necessary to refer in some detail to the way in which the appellants put their case in the application, and to the procedural directions given by the FTT.

10. The complaints raised by the appellants in their original application to the FTT were in similar general terms for each year with some specific items in particular years. The general complaint was that no clear audit had been provided to the leaseholders to relate actual expenditure to the estimated expenditure for each of the blocks and for the estate. Details had been requested together with copies of receipts for expenditure incurred but, it was said, these had not been provided.

11. A second general complaint was that reserve funds which should have been held in trust for major items were being used to meet day to day expenditure thereby, it was said, creating the false impression that total expenditure was less than it had been under the previous management.

12. For the years 2016-17 and 2017-18 the leaseholders also complained that particular service charge items including estate gardening costs, buildings insurance, management fees and pest control costs were excessive. It was additionally suggested that some specific items of expenditure ought to have been the responsibility of individual leaseholders rather than being included in the service charge.

13. For the year 2018-19, the current year at the date of the application, an additional complaint was made about the cost of a proposed programme of major works. The leaseholders were unhappy about the absence of genuine consultation, as required by statute, and claimed that the RTM companies had already made decisions about the appointment of contractors before embarking on consultation.

14. Following a case management on 5 February 2019 which only the appellants attended, the FTT gave standard directions for the preparation of the application for hearing on 15 and 16 July. The respondents were first required to provide certain specific documents by 14 May, including audited or certified service charge accounts and an itemised budget for 2018-19, and copy invoices or receipts for all service charge expenditure since 2014 to the extent that these were available. They were also directed to provide specific information including an explanation of how each leaseholder's service charge percentage was calculated, details of the opening service charge balances when they took over the management of the estate in 2014, and further information about the proposed major works. For their part, the appellants

were to prepare a schedule identifying the charges they disputed and explaining why, to enable the respondents then to reply to this schedule. The FTT's order warned the parties that if they party failed to comply with the directions their application might be struck out or they might be barred from taking any further part in the proceedings.

15. The appellants subsequently complained that the respondents had failed to comply with the FTT's directions. No invoices or receipts had been provided for 2014-15 or 2015-16, the information provided for 2017/2018 was incomplete, the opening service charge balances for 2014/2015 had not been supplied, and inadequate explanation had been provided in relation to the major works. Nor had the respondents completed the Scott schedule.

16. By an order made on 17 June 2019 by Regional Judge Powell, the respondents were barred from relying on or referring to any statement or document which had not been served on the appellants by 14 May 2019, and from giving evidence or making submissions at the forthcoming hearing. This order was modified by Judge Powell following a request made by the respondents on 7 July which he treated as an application to lift the bar against participation at the hearing. Having considered various explanations for their non-compliance the Judge was not prepared to lift the bar entirely or to permit the respondents to provide evidence at that very late stage, but he did modify the original sanctions in two respects: first he allowed the respondents to make representations on material which they had supplied by 14 May and, secondly, he directed that any further participation was to be a matter for the discretion of the FTT on the day of the hearing.

17. When the parties appeared before the FTT on 15 July 2019 they informed the tribunal that a settlement had been reached. That was an exaggeration since, after the hearing had been adjourned to enable the parties to document the terms they had agreed, they proved unable to do so. On 23 October the FTT directed that another case management hearing should take place on 19 November.

18. The second case management hearing was attended by both parties and resulted in further directions. The order made no reference to the fact that directions had previously been given, that these had been complied with by the appellants but not by the respondents, or that the respondents had been barred from participating in the final hearing, subject to the discretion of the FTT on the day. The order made at the hearing on 19 November 2019 proceeded instead to give entirely new directions for a final hearing which it directed should take place on 9 March 2020.

