

12094



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HN/LSC/2016/0020

Property : Caledonian Court, 446 Christchurch Road,
Bournemouth, BH1 4AY

Applicant : Ms Z Youssefi accompanied by Mr Mark
Williams

Representative : Not represented

Respondent : Caledonian Court (Bournemouth) Limited

Representative : Mrs Aileen Lacy-Payne of Napier
Management Services Limited

Type of Application : Liability to pay and reasonableness of
service charges. Liability to pay and
reasonableness of administration charges.

Tribunal Members : Judge N Jutton and Mr P D Turner-Powell
FRICS

Date of Decision : 28 November 2016

DECISION

1 **Introduction**

2 The Applicant, Ms Z Youssefi, is the Lessee of Flat 5, Caledonian Court,
446 Christchurch Road, Bournemouth, BH1 4AY (the Premises).

3 The Applicant holds the Premises under the terms of a Lease dated 6
September 1988 and made between Caledonian Court (Bournemouth)
Management Co Ltd (1) and Ali Sadeh and Hamid Reza Shokrani (2) and
Lindsey Newton (3) which is for a term of 99 years less 10 days from 25
December 1987 (the Lease).

4 On 25 January 2016 the Applicant submitted an application to the
Tribunal for a determination of the following matters:

1. As to whether the service charges for the years ending 23 June 2014
and 23 June 2015 were payable and if so were reasonable.
2. As to whether a demand for payment of services charges in advance
on account for the year ending 23 June 2016 was payable and if so
reasonable.
3. Whether all or any of the costs incurred by the Respondent in
connection with these proceedings were not to be regarded as
relevant costs to be taken into account in determining the amount
of any service charges payable by the Applicant.
4. Whether certain administration charges demanded by the
Respondent were payable and if so, were reasonable.

5 Directions were made by the Tribunal on 16 March 2016. They provided
for the Respondent to send to the Applicant audited and certified service
charge accounts for the years 2013, 2014 and 2015 together with all
demands for payment and details of payments made between 2013 and
2015. They provided for the Applicant to file a Statement of Case
including a Schedule setting out which items of service charge she
disputed, the reasons why and the amount that the Applicant would be
prepared to pay, together with copies of any alternative quotes or other
documents upon which the Applicant sought to rely. The Directions
provided for the Respondent to file a Statement of Case in response to
include a Schedule containing the Respondent's comments and
responses to the issues raised by the Applicant. There was provision for
the Applicant to serve a brief supplementary Reply if she so wished.

6 The matter came on for hearing before the Tribunal on 12 August 2016.
The hearing was not concluded that day and was part-heard. The
Tribunal was unable to complete its determination on that day because it
took the view that to deal with the matter fairly and justly, it required to
see further documents to be disclosed by the Respondent. It therefore
made, at the conclusion of the hearing, further Directions for disclosure
of documents by the Respondent and for written submissions by the
parties. Both parties confirmed that they were content for the Tribunal to

complete its determination on the basis of those written submissions without a further hearing. Further Directions were made by the Tribunal on 12 October 2016 and 1 November 2016 providing for the Applicant, if she wished, to file and serve further written submissions. In the event, the Applicant did not file further written submissions by the dates provided for in those Directions.

7 Documents

8 The documents before the Tribunal comprised:

1. A bundle of documents running to some 464 pages including the Applicant's applications, a copy of the Lease, the parties' Statements of Case, service charge accounts for the years ending 24 June 2013, 24 June 2014 and 24 June 2015 together with copy invoices for items of expenditure and details of the disputed administration charges. References to page numbers in this Decision are references to page numbers in that bundle.
2. Further documents comprising nominal check documents for the years ending 24 June 2014 and 24 June 2015 together with further invoices pursuant to Directions made by the Tribunal on 12 August 2016, together with copy insurance schedule documents for the years ending 31 December 2014 and 31 December 2015 which were handed up to the Tribunal at the hearing on 12 August 2016.
3. A further Statement of Case filed by the Applicant, form of letters to the Tribunal dated 2 September 2016 and 5 September 2016 in accordance with the Directions made by the Tribunal on 12 August 2016.

9 The Inspection

10 The Tribunal inspected the Property on the morning of 12 August 2016. It was accompanied by the Applicant Ms Youssefi, her colleague Mr Mark Williams and Mrs Aileen Lacy-Payne of Napier Management Services Limited. The original part of the Property appears to be Edwardian but has over the years been substantially extended and now contains 29 flats over 3 floors. It is constructed of brick elevations which are largely rendered with tiled roofs and UPVC windows. There are two main car parking areas. One at the front and side of the Property and another accessed via an arch which separates the two sections of the building. There is a small garden area at the front. The Tribunal inspected the exterior of the Property and at the request of the parties, two internal communal halls.

11 The Law

12 The statutory provisions relevant to service charge applications are to be found in sections 18, 19, 20C and 27A of the Landlord and Tenant Act 1985 (the 1985 Act). They provide as follows:

The 1985 Act

- 18 (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
- (a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs.*
- (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
- (3) *For this purpose –*
- (a) *"costs" includes overheads, and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*
- 19 (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*
- (a) *only to the extent that they are reasonably incurred, and*
 - (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise*
- 27A (1) *An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –*
- (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –*
- (a) *the person by whom it would be payable,*
 - (b) *the person to whom it would be payable,*

- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(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,
- (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

5 But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

20C (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the First-Tier Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made –.....

