**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2015] UKUT 0542 (LC)**
**UTLC Case Number: LRX/146/2014**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – admission or agreement – none to be made "by reason only of [the tenant] having made any payment" - section 27A(4)and (5) of the Landlord and Tenant Act 1985***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

| | | |
|---|---|---|
| **BETWEEN** | **PETER CAIN** | **Appellant** |
| | **and** | |
| | **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** | **Respondent** |

**Re: Flat 46,**
**Thornhill Houses,**
**Thornhill Road,**
**London N1 1PA**

**Before: His Honour Judge Nigel Gerald**

**Sitting at: Royal Courts of Justice, Strand. London WC2A 2LL**
**on**
**7 September 2015**

Ms Amanda Gourlay of counsel for the Appellant
*Miss Karmel* for the Respondent

The following cases were referred to in this decision:

The following cases were cited in this decision:
*Shersby v Greenhurst Park Residents Company Limited* [2009] (UKUT 241 (LC))
*Warwickshire Hamlets Ltd v Oliver Geddon* [2010] UKUT 75 (LC)
*Lennon v Ground Rent (Regisport) Limited* [2011] UKUT 330 (LC)
*Staunton v Taylor* LRX/87/2009)
*Cain v London Borough of Islington* [2015] UKUT 0117 (LC).

## DECISION

### Introduction

1. This is an appeal against the 3 November 2014 decision of the First-tier Tribunal (Property Chamber) ("F-tT") when they, as a preliminary issue, determined that the applicant/appellant should be prevented from challenging the reasonableness of any service charges for periods more than 6 years ago under section 27A of the Landlord and Tenant Act 1985, permission to appeal having been granted by the Deputy President of this Tribunal on 5 February 2015.

2. The facts can be shortly stated. In 2002 the appellant acquired the lease of the one-bedroom flat known as No.46, Thornhill Houses, Thornhill Road, London, N1 1PA in respect of which the respondent is landlord. Although from shortly after his purchase the appellant has sought general information about the service charge, it was not until 7 July 2014 that he focused upon the seven specific elements of the service charge which now appear to be challenged, as well as the apportionment of the service charge, when he issued his application challenging the reasonableness of the service charge under section 27A of the 1985 Act for a period of 12 years from the service charge year 2002/2003 right up until 2012/2013. The effect of the F-tT's ruling on the preliminary issue which came before it is that the appellant was prevented from claiming any service charge prior to and including the service charge year 2007/2008.

3. The application is a fairly lengthy and prolix affair from which it is not immediately apparent precisely what issues are being raised and what the appellant's position is, a positive case rarely being put forward, the application taking more the form of a series of questions inviting inquiry as opposed to providing or pleading an answer, assertion or allegation against the respondent as to the unreasonableness of the service charges in question.

4. I will come back to this later in this decision, but suffice to say it is possible to discern two strands of the application. The first is to challenge the manner of apportionment of the service charge between tenants, the appellant's case being that the service charge has not been being apportioned in accordance with the provisions of the lease. I understand that a similar if not the same contention has been advanced by the appellant before the F-tT in Case No. LON/00AU/LSC/2013/0010 but remains unresolved following the compromise of that application and the decision of the Upper Tribunal on 15 March 2015 to decline jurisdiction to resolve the apportionment issue because the service charge dispute had been compromised: see [2015] UKUT 0117 (LC).

5. The second aspect is, I am told by the appellant's counsel Ms Gourlay although this is by no means clear from the face of the application, to challenge seven specific items in each of the six service charge years from 2001/2002 up and until 2006/2007. I do not deal with any in the subsequent years because they are not material for these purposes.