19. If the FTT was aware of Judge Powell's orders of 17 June and 7 July substantially restricting the respondents' participation in the proceedings it did not say so. Nor did it say if it considered that it was acting consistently with those orders (which is a possibility, since Judge Powell's second order had allowed for a further decision on the respondents' participation to be made by the tribunal which would hear the application). On the face of its order the FTT seems to have proceeded as if the debarring orders had not been made.

20. The appellants did not challenge the new directions given by the FTT. When the proceedings finally came before the FTT for hearing on 9 March 2020 they again appear not to have questioned the respondents' status or entitlement to participate. They did question the effect

of Judge Powell's orders when they sought permission to appeal the adverse decision of the FTT handed down on 12 October 2020. Having been refused permission to appeal by the FTT the appellants renewed their application for permission to this Tribunal. In doing so they did refer to their original grounds of application but they did not repeat them and did not draw specific attention to Judge Powell's orders. The suggestion that the debarring orders had a continuing effect which should have been respected by the FTT was first raised as an issue in the appeal on 31 March 2021 when Mr Ahmed submitted an application to add additional grounds of appeal to those for which permission had been given by the Tribunal on 8 January 2021. I will return to that application later in this decision.

The hearing before the FTT and its decision

21. In its order of 19 November 2019, the FTT had identified the issues which were to be determined. Those issues included:

    1. The reasonableness and payability of the service charges demanded from 2014 to 2018 and the on-account charges for 2018-19.
    2. The payability of administration charges demanded for late payment.
    3. Whether professional cost associated with the major works were recoverable (the works themselves had been postponed and any contributions towards the cost of the works themselves collected in advance had been refunded and were no longer in issue, but the fees of surveyors engaged to prepare specifications and tenders remained contentious).
    4. Whether recovery of the service charges was barred by a failure to comply with the statutory requirements governing the content and timing of demands.
    5. Whether the terms of the leases relating to the recoverability of the service charges had been complied with.

21. At the hearing of the application by the FTT on 9 and 10 March 2020 the appellants were represented by Dr Boukadida and the respondents by their managing agent, Mr Wiles of Prime Management Ltd. Dr Boukadida complained on the first day that material which the FTT had directed the respondents to disclose had still not been provided. This led to the provision of a substantial volume of new material by the respondents' agent at 9.00 pm on the evening of the first day. Whether this was entirely new, as Dr Boukadida asserted, or whether it included some documents which had previously been disclosed, is unclear, but the failure to provide such substantial disclosure until half way through the hearing was a gross breach of the FTT's previous procedural directions. A more assertive tribunal might have considered the respondents' conduct to be grounds to reactivate the barring order which had previously restricted their participation, or at least that it required that the appellants be allowed an adjournment to assimilate the material. Mr Granby suggested that the new material amounted to very little that was new and that Dr Boukadida ought to have taken in his stride, but I doubt that most professional advocates would be so sanguine if presented with in excess of twenty electronic files late in the evening before the second day of a factually complicated case. I was told however that, rather than adjourning the hearing, the FTT encouraged Dr Boukadida to take some time to consider the new material before pressing on.

22. The disruption of the hearing by the late disclosure of documents left insufficient time for the parties to make oral representations at the conclusion of the evidence. The FTT therefore invited them to provide a further written summary of their case and each took that opportunity by filing closing submissions on 23 March 2020. The FTT did not direct an exchange of submissions (or at least if it did it did not do so in writing) and the appellants did not see the respondents' submissions until the day before the hearing of the appeal. They did not have the opportunity which an applicant would ordinarily be afforded of commenting on the way in which the respondent had answered their complaints.

23. When the parties' closing submissions of 23 March and the FTT's decision published on 12 October are read side by side, two things are immediately striking. The first is that, despite the appellants having provided an itemised summary of their arguments on each issue, no mention is made of their submissions in the decision; the existence of the appellant's closing submissions is not acknowledged nor are the arguments themselves addressed. The second striking feature, which only became apparent to the appellants and to the Tribunal when a copy of the respondents' closing submissions was provided the day before the appeal, is that the FTT's decision relies very heavily indeed on the respondents' document. It follows almost exactly the order of the respondents' submissions and, to a very considerable extent, repeats them word for word with occasional re-ordering, or the addition of "the respondent explains" or similar phrases here and there. As a result, the issues, and the arguments on those issues, are couched entirely in the terms in which they appeared to the respondents.