(ba) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

13 The statutory provisions relevant to an application as to liability to pay an administration charge are to be found in schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). They provide as follows:

1 (1) In this Part of this Schedule ‘administration charge’ means the amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of any failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease

(3) *In this Part of this Schedule 'variable administration charge' means an administration charge payable by a tenant which is neither –*

(a) *specified in his lease, nor*

(b) *calculated in accordance with a formula specified in his lease*

2 *A variable administration charge is payable only to the extent that the amount of the charge is reasonable*

5 (1) *An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to –*

(a) *the person by whom it is payable,*

(b) *the person to whom it is payable,*

(c) *the amount which is payable,*

(d) *the date, act or by which it is payable, and*

(e) *the manner in which it is payable.*

(2) *Sub-paragraph (1) applies whether or not any payment has been made.*

(3) *The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a Court in respect of the matter.*

(4) *No application under sub-paragraph (1) may be made in respect of a matter which:*

(a) *has been agreed or admitted by the tenant,*

(b) *has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,*

(c) *has been the subject to determination by a court, or*

(d) *has been the subject of determination by a arbitral tribunal pursuant to a post dispute arbitration agreement.*

(5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

14 **The Lease**

15 A copy of the Lease appears at pages 27-44 in the Bundle.

16 By clause 2 of the Lease, the Lessee covenants with the Lessor to perform and observe the covenants on the part of the Lessee set out in the 6th Schedule of the Lease.

17 By clause 3 of the Lease, the Lessor covenants to perform and observe the covenants on its part set out in the 7th Schedule of the Lease.

18 The 6th Schedule of the Lease provides –

“... 19 The Lessee shall contribute and shall keep the Lessor indemnified from and against one twenty-ninth of all costs and expenses incurred by the Lessor in carrying out its obligations under and giving effect to the provisions (clauses 1to16) of the Seventh Schedule hereto.

20 ...

(b) The Lessee shall hereafter on the Twenty-fourth day of June in each year during the continuance of this demise pay to the Lessor an advance amounting to the proportionate amount (as certified in accordance with Clause 15 of the Seventh Schedule) due from or paid by the Lessee to the Lessor for the accounting period to which the most recent notice under Clause 16 of the Seventh Schedule relates.

21 The Lessee shall within twenty-one days after the service by the Lessor on the Lessee of a notice in writing stating the proportionate amount (certified in accordance with Clause 15 of the Seventh Schedule) due from the Lessee to the Lessor pursuant to Clause 19 of this Schedule for the accounting period to which the notice relates pay to the Lessor or be entitled to receive from the Lessor the balance by which that proportionate amount respectively exceeds or falls short of the total sums paid by the Lessee to the Lessor pursuant to the last preceding clause during that period.

19 The 7th Schedule of the Lease contains covenants on the part of the Lessor including covenants to insure the building, to paint the exterior, to maintain common parts including garden areas, to employ agents, to maintain a reserve fund and to keep books of account. Further and in particular:

13

(a) The Lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this Schedule by charging against such costs and expenses in each year and carrying to a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future expenses liabilities or payments whether certain or contingent and whether obligatory or discretionary.

(b) If and so far as any monies received by the Lessor from the Lessee during any year by way of contribution to the Lessor's said costs and expenses are not actually expended by the Lessor during that year in pursuance of this Schedule nor otherwise dealt with so as to be an allowable expense in calculating the Lessor's income for tax purposes for that year the Lessor shall hold those monies upon trust to expend them in subsequent years in pursuance of this Schedule and subject thereto upon trust for the Lessee absolutely.

14 *The Lessor shall keep proper books of account for all costs and expenses incurred by it in carrying out its obligations under this Schedule and an account shall be taken on a date to be fixed by the Lessor within 2 years of the date hereof and on the anniversary of such date in every subsequent year during the continuance of this demise of the amount of those costs and expenses incurred since the date hereof or the date of the last preceding account as the case may be.*

15 *The account taken in pursuance of the last preceding clause shall be prepared and audited by a competent chartered accountant who shall certify the total amount of the said costs and expenses (including the audit fee of the accountant) for the period to which the account relates and the proportionate amount due from the Lessee to the Lessor pursuant to clause 19 of the Sixth Schedule.*

16 *The Lessor shall within two months of the date to which the account provided for in Clause 14 of this Schedule is taken serve on the Lessee a notice in writing stating the total and proportionate amounts specified in accordance with the last preceding clause.*

- 20 Clause 23 of the 6th Schedule contains a covenant on the Lessee's part as follows:

The Lessee shall pay to the Lessor and the Developer (as Head Lessor) all costs charges and expenses (including legal costs and surveyor's fees) incurred by the Lessor and the Developer (as Head Lessor) for the purpose of or incidental to the preparation and service of any notice or proceedings under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court.

21 **The Issues**

- 22 At the start of the hearing on 12 August 2016 and consistent with the Applicant's applications and the Directions made on 16 March 2016, it was agreed with the parties that the following issues fell to be determined by the Tribunal:

1. Whether the actual service charges for the year 2013/2014 were payable and if so, reasonable.
2. Whether the actual service charges for the year 2014/2015 were payable and if so, reasonable.
3. Whether service charge payments demanded in advance for the year 2015/2016 were payable and if so, reasonable.
4. Whether an order under section 20C of the 1985 Act should be made.

