- The FtT (Property Chamber)'s costs jurisdiction for remediation and remediation contribution orders is the no costs jurisdiction under rule 13: unreasonable conduct and wasted costs orders only.
- S20C orders can be made in relation to the landlord's costs.
- Could one make a remediation contribution order application to get remediation order application costs?

Costs recovery for RCOs/ROs

One of the things that may be surprising about remediation orders and remediation contribution orders, both potentially expensive pieces of litigation that leaseholders may be forced to pursue, is that the FtT's jurisdiction on costs is the "no costs" jurisdiction under rule 13 of its Rules. Costs (beyond payment of application fees) can only be awarded by the FtT if a party has behaved unreasonably, a high threshold, or for wasted costs (likewise). Although the Building Safety Act 2022 did not expressly say that the FtT was to have this no costs jurisdiction (rather than its costs jurisdictions for example in relation to its Land Registration or telecoms), amendments to the Rules from 1 November 2022 make express which jurisdictions can have real cost implications. The new Building Safety Act jurisdictions are not included.

The FtT has confirmed that the no costs jurisdiction applies in both of its substantive decisions under these jurisdictions to date, *Batish v Inspired Sutton* (2023, FtT(PC), McGrath and Powell), and *Waite v Kedai* (2023, FtT(PC), Powell and Bowers). The FtT's jurisdiction under s20C of the Landlord and Tenant Act 1985 does apply to these applications, so that the FtT can make an order limiting landlord recovery of the costs of the application through the service charge. In *Waite v Kedai*, the FtT concluded that s20C should not be limited by the schedule 8 Building Safety Act 2022 limits on service charge recovery. It could make a s20C order for the benefit of leaseholders whose service charges for the works would not be limited.

Is there any other route for leaseholders to recover their costs of litigation in relation to remediation order applications? It seems possible that one might make a remediation contribution order application at the same time, and seek to argue that the litigation costs were "costs incurred in remedying relevant defects" under s124(2), because without their incurrence the relevant defects would not have been remedied.

Falcon Chambers

Catherine Taskis KC and Cecily Crampin