24. The conclusion reached by the FTT was that the service charges demanded for each of the years in dispute were reasonable and payable, as were the interim charges demanded for 2018-19. The FTT prefaced its consideration of the issues by pointing out that the appellants had raised numerous issues. Despite those issues being itemised in the Scott schedule and in the appellants' closing submissions, the FTT referred to neither of those documents. Instead it identified 12 issues which it described as "key issues", each of which it addressed compendiously for the whole of the period under investigation. It summarised each party's case on the recurring items of expenditure in dispute (gardening, cleaning, repairs etc), taking its summary almost directly from the respondents' closing submissions. That exercise occupied paragraphs 11 to 47 of the decision. The FTT's conclusion and its reasons followed in paragraphs remaining six paragraphs, which I will set out on full:

> "48. The tribunal determines that the amount payable in respect of service charges for the service charge years 2014-15-, and the interim charges for the service charge year 2018/19 are reasonable and payable.
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> 49. The applicants raised a very large number of issues. Frequently their concern was with the lack of detailed information to underpin the charges. Their approach appeared to be very distrustful of the respondents requiring them to prove the reasonableness of payability of all charges.
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> 50. The Tribunal has done its best to investigate the applicants' claims. The explanations provided by the respondents to many of the concerns expressed by the applicants was convincing.
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> 51. Taking a holistic approach to the issues before it in connection with the service charges, the tribunal determined that the building was economically run. Insurance charges and accountancy charges for instance appear low for the development.

> Electricity repair charges appear high on the face of the accounts, but the explanation that bulbs are being replaced by LED units is compelling.
>
> 52. There is very little evidence in terms of like for like quotations to suggest that charges are unreasonable.
>
> 53. Overall the Tribunal preferred the evidence of the respondents."

25. The FTT then briefly summarised the dispute over the surveyors' charges in connection with the major works. The appellants considered that the costs were unreasonable; three quotations had not been obtained, as they ought to have been; the invoices supplied did not match the fee scales agreed and some items had been invoiced twice; the surveyors had charged for inspecting the third block at Priory Place despite that block being let to a housing association and not being the subject of the proposed works. The FTT also referred to the existence but not to the content of an independent surveyor's report which the appellants had obtained to substantiate their arguments. The contentions of the respondent were also summarised: the surveyors fees were within the boundaries of reasonableness for the work that had been completed; four quotes had been obtained before the specification and tender process commenced; and invoices had been produced for all of the charges incurred.

26. The FTT's decision and its reasons were concisely stated as follows:

> "The tribunal determines that the amount demanded in respect of the surveyor's charges is reasonable and payable. The respondent dealt with the criticisms of the applicants and the tribunal determines that the answers given address the concerns of the applicants."

27. The FTT identified five separate concerns raised by the appellants in relation to compliance with the statutory requirements for service charge demands and with the terms of the lease; this part of its decision appears not to have been taken from the respondent's closing submissions, but nor were the issues identified by the FTT the same as those which the appellants had addressed in their closing submissions. The issues listed by the FTT were:

    (1) Whether the reserve fund was being applied to day to day works.

    (2) Whether sections 47 and 48 of the Landlord and Tenant Act 1987 had been complied with by the wrong landlord being named on service charge demands.

    (3) Whether significant differences between budgeted figures and actual expenditure suggested poor accountancy standards.

    (4) That service charge funds were not kept in separate bank accounts or a trust account.

    (5) Whether the managing agents and the respondents had received insurance commissions.

    (6) The respondents' failure to provide the opening cash balance in the service charge account when they took over management from the previous management company.