5. Whether the administration charges demanded by the Respondent were payable under the terms of the Lease and if so, whether they were reasonable.
- 23 At the hearing on 12 August 2016, the Applicant made an application to adjourn the hearing and for disclosure of further documents by the Respondent. Those are documents set out in a letter from the Applicant to the Tribunal dated 5 August 2016 which in summary were:
1. 'Full accounts' rather than 'abbreviated accounts'.
 2. Confirmation of receipts of all payments made by the Applicant since 2000.
 3. The Managing Agents' bank statements.
 4. Original invoices of expenditure incurred by the Respondent.
 5. Copies of expert's health and safety and building reports.
 6. Copies of insurance schedules and policies and 'original bills'.
- 24 The Applicant referred to the accounts contained in the Bundle and in particular to a note at page 58 for the accounts ending 24 June 2013. She referred to a paragraph that read:
- "These procedures did not constitute an audit in accordance with international standards on auditing (UK and Ireland) and were not designed to provide any assurance regarding whether the amounts charged are a reasonable amount for the services, or whether those services would be provided effectively".*
- 25 The accounts the Applicant submitted were as such abbreviated accounts and she said that she was entitled to receive full accounts.
- 26 The Tribunal referred her to another paragraph on the same page which reads:
- "Our work was carried out having regard to TECH01/10 published jointly by ICAEW, ARMA and RICS. In summary, the procedures to be carried out with respect to the service charge accounts were:*
1. *To check whether the figures contained in the information were extracted correctly from the accounting records maintained by or on behalf of the managing agents; and*
 2. *To check, based on a sample, whether entries in the accounting records were supported by receipts, other documentation or evidence that we inspected".*

- 27 The Tribunal pointed out the accounts contained in the Bundle which set out items of expenditure for service charges were in a form that the Tribunal would expect to see for service charge accounts.
- 28 Mrs Lacy-Payne resisted the application saying that it was made too late in the day. In any event she contended, the documents that the Applicant sought disclosure of were not relevant to the issues before the Tribunal.
- 29 The Tribunal determined that it would not adjourn the hearing nor make a further Order for disclosure. The application was made too late in the day. It was an application which the Applicant could have made substantially before the hearing. Further, the bulk of the documents that the Applicant sought disclosure of were not relevant to the issues before the Tribunal. The Applicant's application was dismissed.
- 30 The Tribunal has carefully considered all of the oral representations made by the parties to it at the hearing on 12 August 2016, together with the written submissions made by the parties and all documents before the Tribunal in addressing the issues that fall to be determined by it as set out above.
- 31 The Tribunal makes a general point in respect of the nominal check documents produced by the Respondent and the references in that document to invoices. The nominal check documents break down items of expenditure by reference to 'nom' numbers which appear in the first column of the nominal check document. For example, cleaning appears under 'nom' number 6040, gardening under 6080, electricity charges under 6100. Some of these 'nom' numbers relate directly to items appearing in the service charge accounts. For example, the service charge accounts for the year ending 24 June 2014 show a figure for garden maintenance of £1120 and that corresponds to figures set out for gardening in the nominal check document under 'nom' number 6080. There are however certain items of expenditure which are listed in the service charge accounts which are not given a separate 'nom' number in the nominal check documents. For example, for the year ending 24 June 2014, there is no separate 'nom' number for 'general maintenance and repairs' or for 'doors and windows', both of which appear as separate items in the service charge accounts. It is however clear to the Tribunal that such items appearing in the service charge accounts form part of those items listed under 'nom' number 6140 in the nominal check documents. Taken as a whole, the nominal check documents appear to address and include each item listed in the service charge accounts.

32 **Actual Service Charges for the Year Ending 24 June 2014**

33 **Management Fees**

- 34 The Applicant says that she does not feel that the Respondent's managing agents properly manage the Property. That the standard of management is poor. That she should not have to pay for a poor service.

She complains that her phone calls and letters are not responded to, that she is ignored. Although she accepted that there was a degree of management, she said that it was not of a sufficient standard to justify the charges claimed. She also said that certain items of management were in turn contracted out by the managing agents to other companies, thus increasing the management expenses. She referred by way of example to an invoice at page 200 dated 5 November 2013 from Merrileas Management for the preparation of an external decoration and specification.

- 35 Mrs Lacy-Payne said that Merrileas Management was an independent company that had been retained to draw up a specification for the purpose of tendering for works of external decoration. That was work that went beyond the expertise of the managing agents. Conversely, had it been within their expertise, then they would have carried out the work but that would have the effect of increasing the amount of managing agents' fees. That as such, the fact that such work was contracted out to a third party would not increase the overall management charge. Similarly, Mrs Lacy-Payne said that because the managing agents' offices were open Monday to Friday between 9am and 5pm, they contracted out to a third party an out of hours emergency call service for the benefit of the lessees so if they had a problem at the Property, for example over the weekend, that could be responded to. The fact that that work was contracted out did incur a charge but if the managing agents themselves had instead provided an out of hours service, that would have increased the managing agents' fees.
- 36 Upon being questioned by the Tribunal as to what she felt would be a reasonable fee for the managing agents, the Applicant suggested that it should be about half of the amount claimed.
- 37 The Tribunal notes that no evidence was produced by the Applicant in the form, for example, of estimates from other firms of managing agents in support of her contention that the fees charged were unreasonable. Further, in the view of the Tribunal, upon the basis of its own experience and expertise, it does not regard the amount being charged by the managing agents as unreasonable. The amount charged for the year was £5452 which equates to £188 per flat. Accordingly the Tribunal determines that the management fees claimed are payable and are reasonably incurred. The Applicant's share thereof under the terms of her lease is 1/29th which equates to £188.