| | **2001/02** | **2002/03** | **2003/04** | **2004/05** | **2005/06** | **2006/07** |
|---|---|---|---|---|---|---|
| Aerials | £ 18.15 | £ 4.45 | £ 6.34 | £ 4.60 | £ 4.32 | £ 5.15 |
| Block lighting | £ 16.31 | £ 5.99 | £ 5.93 | £ 8.20 | £ 10.53 | £ 14.89 |
| Block Repairs | 0 | £ 45.39 | £ 42.65 | £ 20.01 | £ 29.46 | £ 56.02 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Caretaking | £104.91 | £ 99.22 | £108.31 | £119.29 | £188.13 | £240.88 |
| Grounds Maintenance | £ 1.81 | £ 3.27 | £ 4.38 | £5.10 | £ 5.25 | £ 6.12 |
| Insurance Management | £ 12.29 | £ 16.05 | £ 16.97 | £ 16.77 | £ 10.86 | £79.86 |
| Management (Estate) | £255.64 | £173.86 | £227.02 | £188.98 | £223.46 | £230.99 |

In respect of each year, the appellant paid most if not all of the total service charge claimed without any specific provision or retention or qualification in respect of any of these seven items or indeed any other sums and continued to make sometimes quite large service charge payments, the last one being for more than £890 paid in respect of the 2012/13 service charge year.

6. The F-tT reached its decision on four grounds, each of which is challenged on appeal. In paragraph 12 of its decision, the F-tT concluded:

> "…However for the years preceding 2007/8 (in other words the years 2001/2 to 2006/7) the Tribunal is satisfied that it is now no longer appropriate for these years to be litigated before the Tribunal. The reasons for the Tribunal coming to this decision are as follows."

The easiest way forward is to deal with each ground separately and the relevant submissions in respect of them.

7. Before proceeding it is however right to record that the respondents' submissions were initially somewhat confused. I was told by Miss Karmel, who also represented the respondent before the F-tT, that the purpose of the preliminary issue before the F-tT was primarily directed at reducing the scope of disclosure, not limitation, it being the respondent's concern that disclosure would range from the impossible to extremely difficult to track down and locate because they had been archived, some had been lost and it was such a long time ago, being more than 6 years ago. She went on to say that the position the respondent had taken before the F-tT was not that the apportionment of the service charge was statute barred and, indeed, at one stage said that it was not even suggested that the challenges to the seven specific items were statute barred, but, as I have said, that their concern was the disproportionality of disclosure.

8. That was somewhat difficult to follow given the findings of the F-tT. Ultimately, once the respondent had had an opportunity to reflect, I was told that the respondent did take the position that all of the matters were statute barred or prevented by reason of admission or agreement including the issue of apportionment even though the respondent accepted that the apportionment had most probably been in error, not having been calculated in compliance with the provisions of the lease. Even without that, I would have proceeded on the footing that the decision of the F-tT was to the effect that, *inter alia*, the claims for determination of reasonableness were prevented by agreement or admission or statute barred because that is what the decision states.

9. Subsequent to closing submission, the appellant personally emailed two further sets of Observations to the Tribunal for consideration. No regard or weight has been given to them because the appellant was ably represented by counsel such that it is not open to him to directly communicate with the Tribunal to supplement that which has previously been submitted on his behalf. That would be procedurally unfair to the respondent, and would be inappropriate where someone has been

represented by counsel. That said, having read through them, they are of no materiality to the questions which I have to deal with on this appeal.

### Ground one: agreement or admission

10. First, the F-tT found that the appellant was to be treated as having agreed or admitted each of the elements of the service charge and also its apportionment from which it follows that he was debarred from making an application under section 27A by virtue of section 27A(4) and notwithstanding sub-section (5), the material sub-sections of which are as follows:

> "(4) No application under section (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"