28. After recording the respondents' explanations or answers to these complaints the FTT addressed them compendiously, finding that there were no breaches of the lease such as to make the service charges demanded not payable. As to statutory requirements it found that "the applicants were fully aware of the identity of the landlord and therefore in this instance there was no breach of the requirements of section 47". It agreed with the respondents that they had had little choice but to use the reserve funds because of difficulties they faced in collecting service charges, and accepted that there had been little that the respondents could have done to obtain information from the previous management company. In summary, they had done their best to provide a lawful and acceptable service to the leaseholders at a reasonable cost.

The issues

29. Although the Tribunal gave permission to appeal on five issues identified by Dr Boukadida without the benefit of professional representation, Mr Ahmed and Mr Granby agreed that the main issue in the appeal was the adequacy of the FTT's treatment of the appellants' case and the sufficiency of its reasons for finding entirely in the respondents' favour. Given the way in which the appeal has been presented, I agree with counsel that it is not necessary to refer to the original grounds of appeal in any detail.

The requirement to give reasons

30. There was no dispute between counsel about the relevant standard to be applied by an appellate tribunal when considering the adequacy of reasons given by a first-tier tribunal for its decision.

31. The FTT is obliged by Rule 36(2)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to provide written reasons for any final decision. Guidance on the consequences of this duty can be obtained from a number of sources, including the decision of the Court of Appeal in *Flannery v Halifax Estate Agency's Limited* [2000] 1 WLR 377, at 381, where Henry LJ made the following general comments on the duty to give reasons:

> "(1) The duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties, especially the losing party should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not.
>
> (2) The first of these aspects implies that the want of reasons may be a good self-standing ground of appeal. Where because no reasons are given it is impossible to tell whether the judge has gone wrong on the law or the facts, the losing party would be altogether deprived of his chance of an appeal unless the court entertains an appeal based on the lack of reasons itself.

> (3) The extent of the duty, or rather the reach of what is required to fulfil it depends on the subject matter. Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarised the evidence) to indicate simply that he believes X rather than Y; indeed there may be nothing else to say. Wherever the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other. This is likely to apply particularly in litigation where, as here, there is disputed expert evidence; but it is not necessarily limited to such cases.
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> (4) This is not to suggest that there is one rule for cases concerning the witness's truthfulness or recall of events and another for cases where the issue depends on reasoning or analysis (with experts or otherwise). The rule is the same: the Judge must explain why he has reached his decisions. The question is always, what is required of the judge to do so; and that will differ from case to case. Transparency should be the watch word."

32. Mr Granby also drew my attention to the comments of Lord Philips MR in *English v Emery Reinbold & Strick Ltd* [2002] 1 WLR 2409 at [17] – [18], reiterating that in judgments of all descriptions there is no duty on a judge to deal with every argument presented in support of a party's case. Lord Philips continued:

> "18. … But when considering the extent to which reasons should be given it is necessary to have regard to the practical requirements of our appellate system….
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> 19. It follows that if the appellate process is to work satisfactorily, the judgment must enable the appellant to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision.
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> …..
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> 21. When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submissions in question. The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's decision."

33. In service charge cases involving a large number of factual and technical issues it will often be possible for a tribunal to deal with a number of issues as a group, without delving into detail on each and every one. Where the same sort of factual challenge is made to charges for the same service in a number of different years, or where the tribunal is satisfied that there is no evidence to justify a challenge to a variety of charges, it will be sufficient for it

to say so. But where charges are disputed on a number of distinct grounds, each of which would provide an independent defence to liability, it will always be necessary for the tribunal to consider each ground of challenge, and to explain its reasons for dismissing it, at least until it has found a challenge which it accepts provides a complete defence. A tribunal does not need to deal with every argument presented in support of a party's case, but it does need to deal with every issue which may have a determinative effect on the outcome of part of the the proceedings.