38 **Buildings Insurance**

- 39 After lunch at the hearing on 12 August 2016 at the request of the Tribunal, Mrs Lacy-Payne produced insurance schedules for the years ending 31 December 2014, 2015 and 2016. The premium shown for the year ending 31 December 2014 is £5490.04 in an insurance schedule from the Liverpool Victoria Insurance Co. The insurance schedules were produced to the Applicant and she was allowed time to consider them. The Applicant said that she believed that because the managing agents

manage a large number of properties, that they arrange insurance through block policies and receive a reduction for volume which was not passed on to the lessees. Upon being questioned by the Tribunal, the Applicant confirmed that she had no evidence to support that contention. The Applicant was unable to produce any evidence of alternative insurance quotes.

40 The Tribunal notes that the Property was insured with a well-known reputable insurance company. There is no evidence to suggest that the sums insured were not reasonable. On the basis of the evidence before it, the Tribunal is satisfied that the buildings insurance premium of £5490.04 was reasonably incurred and is recoverable as part of the service charge payable by the Applicant. The Applicant's share thereof is £189.31.

41 **Insurance Excess**

42 Mrs Lacy-Payne referred to documents at pages 132 and 197 in support of a total figure for insurance excess of £450. The Applicant reasonably confirmed that the matter was not disputed. The Tribunal therefore determines that insurance excess of £450 is payable and reasonably incurred and the amount payable by the Applicant is £15.52.

43 **Insurance Valuation**

44 Mrs Lacy-Payne referred the Tribunal to page 228 which is an invoice from Wessex Surveyors dated 25 July 2013 for £540. The Applicant confirmed this was not disputed. The Tribunal determines that the sum of £540 is reasonable and the amount payable by the Applicant is £18.62.

45 **Cleaning**

46 The Applicant said that she was not happy that the cleaning of the common areas was carried out to a reasonable standard. She said the costs of cleaning should be lower. She complained that the lessees were charged for cleaning carried out on a weekly basis when in practice she believed that the cleaners only visited once a month. Further, that for each visit the rate charged should be lower. She suggested a sum of 40% of the sum claimed.

47 Mrs Lacy-Payne said the amount charged of £34 per week later rising to £36 per week was not unreasonable.

48 The Tribunal had noted at its inspection the extent of the common areas that fell to be cleaned. Those areas did not appear to be in a condition which suggested that they had not been regularly cleaned. Further, in the view of the Tribunal, it is reasonable, and in the interests of the lessees, for the common areas including the hallways and stairways to be cleaned on a weekly basis. The Applicant produced no evidence for example in

the form of alternative quotes for cleaning, to suggest that the amount charged was unreasonable.

49 In the circumstances, based on the evidence before it, the Tribunal is satisfied that the sum of £1854 is reasonable and the amount payable by the Applicant is £63.93.

50 **Rubbish Removal**

51 The Applicant said that she did not object to the costs incurred in removing rubbish per se but was concerned in her view that additional rubbish was caused by lessees of other flats at the Property wrongly sub-letting their properties. The Tribunal asked her whether it was her case that the Lease prevented sub-letting and she was allowed time to consider the terms of the Lease. Mr Williams on the Applicant's behalf referred the Tribunal to clause 14 of the 6th Schedule of the Lease (page 37). Clause 14 provides:

Neither the Premises nor any part thereof shall be used for any illegal or immoral purpose nor shall any trade or business be carried on there nor shall any boarder or lodgers be taken but the Lessee shall use them for the purposes of a single private residence in the occupation of one family only with the car parking space as ancillary thereto.

Mr Williams contended that the clause prevented the premises being used for business purposes and the fact that certain premises at the Property he said were advertised on websites such as the Airbnb website, suggested that they were in reality being used as businesses.

52 Mr Williams also referred the Tribunal to clause 17(a) of the 6th Schedule of the Lease (page 38) which provides:

17 (a) The Lessee shall not assign sublet share or otherwise part with possession of part only of the Premises.

He said that he understood that certain properties were being sub-let in part but he confirmed upon being questioned by the Tribunal that he had no evidence to support that contention.

53 It was Mr Williams' contention that the effect of sub-letting was to increase the amount of rubbish being deposited as each time a sub-tenant moved into or left a property, further rubbish was deposited. He accepted upon being questioned by the Tribunal that he had no evidence to support that contention.

54 The question of whether or not alleged sub-letting of other flats at the Property is a breach of the terms of the Lease is not an issue before the Tribunal. The issue is whether or not the costs of removing rubbish from communal areas can be recovered by the Respondent under the terms of the Lease as part of the service charge and if so, whether or not the costs thereby incurred were reasonably incurred.

55 Further in any event, there was no evidence before the Tribunal to support the Applicant's contention that the effect of sub-letting of premises at the Property was to increase the amount of rubbish being deposited at the Property which would have to be removed by the managing agents thereby incurring additional expense and thus increasing the amount of the service charge.