11. The relevant parts of the decision are as follows:

> "13. The first reason is that for many years the Applicant has made payment of the sums now being challenged without any demur at all. By virtue of section 27A(4) of the Act, the Applicant is precluded from proceeding with a determination in respect of sums which he has agreed or admitted. By virtue of Section 27A(5) of the Act, the Applicant is not to be taken to have agreed or admitted any matter by reason only of having made any payment. However, the Applicant in this case (just as the Appellant in the case of *Shersby v Greenhurst Park Residents Company Limited* [2009] (UKUT 241 (LC)) has done substantially more than make payments in respect of these years. First, in common with the Appellant in the case cited, he has not only made the payments but has waited an extremely long time (that is to say until this application) before seeking to challenge them before the Tribunal. In the meantime there has been other cases involving the selfsame parties. The respondent was compelled to take proceedings against the Applicant in order to recover the costs of major works and those proceedings led to a judgment in default in the Lambeth County Court.
>
> "14. Secondly, throughout the period since the inception of the transfer of the lease to the Applicant (some 12 years) the nature of the exchanges between themselves and the Respondent have very largely been requests for information from the Applicant to the Respondent. When asked by the Tribunal why this was so, the gist of his reply was that he was entitled to know how they were calculating his claim and upon what basis decisions were being taken about rates of pay, calculation of costs and apportionment of costs. The effect of this, in the view of the Tribunal, was that whilst it was entirely possible that once the information had been supplied, there would be challenges, it was equally possible that given the methodology adopted by the Respondent, the Applicant would accept that which he was being charged. Of course this is speculation, but the requests being made by the Applicant to the Respondent were not clearly defined challenges to specific sums, and an explanation as to what the appropriate sum was intended by the Applicant to be (at any rate not on the basis of the submissions made by the Applicant to the Tribunal). They were more in the nature of requests for information. The replies to the requests may not have been controversial.

> "15. Finally, when asked by the Tribunal why he did not simply make the application which he is now making before the Tribunal many years ago, he told the Tribunal that "*I did not want to waste anyone's time. Why should I waste the time of the Tribunal when Islington had the information but would just not provide it.*" Whilst it was entirely the perogative of the Applicant not to bring the obvious application before the Tribunal (of the kind he is now making) during this long period of time, it seems to the Tribunal that this conduct can be put in the balance together with the other matters raised above, all of which are consistent with the conclusion, which the Tribunal reaches, that he may be deemed to have admitted the charges which are now old and predate the beginning of his complaints in 2006. For these reasons, it seems to the Tribunal that the Applicant is precluded by section 27A(4) from bringing this application in respect of those years now long since past."

12. The appellant submitted that there was insufficient to found any agreement or admission, in particular, no specific date or act or failure to act was identified by the F-tT so that, on analysis, all that was left was payment which, by virtue of section 27A(5), can not found an admission or agreement. Further, as a matter of law, an admission or agreement can not be inferred from a lessee's conduct under section 27A(5).

13. The respondent submitted that the F-tT was right to conclude that the appellant should be treated as having agreed or admitted the amounts of the service charge in this six year period.

14. Before considering the facts of this case, it is necessary to consider the meaning and effect of section 27A(5). An agreement or admission may be express, or implied or inferred from the facts and circumstances. In either situation the agreement or admission must be clear, the finding being based upon the objectively ascertained intention of the tenant which may be express or implied or inferred from the conduct of the tenant – usually an act or a series of acts or inaction in the face of specific circumstances or even mere inaction over a long period of time or a combination of the two.

15. Absent sub-section (5) and depending upon the facts and circumstances, it would be open to the F-tT to imply or infer from the fact of a single payment of a specific sum demanded that the tenant had agreed or admitted that the amount claimed and paid was the amount properly payable, *a fortiori* where there is a series of payments made without challenge or protest. Part of the reason for this is that people generally do not pay money without protest unless they accept that that which is demanded is properly due and owing, and certainly not regularly over a period of time. Whilst it would generally be inappropriate to make such an implication or inference from a single payment because it could not be said that the conduct of the tenant was sufficiently clear, where there have been repeated payments over a period of time of sums demanded, there may come a time when such an implication or inference is irresistible.

16. Taking matters one step further, it would be open to the F-tT to make such a finding even where there had been no payment at all but there were other facts and circumstances clearly indicating that the tenant had agreed or admitted the amounts claimed. What is required is some conduct which gives rise to the clear implication or inference that that which is demanded is agreed or admitted by the tenant. The relevant question, therefore, is: are there any facts or circumstances from which it can properly be inferred or implied that the tenant has agreed or admitted the amount of service charge which is now claimed against him?

17. The effect of sub-section (5), however, is to preclude any such finding "by reason *only of* [the tenant] having made *any payment*" (italics supplied). The reference to the making of "any payment", and "only" such payment, indicates that whilst the making of a single payment on its own, or without more, will never be sufficient to found the finding of agreement or admission, the making of multiple payments even of different amounts necessarily over a period of time (because that is how service charges work) may suffice. Putting it another way, the making of a single payment on its own, or without more, will never be sufficient; there must always be other circumstances from which agreement or admission can be implied or inferred. And those circumstances may be a series of unqualified payments over a period of time which, depending upon the circumstances, could be quite short, it always being a question of fact and degree in every case.