The sufficiency of the FTT's reasons in this case

34. On behalf of the appellants, Mr Ahmed identified a number of specific topics which he submitted the FTT had failed to deal with adequately. Mr Granby also focussed on the same topics and his general submission was that when one considered the way in which the appellants had presented their grounds of challenge in the Scott schedule, the FTT had dealt adequately with their case and had been entitled to find on the evidence that the charges were reasonably incurred and reasonable in amount without going into any greater detail. To expect anything more, Mr Granby submitted, would be to require the FTT to give reasons for its reasons.

35. The application was made under section 27A, 1985 Act and required the FTT to determine what service charges were payable by the appellants to the respondents in each of the years in issue. The applicants had identified the individual charges with which they were dissatisfied in the Scott schedule, and the FTT was required to consider in relation to each charge, whether it was payable or not. Mr Granby submitted that the FTT's task was limited to considering those specific grounds of challenge which had been entered by the appellants in the schedule; any complaint which did not feature in the schedule was not an issue in the application and the FTT was not merely permitted, but was required, to ignore it.

36. I do not accept Mr Granby's very narrow characterisation of the FTT's function in this case.

37. This was not a case in which the Scott schedule adequately defined the issues between the parties and neither they nor the FTT appear to have treated it as a reference point during the hearing, in their closing submissions, or in the decision. One reason for that was the respondents' own procedural defaults. The appellants' column in the Scott schedule was compiled before the respondents complied with the FTT's original direction that they provide copies of invoices and receipts. For that reason, many of the appellant's challenges were, as the FTT recognised, expressed as requests for an explanation for the variations between the charges demanded and the sums which had been incurred in previous years; others were simply challenges to the payability of items for which no explanation or supporting material had ever been provided at all. The appellants' case only fully developed as documents were provided and was largely contained in a witness statement made by Dr Boukadida on 10 February 2020, long after the Scott schedule had been filed. The appellants' case on each issue was then concisely summarised in their closing submissions of 23 March 2020.

38. The respondents' own case emerged very late in the day. Their comments in the Scott schedule did not deal with any of the charges for the years 2014-2017 and referred only to

charges for 2017-18 and 2018-19. No witness statement was relied on by the respondents and they appear to have presented their case orally at the hearing and in the form of their closing written submissions.

39. For the respondents now to maintain that the FTT's decision needed only to deal with the case at the general level reflected in the Scott schedule seems to me both to be procedurally unjustified and to be inconsistent with the FTT's approach (it made no reference to the Scott schedule in its decision). The FTT had tried to assert some procedural discipline in reaction to the respondents' non-compliance with its directions when Judge Powell made his original orders limiting their participation, but those orders were subsequently ignored or implicitly rescinded and a much more permissive approach was adopted by the panel which managed and eventually heard the application. The respondents having benefitted from that approach it would be conspicuously unfair for the issues to be pruned back by reference to a document deprived of much of its usefulness by their own defaults, particularly when the issues had been more clearly defined in the appellants' witness statement filed in good time before the hearing and in its closing submissions.

40. It is convenient next to consider one of the overarching matters raised in the appellants' evidence and submissions, since it has the potential to affect the recoverability of all of the charges in issue. That is the extent of the respondents' compliance with section 47, Landlord and Tenant Act 1987 (the 1987 Act), which requires a demand for payment of service charges to contain the name and address of the landlord. The consequence of a failure to provide that information is that the charge is treated for all purposes as not being due at any time before the information is furnished by the landlord by notice given to the tenant. The effect of non-compliance is therefore only suspensory, but that does not diminish its significance since the fact that charges must be treated as not having been due may be important for other reasons, including where costs have been incurred in demanding arrears which the landlord has sought to recover as administration charges.