56 The Tribunal is satisfied that the costs of removing rubbish from the common areas at the Property can be recovered as service charges under the terms of the Lease and that the sum incurred of £240 is reasonably incurred. The amount payable by the Applicant is £8.28.

57 **Garden Maintenance**

58 The Applicant said that she had spoken to the gardener who suggested that he was not receiving the full amount for his services that was in turn being charged to lessees as part of the service charge. The Applicant also said that the garden was small and limited and not properly maintained, not least because she said that the occupier of one of the ground floor flats at the Property let their dogs foul the grass which prevented it being cut by the gardener. The Applicant also referred the Tribunal to an invoice at page 137 from a company called Arborcare UK Limited for the costs of removal of a tree.

59 Mrs Lacy-Payne referred the Tribunal to invoices that appear at page 170 onwards regarding maintenance. The invoice at page 137 she said was an invoice from a tree surgeon for the removal of a tree that had fallen, the cost of which had been successfully claimed back from the neighbour's insurers and was therefore not included in and not charged as part of the service charge.

60 Having inspected the Property including the garden areas, the Tribunal is satisfied that the amount charged for garden maintenance is reasonable and is reasonably incurred. There is no evidence before the Tribunal to suggest that the rate charged is unreasonable, for example in the form of alternative quotations.

61 Accordingly the Tribunal determines that the sum of £1120 for garden maintenance is reasonable and the amount payable by the Applicant is £38.62.

62 **General Maintenance and Repairs**

63 The Applicant said that it was clear from photographs and from the Tribunal's inspection that the Property was not properly maintained and repaired, for example she said that the guttering needed clearing. She otherwise had no comment to make about this item.

64 The Tribunal is satisfied in light of its inspection and having carefully considered the documents before it, in particular invoices in the bundle and referred to in the nominal check documents that this item is

reasonably incurred. There is no evidence before the Tribunal that the item is unreasonably incurred. Accordingly the Tribunal determines that the sum claimed of £1533 is reasonable and the amount payable by the Applicant is £52.86.

65 Electrical Repairs

66 Invoices for these works appear at pages 135, 136, 139 and 140. The Applicant contended that there were cheaper contractors that could have been used and she suggested that a reasonable figure would be £300. She said she had based that upon telephone enquiries she had made of alternative contractors. Upon being questioned by the Tribunal, the Applicant however was unable to produce any documentary evidence to support her contention that the amount was unreasonably incurred.

67 Upon the basis of the evidence before it and having considered the said invoices, the Tribunal is satisfied that the amount of £588 is reasonably incurred and the amount payable by the Applicant is £20.28.

68 Roof, Drains and Gullies

69 The Applicant said that the figure claimed was not value for money. That a proper job she said was not done to maintain the roof, drains and gullies and sometimes no work was done at all. That the work was not supervised.

70 Mrs Lacy-Payne said the work was properly carried out.

71 Having inspected the Property, the Tribunal is satisfied that the nature of these works is of an ongoing and reoccurring basis. For example, it is quite clear given the position of the Property and its proximity to trees that the clearing of gutters would undoubtedly need to be carried out on a regular basis. Further, although it was clear at its inspection that some gutters at the Property were in need of clearing, the sums claimed related to work carried out some 3 years previously.

72 In all the circumstances, on the basis of the evidence before it, the Tribunal is satisfied that the sum claimed of £390 is reasonably incurred and the amount payable by the Applicant is £13.45.

73 Doors and Windows

74 Mrs Lacy-Payne referred the Tribunal to invoices at pages 213 and 226 which are invoices from locksmiths for attending at the Property. The Applicant said that she did not dispute the figure. The Tribunal therefore determines that the sum of £135 is reasonably incurred and the amount payable by the Applicant is £4.66.

75 **Car Park**

76 Mrs Lacy-Payne was not able with certainty to identify which invoices in the bundle related to this item. The Applicant said it was a matter she was content to leave to the Tribunal to determine. There was no evidence from the Applicant to the effect that the work had not been carried out, was not recoverable and was not reasonable. From the evidence before it and having considered the items listed under the 'nom' number 6140 on the nominal check documents, the Tribunal is satisfied upon the balance of probabilities that the sum of £510 was reasonably incurred and the amount payable by the Applicant is £17.59.

77 **Flat Roof Repairs**

78 The Applicant made no specific submissions about this item and said she was content to leave it to the Tribunal to determine. The Tribunal notes the invoice at page 356 from Touch Access Limited for £960 is for the costs of re-felting a flat roof.

79 On the basis of the evidence before it and in the absence of any evidence from the Applicant to the effect that the sum was unreasonably incurred, the Tribunal is satisfied and determines that the sum of £960 was reasonably incurred and the amount payable by the Applicant is £33.10.

80 **Major Works Expenses**

81 Mrs Lacy-Payne referred the Tribunal to invoices that appear at pages 208 and 227. The nominal check documents also refer to an invoice at page 200 and taken together, the three invoices total £11,209.50.

82 The Applicant said that the Lease provides that the Property should be painted with at least two coats of good quality paint. She did not believe that had happened in this case. She believed that only one coat of paint had been applied and that "*low value paint*" had been used. She complained that although the workman had been on site for 6 days, they had left their ladders on site for 6 weeks.

83 Mrs Lacy-Payne said that two coats were applied using good quality paint and the work had been overseen by the managing agents.