18. 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 commonsense 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. Self-evidently, the longer the period over which payments have been made the more readily the court or tribunal will be to hold that the tenant has agreed or admitted that which has been demanded and paid. It is the absence of protest or qualification which provides the additional evidence from which agreement or admission can be implied or inferred.

19. An illustration is provided by the case of *Shersby* in which agreement or admission was found to be established from a combination of a series of payments over a period of time coupled with (a) substantial delay before challenge and (b) other proceedings in which the applicant tenant had the opportunity to and could, and perhaps should, have challenged those elements which he later challenged. The kernel of that decision is found in the following passage:

> "44. As regards the years 1997-2004 inclusive I accept Mr Bhose's argument that the Appellant is not entitled to make an application under section 27A in respect of these payments. I find that he has agreed or admitted these sums and that section 27A(4) prevents his application in respect of these years. As regards section 27A(5) this provides that the Appellant is not to have been taken to have agreed or admitted any matter by reason of only having made any payment. However, the Appellant has done substantially more than merely make payment in respect of these years. He has not only made the payments but has waited a long time (namely until the 2007 application) before seeking to challenge them, and has in the meantime made a separate application to an LVT raising various matters regarding charges but not raising any matter as regards these insurance premiums. The 2005 proceedings were then withdrawn without the insurance premiums having been raised as an issue. The combination of these repeated payment, without any complaint or reservation, coupled with the lapse of time and with the express challenging in the form of the 2005 proceedings of certain matters (but not these insurance matters) leads me to conclude that the Appellant must be taken to have agreed or admitted these premiums."

20. *Shersby* was a particularly strong case because in addition to a series of payments being made without challenge over a long period of time, there were proceedings in which, the Upper Tribunal held, the tenant should have but failed to raise the challenges he subsequently sought to raise. That was a finding akin to an abuse of process, it being established that all issues in dispute should be raised when the matter comes before the court. It however should not be treated as authority for the proposition that there must be something additional to a series of unchallenged payments over a period of time. As I have said, whether that will suffice depends upon the circumstances of the case.

21. Turning to the facts of this case, as I indicated at the outset, it is unclear precisely what is being challenged in each of the years in question. The application starts off making it clear that the gravamen of appellant-applicant's complaint is the issue of apportionment and essentially matters of law rather than challenging the amount of the individual components of the service charge. I say this because the opening words of the material part of the application state that "This application is primarily about the overall methodology, legality, and correct interpretation of the Respondent's lease and method used to calculate leaseholder service charge" and then goes on to say that "correct apportionment of those service charges the Applicant is being invoiced for (to be considered by the Lands Chamber)". As I have said, the Upper Tribunal declined to determine the issue of apportionment because that aspect of that application had been determined by agreement between the parties. There then follows as series of questions of whether certain fees are reasonable, fair and reasonable, inflated and so on.

22. It was not until oral submissions that Ms Gourlay made clear that the items being challenged are those seven items which I have identified above. In respect of those seven items, as I understand it, the appellant asserts that there should have been no charges for the aerial maintenance or grounds maintenance (gardening) because none was done; there was no entitlement to claim insurance management fee under the provisions of the lease, there being no challenge to the *per se* reasonableness of the amounts charged in respect of either of these items; the block lighting was illegally calculated (so, presumably, unreasonable); and the amount charged in respect of the estate management was unfair and unreasonable.

23. When viewed in that light, particularly in respect of the gardening charges and insurance management fee, it is striking that neither of those items required any form of disclosure to challenge because all that the tenant needed to do was look out of his window and observe that the garden was not maintained and look at his lease and note that insurance management fees were irrecoverable (if either be the case), yet he made no complaint until 7 June 2014, some 12 after the first service charge year now challenged and either years after the sixth service charge year, all the while paying most or all of the service charges as and when demanded without qualification. The only material communication to which I have been referred was an email dated 4 April 2003 enquiring who was responsible for ground maintenance as he understood that no-one was being paid to look after it. That followed an email almost a year ago to the day, 3 April 2003, asking for the previous two years audited accounts with full supporting documentation. Neither are sufficient to amount to a challenge or protest in respect of any aspect of the service charge.