41. The appellants' position on section 47 compliance was clearly set out in their closing submissions (paragraphs 15 to 17) and was based on two arguments. First, that although the "landlord" was different for each block, every demand identified the first respondent as "landlord" (an RTM company is taken to be the landlord for the purpose of compliance with section 47 by Commonhold and Leasehold Reform Act 2002 Sch.7 para.12). The demands addressed to the leaseholders of Hermitage Close therefore failed to provide the required information and the sums demanded were not payable. Secondly, in August 2017 the address of both respondents had changed, but this change was not reflected in service charge demands, which continued to refer to their previous address. None of the demands for 2017-18 or 2018-19 were compliant and the sums demanded were not payable.

42. The FTT stated in paragraph 66 of its decision that it was satisfied that the requirements of section 47 had been met for reasons given by the respondents which it had already recorded in paragraph 64(ii). Those reasons did not address the question of whether the landlords' names and addresses were included in the service charge demands, and relied instead on alternative arguments that the appellants knew who their landlords were or, if the proper procedure had not been followed, that new demands could be served. Neither of those arguments was an answer to the appellants' case. No findings were made by the FTT about the identity of the landlords or the content of the demands and no reference

was made to either of the appellants' points. It is therefore impossible to know from the decision whether the service charges are payable or not.

43. Mr Granby's answer to the FTT's omission to deal with the section 47 points raised by the appellants was to suggest that a different point had been taken in Dr Boukadida's first witness statement in June 2019 (at which time he did not appreciate that an RTM company could be a landlord for the purpose of section 47) and that neither of the points relied on had been mentioned in the Scott schedule. I do not accept those are answers to the appellants' arguments. The general issue of compliance with section 47 was clearly identified in the Scott schedule, and there was no need for the appellants to identify whom it was they understood was their landlord. According to the appellants' closing submissions the two points which they relied on were put to Mr Wiles during the hearing and he was said to have accepted that the information provided in the demands was incorrect. The FTT clearly needed to deal with the substance of the issues but it wholly omitted to do so.

44. These reasons alone are sufficient to require that the FTT's decision be remitted to it for further consideration, at least in relation to the ten flats in Hermitage Close for the whole period under examination and the nine flats in Chantry Close for the years 2017-18 and 2018-19.

45. The appellants had additional points in relation to the form of demands and the absence of the information required by section 48, 1987 Act, which the FTT did not mention in its decision, despite them being relied on as a complete answer to the issue of payability. That omission in itself would justify remitting the decision for further consideration in relation to all of the years in issue.

46. Nor did the FTT deal with the appellants' complaint that yearly accounting adjustments had not been made since the RTM companies took over management, despite the service charge account being in surplus. The result was argued to be that the leaseholders were being overcharged and that credits were never applied to their accounts. The answer suggested by the respondents was that there had been deficits rather than surpluses in the service charge account because of non-payment by some leaseholders and that that was why recourse had had to be made to the reserve account for routine expenditure, but that does not seem to me to provide a reason for the respondents not to undertake the annual balancing exercise required by the lease, and to credit any surplus to which an individual leaseholder may be entitled depending on their own payment record. The FTT's omission to address this issue is a separate reason why its conclusion that all the charges demanded are payable cannot stand, since those charges have not taken into account any end of year adjustments which may be required.

47. The FTT also failed to deal with a number of discrete issues concerning specific charges. One such issue concerned insurance, where the appellants asserted that the insurance policies obtained did not comply with the requirement of the lease that the leaseholders be included as insured persons. The finding that the cost of insurance was reasonable was not an answer to that point. A second example concerned the cost of waste collection and junk removal. Mr Ahmed explained that the FTT had misunderstood or misdescribed the appellants' point about this item because it had taken its analysis directly from the respondents' closing

submissions. The appellants' concern was not with the cost of bin hire, but with a change in the treatment of this charge which had originally been a block charge but became an estate charge with the result, it is said, that charges paid by leaseholders in one block were credited against costs incurred in respect of the other block. This was explained in paragraph 33 of the appellants' closing submissions, to which the FTT made no reference. A third example concerned the costs incurred by the respondents' surveyors in preparation for the major works which were eventually postponed. It became apparent during the hearing that the main point taken by Mr Ahmed concerning compliance with section 20 consultation requirements was a bad one (the surveyors' fee was too low to engage the statutory requirements) but other issues were raised which the FTT failed to address (in particular that unnecessary work relating to the third block was charged for, and that the fee exceeded the scale agreed).