84 The work was carried out some 2 years ago, that is 2 years prior to the Tribunal's inspection. There was nothing to suggest to the Tribunal from its inspection that the Property had not been painted some 2 years ago. Nor is there any evidence that the decorators had done a bad job. Nor is there any evidence before the Tribunal to the effect that only one coat of paint had been applied or that the paint applied had been of "*low value*". The Tribunal notes that the external decoration works had been subject to a consultation process pursuant to section 20 of the Landlord & Tenant Act 1985. In the view of the Tribunal, given the nature of the site and building, there is nothing to suggest that the costs of these works were unreasonable.

85 Accordingly the Tribunal determines that the cost of these works in the sum of £11,209.50 was reasonably incurred and the amount payable by the Applicant is £386.53.

86 **Heat and Light**

87 The Applicant suggested that there were too many lights serving the communal areas of the Property that were left on for too long. She referred to six external fluorescent lights which she said were very expensive to run. She suggested that during the daytime internal lights serving the communal areas such as corridors and stairwells could and should be turned off. As such, there could be a saving in the electricity bill.

88 Mrs Lacy-Payne said the lights in the communal hallways stayed on because the hallways in general had no windows and lighting was required for safety reasons. Further she said that there had been historically a problem with drug users using the underground carpark at the Property and the residents had asked that more lights be fitted to the car park to try and stop that use and that had been successful.

89 The Tribunal is satisfied that it is reasonable having inspected the internal hallways to leave lights on during the day. Nor is it unreasonable to have additional lighting, particularly at the request of lessees, to properly light the car park and to deter drug users. On the basis of the submissions put to it, the Tribunal is not satisfied that this item has been unreasonably incurred in whole or in part.

90 Accordingly the Tribunal therefore determines that the sum of £945 is reasonably incurred and the amount payable by the Applicant is £32.58.

91 **Accountants' Fees**

92 The Applicant reasonably confirmed that she does not object to this item. The Tribunal determines that the sum of £528 is reasonably incurred and the amount payable by the Applicant is £18.21.

93 **Sundry Item**

94 Similarly, the Applicant confirmed that this item was not disputed and the Tribunal determines that the sum of £14 is reasonably incurred and the amount payable by the Applicant is £0.48.

95 **Reserve**

96 The Applicant confirmed that this item was not disputed and the Tribunal determines that the sum of £5,000 is reasonably incurred and that the amount payable by the Applicant is £172.41.

97 **Actual Service Charges for the year ending 24 June 2015**

98 The Applicant said that her arguments and submissions in relation to the service charges for the year ending 24 June 2015 mirrored, were the same as, those for the previous year. Both parties at the hearing on 12 August 2016 said they were content on that basis for the Tribunal to consider and determine the amount of service charges for the year ending 24 June 2015 upon the basis of submissions made orally in respect of the previous year's service charge and upon written submissions.

99 The Tribunal has carefully considered all the written submissions by both parties. It has carefully examined the contents of the bundle, the nominal check documents used by the Respondent and the additional invoices attached thereto. It has considered each item of expenditure by reference to those submissions and documents and in light of the submissions made by both parties in respect of the service charge for the previous year. It has regard to the fact that the service charge accounts have been prepared by a firm of Chartered Accountants who confirm in their report to the accounts that the figures set out have been extracted correctly from accounting records, that they are based upon receipts and other documents or evidence which have been inspected by the Accountants, and that the balance of service charge accounts agreed or reconciled with the bank statement for the accounts in which the funds were held.

100 The Tribunal is satisfied on that basis that the service charge sought by the Respondent for the year ending 24 June 2015 is for expenditure which has been reasonably incurred and is properly recoverable as service charge under the terms of the Lease. In the circumstances, it does not propose, in order to avoid repetition, to go through each item of expense set out in the service charge account for the year ending 24 June 2015.

101 The Tribunal determines that the expenditure incurred by the Respondent for the service charge year ending 24 June 2015 of £39,678 was reasonably incurred and is recoverable as service charge under the terms of the Lease. The amount payable by the Applicant is £1368.21.

102 **Advanced Service Charge Demand for year ending 24 June 2016**

103 The Respondent seeks to recover from the Applicant service charge payments on account i.e. in advance, for the year ending 24 June 2016. There is a demand addressed to the Applicant from the Respondent's managing agents dated 18 June 2015 for the sum of £1187.32 described as service charge for the period "24/6/2015-23/06/2016". The demand states that the "due date" is 24 June 2015. At pages 377 and 378 is a form of service charge budget calculation.