24. The only explanation put forward is that the appellant did not have the material which he required to mount his challenge and still does not have all of the material he would like because the respondent has failed to provide it despite, I am told, over 70 requests for service charge information having been made some of which have been abortive and refused on appeal to the Information

Commission and dismissed as “vexatious” by the First-Tier Tribunal General Regulatory Chamber Information Rights. That explanation does not stand scrutiny in respect of the gardening costs and insurance management fee for reasons stated, and probably does not in respect of the aerial. So far as the other items are concerned, I do not know when the first requests for information were made under the Freedom of Information Act 2000 although they were probably from around November 2011 onwards. Neither do I know what precisely was requested. However, it does not follow from the fact of a request for information being made that something is being challenged, especially where it would appear that the items now being challenged are of such antiquity and payment has been made without qualification or protest. As the F-tT said, the requests were in the nature of requests for information and nothing more.

25. The question is whether there are any facts and circumstances from which the F-tT could properly have found that the appellant had agreed or admitted the service charge items in respect of the 2001/02 to 2006/07 period he now seeks to challenge. In my judgment, the F-tT was entitled to so find based purely upon the series of payment in respect of the demanded service charge throughout this six year period, and subsequently, without reservation, qualification or other challenge or protest. That of itself is sufficient. The is, however, reinforced by the sheer length of time which has elapsed before challenge was first made – between eight years in respect of the 2006/07 service charge and 12 years for the 2001/02 service charge. Whilst distinctions can be made between the nature of the different service charge items being challenged, the F-tT is entitled to look at matters in the round and find that where there has been substantial delay in making any challenges to the items now in dispute, and most if not all of which have long-since been paid, that the tenant has agreed or admitted the amounts claimed which, after all, have long-since lain dormant without challenge.

26. It in my judgment, and contrary to the submissions of Ms Gourlay, is no bar to such a finding that a particular act or date can not be pointed to. This is because it is inherent in the nature of the facts and circumstances (inactivity; payment without qualification for a long time) that it is not possible to pinpoint any particular date upon which the agreement or admission was or should be treated as having been made. Here, the F-tT was invited to find that the claim should be limited to six years prior to the making of the application on the implicit footing that it was to be implied or inferred that the applicant had agreed or admitted the first six years’ service charges at some stage thereafter although the precise date could not be pinpointed.

27. There is, however, no magic to the claim being limited to six years before the making of the application: that is was what the F-tT was asked to find, and it acceded to that request. The fact that it coincides with what is frequently the applicable limitation period is of no materiality because a finding of admission or agreement is a finding of fact to the effect that the tenant has agreed or admitted the amount due so ousting the jurisdiction of the F-tT and indeed the county court by dint of section 27A(4)(a): it is not a question of limitation. Had the F-tT been asked to find that agreement or admission should be treated as having been made within a shorter period before making the application, the F-tT would, depending on the facts and circumstances, have been entitled to so find.

28. The F-tT went a little further and found that the applicant had an opportunity to put forward these allegations when litigation was pursued in the Lambeth County Court. As I understand it, the respondent issued proceedings in the Lambeth County Court for payment of a disputed service

charge which on 3 January 2013 was referred "to the leasehold valuation tribunal …to determine the reasonableness of the service charge demanded". What was referred was in relation to one or two elements of one service charge year, the underlying challenge being apportionment. That was compromised without determination of that issue.