48. For all of these reasons I am satisfied that the FTT's decision was inadequately reasoned and failed to deal with the substance of many of the issues raised by the appellants.

49. Mr Granby nevertheless submitted that any action taken by the Tribunal in light of the issues raised under sections 47 and 48, or in relation to the form of contractual demands or annual accounting, should not disturb the FTT's conclusions on other issues, particularly those concerned with the reasonableness of the sums demanded and the general finding that the estate was competently run. I have more sympathy with that submission, at least to the extent that it seeks to maintain the FTT's conclusion that the level of charges was reasonable. I reject the suggestion made in the appellants' original grounds of appeal that it was necessary for the FTT to address each disputed item individually; as I have already explained when discussing the standard of reasons, if a number of similar issues are answered by the same basic finding of fact, there is no reason why the FTT should not say so and deliver a decision dealing compendiously with a number of different charges. I also accept the general proposition that the cost of a service does not become unreasonable simply because someone else may offer to provide the service more cheaply.

Disposal

50. I therefore set aside the FTT's decision so far as it concerns issues other than the reasonableness of the sums claimed by the respondents as service charges. The single exception to that exception is in respect of the sums charged by the respondent's surveyors in preparation for the major works, the reasonableness of which should also be reconsidered. That issue, and the remaining statutory and contractual challenges raised by the appellants in their closing submissions of 23 March 2021 are remitted to the FTT for further consideration.

51. I conclude with three points.

52. The first is Mr Ahmed's application to introduce additional grounds of appeal relating to the FTT's unexplained relaxation of the partial bar imposed by Judge Powell on the respondents' participation in the hearing. It is possible that the FTT considered it was appropriate to relax the bar, because a new hearing date was being fixed and Judge Powell's second order had allowed some flexibility to the panel which finally heard the case. If so,

that should have been explained; if not, the respondents should not have been permitted to give evidence except to the limited extent permitted by Judge Powell. Although that is in some ways the most unsatisfactory aspect of this case I do not think it requires any different outcome. It was the lack of substance in the appellants' claim that certain charges were unreasonable, rather than any evidence led by the respondents, which enabled the FTT's findings on reasonableness to survive this appeal, and it would be no service to the parties to require them to relitigate issues which have been properly determined.

53. The second point concerns the applicants' original application under section 20C, 1985 Act. The FTT refused to make an order preventing the respondents from recovering through the service charge a contribution towards the costs of the proceedings before it. I heard no submissions on that issue, as it would have been premature to have done so, but having remitted the bulk of the application back to the FTT for further consideration my inclination is to set aside the decision refusing an order and to remit the original section 20C application to the FTT to be considered afresh when the final outcome is known. If the parties wish to make submissions on that point, or if the respondents wish to resist the making of an order under section 20C in relation to the costs of the appeal, they should do so in writing with the respondent going first within seven days of the publication of this decision and the appellants responding within a further seven days.

54. Finally, I revert to a point which I made when granting permission to appeal. The parties should appreciate that even after the matter has been reconsidered by the FTT, and perhaps further demands have been issued to reflect necessary adjustments and reconciliations, the final outcome may not be so very different from the FTT's original decision to have justified the substantial expense and effort involved in achieving it. Both parties should therefore consider whether they would be assisted to resolve this dispute in a more satisfactory way by engaging the services of a mediator.

Martin Rodger QC,

Deputy Chamber President

8 July 2021