- 104 As set out above, the Lease provides at clause 20(b) of the 6th Schedule that the Lessee will on the 24th day of June in each year, pay to the Lessor in advance service charge payment on account. The amount to be paid is described as “... *the proportionate amount (as certified in accordance with clause 15 of the 7th Schedule) due from or paid by the Lessee to the Lessor for the accounting period to which the most recent notice under clause 16 of the 7th Schedule relates*”. There is then a balancing provision at clause 21 of the 6th Schedule which allows for an account to be taken at the end of the service charge year once the actual amount of the charges is known whereby the Lessee either is repaid any advance payments that exceed the actual service charges incurred or makes a further payment to make up the difference between the amount paid in advance and the actual charges.
- 105 The amount of the advanced service charge payment is therefore calculated by reference to the “*most recent notice under clause 16 of the 7th Schedule*”.
- 106 Clause 16 of the 7th Schedule of the Lease provides that the Lessor will within 2 months of the date to which the service charge account is taken (in this case 24 June) serve on the Lessee a Notice stating the amount of the costs and expenses incurred by the Lessor to which the service charge relates.
- 107 There is a practical difficulty in that the payment in advance to be made by the Lessee under clause 20(b) of the 6th Schedule of the Lease is due on 24 June in each year. The amount in advance which the Lessee is to pay on that date is calculated by reference to “*the most recent Notice under clause 16 of the 7th Schedule*”.
- 108 The issue therefore is, what is the amount due from the Applicant to the Respondent on 24 June 2015 on account of the service charge year ending on 24 June 2016? Properly the amount, in the view of the Tribunal, is calculated by reference to the most recent service charge accounts in respect of which Notice should have been served on the Applicant pursuant to clause 16 of the 7th Schedule of the Lease, which in this case would be the service charge accounts for the year ending 24 June 2014.
- 109 That was put to the parties at the hearing on 12 August 2016 and they were allowed time to consider. The amount of the service charge for the year ending 24 June 2014 is £36,959. The amount payable by the Applicant will be 1/29th thereof i.e. £1,274.45.
- 110 In fact, the Respondent seeks to recover less than that, £1,187.32. In the circumstances, the Tribunal determines that the amount of £1,187.32 is reasonable and is payable by the Applicant.

111 **Administration Charges**

112 The Respondent seeks to recover administration charges from the Applicant of £5488.40. The amount claimed is set out in a demand addressed to the Applicant dated 18 April 2016 at page 456. It comprises two items. Firstly, legal costs inclusive of VAT and disbursements of £5308.40 and secondly, managing agents' fees of £180.

113 The Respondent says these are costs and charges incurred following service on the Applicant of a Notice pursuant to section 146 of the Law of Property Act 1925 and in respect of subsequent proceedings in the County Court for possession. Those proceedings were concluded by an Order dated 22 March 2016 which granted the Applicant relief from forfeiture. Those costs, the Respondents says, are recoverable as administration charges pursuant to clause 23 of the 6th Schedule to the Lease which provides for the Lessee to pay to the Lessor all costs, charges and expenses including legal costs and surveyor's fees incurred by the Lessor:

"for the purpose of or incidental to the preparation and service of any notice or proceedings under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court".

114 Further details of the amount of costs/administration charges that the Respondent seeks to recover are set out at pages 457-461. The legal costs are broken down into three parts as follows:

1. Page 458, Statement of costs in a form prepared for summary assessment headed 'Statement of Costs of Claimant for hearing on 22 March 2016'. There is endorsed on the Statement in writing the words 'costs of warrant of possession'. The total figure including VAT and disbursements is £506.
2. Page 459, Statement of costs prepared again in a form of summary assessment of costs headed 'Statement of Costs of Claimant for hearing on 28 July 2015' and it is for a total figure, including VAT and disbursements, of £1279.20.
3. Pages 460 and 461, again a Statement of costs in a form prepared for summary assessment headed 'Statement of Costs of Claimant for hearing on 22 March 2016' and then added by hand, 'costs from 28/7/2015 to 22/3/2016' for a total sum inclusive of VAT and disbursements of £3523.20.

115 The Applicant says that these costs cannot be determined by the Tribunal and recovered by the Respondent because they have already been subject to a decision of the County Court

116 The costs relate to the proceedings in Bournemouth County Court under case no. B00BH331. Copies of Orders made in those proceedings, including Orders made on 28 July 2015 and 22 March 2016, have been

filed with the Tribunal in accordance with the Directions made by it on 12 August 2016.

- 117 The Tribunal cannot make a determination in respect of an administration charge which has already been subject to a determination by a Court (section 5(4)(c) of Schedule 11 of the 2002 Act). The Tribunal understands that the Respondent's case is that there is a distinction to be drawn between costs that have been awarded by the Court under its inherent jurisdiction and costs or fees that may be recovered pursuant to the terms of a contract or agreement between the parties, such as a lease. That accordingly, by reason of clause 23 of the 6th Schedule of the Lease, the Respondent says that the Lessee (the Applicant) is obliged to and agrees to pay as administration charges the costs and expenses including legal costs that it incurs in respect of the proceedings before the County Court following service of a notice under section 146 of the Law of Property Act 1925, notwithstanding any Costs Orders that may have been made by the County Court in those proceedings.

118 The Tribunal's Determination

1. **Costs of Warrant of possession (page 458): £506 and costs for hearing, 22 March 2016 (pages 460 and 461): £3523.20**

It is convenient to deal with both of these items as one given that it is clear from the face of the documents that both statements of costs for summary assessment upon which the Respondent relies (pages 458, 460 and 461) were prepared for the Court hearing on 22 March 2016. At that hearing the Applicant was granted relief from forfeiture. The Court made an Order of "no order as to costs". Despite the wording, that is a costs Order. It is an Order to the effect that each party should be responsible for their own costs. The Respondent was therefore unsuccessful in obtaining a costs Order on 22 March 2016 against the Applicant.