29. In my judgment, the F-tT probably went too far in holding that that which is now being challenged should have been raised in that referral to the F-tT. I say this because it has been held that the jurisdiction of the F-tT in a case referred to it from the county court is confined to the question referred and all issues comprehended within that question (*Lennon v Ground Rent (Regisport) Limited* [2011] UKUT 330 (LC) and *Staunton v Taylor* LRX/87/2009), even though it has been held that principle ought to be applied in a practical manner and with some latitude: see *Cain v London Borough of Islington* [2015] UKUT 0117 (LC). In other words, the referral by the Lambeth County Court was of insufficient ambit to vest jurisdiction in the F-tT to determine issues relating to the 2001/02 to 2006/07 service charge years. What would have been required would have been a new application raising the instant issues, perhaps conjoined with the referral. On analysis, what the F-tT was really saying was that the applicant had had ample time within which to challenge these service charge items and had failed to so do so so should not now be able to challenge them, it being proper to find that he had admitted or agreed them. With that I respectfully agree.

30. Albeit for reasons slightly differently expressed, I refuse this aspect of the appeal against the decision of the F-tT. In my judgment, this encompasses the apparent challenge to the apportionment of the service charge in respect of the service charge years from 2001/02 to 2006/07. Whilst that has not been adjudicated upon and whilst the respondent appears to accept that it has miscalculated the amount payable, I see no reason why the tenant should not be treated as having agreed or admitted this aspect of the service charge so far as the jurisdiction of the F-tT and the 1985 Act is concerned. This is not altered by the fact that he now wishes, and has been permitted, to challenge apportionment in subsequent years.

**Ground two: six year limitation period**

**Ground three: laches**

31. Secondly, the F-tT found that the claim was statute barred and, thirdly, that the applicant was prevented by laches from pursuing what was a restitutionary claim. The reasoning of both grounds is to be found in the following paragraphs of the F-tT's decision:

> "16. Further, and if for any reason, the Applicant should not be barred by Section 27A(4) then it seems to the Tribunal that his claim is in the nature of a restitutionary claim. He is not suing under the lease (which being under seal which enable the Applicant to rely upon Section 8 of the Act (12 years permitted in respect of a speciality). Even if Section 8 of the Act is an Application, it is qualified by Section 8(2) of the Act which says that Section 8(1) shall not effect any action for which a shorter period of limitation is prescribed by any other provision of the Act. The other provision of the Act which might apply is Section 19 which imposes a time limit of 6 years in respect of recovery of rent. The service charge in this case is reserved in the lease as "rent" and that the time limit in respect of rent for six years. Accordingly on the face of it, Section 8 of the Act is qualified by Section 8(2) and Section 19 which appear to take precedence. Once again, even if this is not the case it seems to the Tribunal that the proper characterisation of the applicant's case is as indicated above, a claim based in restitution. He is

not seeking to rely on a particular provision in the lease; his claim is that the Respondent is wrongfully holding monies paid by him, which in fact should be returned to him.

"17. It is well established that a restitutionary claim is one for equitable relief, subject to equitable principles. If it is indeed the case, as the Tribunal has found, that it would have been entirely open for the Applicant to have brought these proceedings many years ago, then there has been a very long delay (or "*laches*" as was the Latin name for such delay) which would preclude the Applicant from pursing his claim subsequently for the period affected by that delay. For the reasons indicated above, the Tribunal concludes that that delay was up until the time first registered by the Respondent of any proper complaint in 2006 and the years falling before those already identified in paragraph 12 above should not be pursued because the delay on the part of the Applicant."

32. Given the conclusion I have already reached, it is not necessary for me to deal with these aspects of the appeal in any detail. I will however do so briefly.

33. With regard to the finding that the claim was statute barred because it was a claim for re-payment of service charge in respect of which a six year limitation period applies, this, in my judgment, is misconceived. Section 8 of the Limitation Act 1980 provides as follows:

(1) An action upon a speciality shall not be brought after the expiration of 12 years from the date on which the cause of action accrued.

(2) Subsection (1) above shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act."

Section 19 of the 1980 Act provides as follows:

"No action shall be brought, or distress made, to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of 6 years before the date on which the arrears became due."

34. The application to the F-tT is a claim for determination as to the reasonableness of the service charge made under section 27A of the 1985 Act. It is not a claim to recover rent or arrears or service charge (both brought by the landlord) or damages in respect thereof (brought by the tenant). If successful, it would result in a determination as to the reasonableness of the amounts claimed and nothing more.

35. With regard to the finding that the doctrine of laches applies, in my judgment that is misconceived because that only applies to equitable claims where no period of limitation is provided, such as restitution. This claim is not an equitable claim but a claim to determination of the reasonableness of the amounts claimed by way of service charge under statute. In that regard I respectfully adopt the reasoning of His Honour Judge Huskinson in *Warwickshire Hamlets Ltd v Oliver Geddon* [2010] UKUT 75 (LC) where he said as follows:

"60. As regards Mr Derby's appeal to the doctrine of laches, it is right to note that Mr Derby realistically and frankly accepted that he could not say that laches applied because the doctrine of laches only applies to claims for equitable relief when no limitation is prescribed by statute. Here he recognises there is no claim for equitable relief but insisted the Respondents have made an application to the LVT under statutory provision giving them power to do so, namely section 27A of the 1985 Act as amended. Accordingly I conclude that the doctrine of laches cannot help the Appellants…"

**Ground four: case management powers**

36. The fourth and final reason of the decision of the Tribunal was essentially an exercise in case management. The material parts of the decision are as follows:

> "18. A final reason for the Tribunal concluding that the year mentioned above should not be part of the determination to be made by the Tribunal is that of the overriding objective. By virtue of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to apply the principles of the overriding objective imported from the Civil Procedure Rules (see Rule 3 of the Rules). In determining the preliminary issue in this case the Tribunal has management powers which include the power to deal with an issue in the proceedings as a preliminary issue (Rule 6(3)(g)) and also by virtue of Rule 9(3) the Tribunal may strike out the whole or part of proceedings or case where the Tribunal considers that there is no reasonable prospect of the Applicant's proceedings or case, or part of it, succeeding – (see Rule 9(3)(e)).
>
> "19. The overriding objective requires the Tribunal to give proper consideration to dealing with a case fairly unjustly. In order so to do, the Tribunal needs to consider proportionality and the anticipated costs and the resources of the parties and of the Tribunal. It is necessary to ensure that the parties, so far as practical, are able to participate fully in the proceedings. Because of the background to this case, as already outlined above, the Tribunal finds that it will be wholly disproportionate to have a detailed examination of all the heads of service charge for the year going back as far as 2001/2 – 2006/7. Some of this information may be held in archives (the exercise has not yet been carried out) but some of it will by now have been disposed of or be exceedingly difficult to ascertain. Moreover from a factual point of view, if it is the Applicant's case – as he inferred may be the position in respect of some heads of charge, that the quality or fact of certain works is in dispute, the Respondent will be in a difficult, if not impossible situation according to a precise witnesses who can deal with such an allegation at this time. They are likely on the basis of probability, no longer to be traceable and if they are, cannot be expected to remember matters relating to service charges and the performance of duties going back such a long period of time. The paperwork and other documentation will again be difficult, if not impossible to unearth – and even if it is possible it will be at an expense completely disproportionate to the sums being challenged. It seems to the Tribunal that some kind of injection of reality to what is sensible to pursue at this stage and what is no longer sensible, has to occur, and the Tribunal in the exercise of its powers as referred to above, takes the view that it would be disproportionate and neither fair nor just at this stage to go back beyond the year 2007/8- which itself is some significant period in past."

37. It is again strictly unnecessary for me to consider this aspect of the appeal. However, I would simply say by way of general observation that the case management powers of the F-tT and indeed the court can not properly be used to prevent litigants from pursuing what the F-tT and court might regard as stale claims as that is a function of applicable limitation periods, laches or, in this case as has been found, a determination that that which is disputed has been agreed or admitted.

38. The purposes of case management powers is to manage litigation once commenced and make its management proportionate, not to effectively strike out a claim because it is too old or the costs of litigating far exceed the amount at stake. If that were so many challenges to the reasonableness of service charges would be open to challenge and “strike out” especially where a local authority is concerned because it is frequently the case that relatively small sums are involved and the costs of a local authority using its staff and outsourcing to lawyers and digging through all its archives are far in excess of that which is in stake. That is often the case with the private landlord also. But that of itself does not justify bringing an otherwise legitimate challenge under the 1985 Act to a premature end.

## Conclusion

39. For those reasons, I therefore dismiss this appeal.

Dated: 25 September 2015

His Honour Judge Nigel Gerald