When exercising its discretion as to costs, the Court as a matter of general principle should have regard to the contractual position (in this case to the terms of the Lease). It may exercise its discretion to make an Order which departs from the contractual position (Forcelux Limited v Binnie (2009) EWCA Civ 1077). The Court on 22 March 2016 decided not to grant the Respondent its costs. The Respondent was represented at the hearing by its solicitor. The Tribunal does not know what submissions were made to the Deputy District Judge but the fact is that in exercising the Court's discretion, the Deputy District Judge made an Order in respect of costs in the terms stated. In exercising that discretion, the Court departed from the contractual position i.e. from clause 23 of the 6th Schedule of the Lease.

In the circumstances, the Tribunal concludes that the administration charges that the Respondent now seeks to recover

have been, as costs, addressed by the Court on 22 March 2016. They have been subject to a determination by the Court and for that reason it cannot and does not make a determination that those costs can now be recovered by the Respondent as administration charges. To do otherwise would be to indirectly disturb the discretion that was exercised by the Court on 22 March 2016, which it would be wrong and inappropriate to do.

2. Costs of the hearing on 28 July 2015: £1279.20.

The Order made by the Court on 28 July 2015 adjourned the matters before it to the Designated Circuit Judge who was dealing with an appeal that had been submitted by the Applicant. The Court made an Order that the costs of the hearing on 28 July 2015 were reserved to that adjourned/appeal hearing. That hearing was heard by His Honour Judge Iain Hughes QC on 12 August 2015. The Judge dismissed the appeal and did not make an Order as to costs. It follows therefore, that the costs of the hearing on 28 July 2015 have not been subject to an Order ie a determination of the Court. It is open therefore for the Tribunal to consider whether or not those costs can now be recovered under the terms of the Lease as administration charges and if so, whether or not they were reasonably incurred.

The Tribunal is satisfied that these are costs that were incurred by the Respondent for the purpose of and/or incidental to proceedings following service of the section 146 Notice and as such, are recoverable by the Respondent from the Applicant as administration charges pursuant to clause 23 of the 6th Schedule of the Lease. There are no submissions by the Applicant as to the reasonableness or otherwise of the amount of charges claimed. On the basis of the evidence before it, the Tribunal is satisfied that the amount claimed is reasonably incurred and is payable by the Applicant.

3. Managing Agents' fees (page 456): £180

The Respondent also seeks to recover from the Applicant, fees of its managing agents it says in relation to the section 146 Notice. Those fees are described on the demand sent to the Applicant at page 456 as "*2 x hours preparation of material Section 146 Flat 5*". That work is further described at page 455 as the managing agents' fees for "*preparing documents*". There would no doubt be time spent by the managing agents in preparing instructions and copying documents for submission to the Respondent's solicitors. These fees do not appear to have been subject to a determination by the Court. It is reasonable in the view of the Tribunal for the Respondent to incur such fees and there is nothing to suggest that they are unreasonable in amount. Accordingly, the Tribunal determines that these fees are reasonably incurred and are recoverable from the Applicant.

119 **Section 20C Application**

120 The Applicant seeks an Order that all or any of the costs that have been incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

121 The Tribunal asked Mrs Lacy-Payne to take the Tribunal to the provisions in the Lease which the Respondent says allow recovery of such costs as service charges. Mrs Lacy-Payne was allowed time to consider. She referred the Tribunal to clause 11 of the 7th Schedule of the Lease (page 41) which provides as follows:

“The Lessor shall be entitled to employ and engage such servants, agents and contractors as it considers necessary or desirable for the performance of its obligations under this schedule and pay their wages, commissions, fees and charges”.

122 The Applicant said that the fees incurred by the Respondent, in particular those of its managing agents in relation to the proceedings before the Tribunal, should not be recovered as service charge because of, she said, the unreasonable behaviour of the managing agents.

123 The clause relied upon by the Respondent allows the Respondent to employ servants and agents to include managing agents, to carry out the Respondent's obligations under the terms of the 7th Schedule of the Lease. Nowhere in the 7th Schedule is there provision which provides for representation before the Tribunal. Nor in the view of the Tribunal is there any provision elsewhere in the Lease which allows for the Respondent to recover as service charges the costs and expenses it occurs in appearing before the Tribunal.

124 Further, in any event, the Tribunal is of the view that the Respondent's conduct of the proceedings before it was such that it should not in any event be entitled to recover the costs thereof as service charges. There was a failure on the part of the Respondent's representatives to properly prepare themselves for the hearing before the Tribunal. In particular, an inability to assist the Tribunal or the Applicant at the hearing on 12 August 2016 by properly referring the Tribunal to the documents relied upon by the Respondent in support of service charges in the bundle. That as a consequence the Tribunal was obliged to make a Direction for the production by the Respondent of the nominal check documents and further supporting invoices. It may well have been the case that had such documents been made available to the Applicant in a form whereby the Applicant could by reference to each item of expenditure set out in the service charge accounts identify the invoice or invoices concerned, that these proceedings may not have continued and may have settled.

125 Summary of the Tribunal's Determination

1. **Service charges for the year ending 24 June 2014**

The amount payable by the Applicant to the Respondent is £1274.43.

2. **Service charges for the year ending 24 June 2015**

The amount payable by the Applicant to the Respondent is £1368.21.

3. **Service charge payments on account in advance for the year ending 24 June 2016**

The amount payable by the Applicant to the Respondent is £1187.32.

4. **Administration charges**

The amount payable by the Applicant to the Respondent is £1459.20.

5. **Section 20C Application**

The Tribunal determines that the costs that have been incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Dated this 28th day of November 2016

Judge N Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.