



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

**Case Reference** : CHI/24UF/LIS/2015/0005

**Property** : 73, 74 & 76 Mantle Close & 106 Williams Close,  
Rowner, Gosport, Hampshire, PO13 9QP

**Applicant** : Mr Samuel Oparah

**Respondent** : Rodney Court (Gosport) Management Company  
Limited  
(Agents: Zephyr Property Management)

**Respondent's  
Representative** : Mr Doyle (Counsel)

**Type of Application** : Liability to pay service charges

**Tribunal Members** : Judge J Brownhill (Chair)  
Mr P D Turner-Powell FRICS  
Ms T Wong

**Date and venue of  
Hearing** : 26-27<sup>th</sup> July 2016. Chichester Magistrates Court

**Date of Decision** : 2<sup>nd</sup> August 2016

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**DECISION**

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- 1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.
- 2 The Applicant is the leaseholder of the 4 flats which are the subject of this application (namely 73, 74 & 76 Mantle Close & 106 Williams Close, Rowner, Gosport, Hampshire, PO13 9QP). The Applicant also told the Tribunal that in addition to the above flats which he owns he also manages a number of other flats on behalf of other individuals. In total he told the Tribunal he managed 11 flats on this estate. He is therefore not a man inexperienced in the management of properties. The Applicant applied pursuant to section 27A of the Landlord and Tenant Act 1985 for a determination of his liability to pay and the reasonableness of services charges for certain years [1]. The relevant statutory provisions are set out at Appendix A to this decision. The application referred to specifically to the service charge years from 2011 to 2015 [4].

### Summary

- 3 The Tribunal did not consider the service charge years for 2011 and 2012 for the reasons detailed below. The Tribunal found as follows in relation to the remaining years:
  - a. In relation to the 2013 service charge year, that the sums claimed were reasonable and payable under the terms of the lease;
  - b. In relation to the 2014 service charge year that, the sums claimed were reasonable and payable under the terms of the lease;
    - i. Save that item 170, invoice R73 [494] £135, and item 171 invoice R108 [545] £50 are **not** items which are properly recoverable through the service charge, and should be deducted from the service charge calculations.
  - c. In relation to the 2015 service charge year, that the sums claimed were reasonable and payable under the terms of the lease;
  - d. The Tribunal does not consider it just and equitable to make an order under section 20C of the 1985 Act.
  - e. Further directions are given on the Respondent's application that the Applicant pay its costs pursuant to Rule 13(1)(b) of the Tribunal's rules.

### The Inspection

- 4 The Tribunal had the benefit of inspecting the development and buildings in which the properties in question are situated prior to the hearing on the 27/07/2016. Present at the inspection were both Mr Oparah (the Applicant), Mr Doyle (Counsel for the Respondent) and Ms Cole (of the Respondent's managing agents).
- 5 The properties which are the subject of this application are part of a development consisting of flats/ maisonettes over 5 blocks. The buildings are of a frame construction with largely precast panel infill and cladding. The Tribunal understands that they were previously Ministry of Defence properties

used to house service personnel and their families. The blocks themselves are either 4 or 5 storey in height (ground to third floor, or ground to fourth floor).

- 6 At the time of inspection there were some refurbishment works ongoing to the exterior of the Mantle Close blocks, with works having been completed to other blocks. These works appeared to consist of the installation of insulation to the exterior faces of the blocks, which was then boarded and rendered. The Applicant showed the Tribunal around various external parts of the blocks on the development, pointing out various areas/ physical features which he said would form part of his challenge to the service charges.

#### The Hearing

- 7 Mr Oparah, Mr Doyle and Ms Cole attended the hearing on 27/07/2016 at Chichester Magistrates Court. On the 28/07/2016, Mr Oparah's sister, Mrs Payne, also attended.

#### Preliminary matters

- 8 There were a number of preliminary points dealt with by the Tribunal on both days of the hearing, and it serves to deal with them together at this stage of the Tribunal's decision.
- 9 The Applicant sought, on the second day of the hearing to raise a new dispute about the standard of cleaning carried out in the communal areas of the development, in particular to the communal stairwells. The Tribunal noted that this had not, prior to the hearing, been raised by the Applicant as a matter in dispute. Indeed looking at the long list of invoices which were disputed by the Applicant [891]-[901] the cleaning invoices were notable as having not been disputed by the Applicant - see for example at [892][895]. The Tribunal noted the difference between invoices for routine cleaning, and those for removal of bulk items seemingly fly tipped on the estate, recognising that some of the invoices relating to the latter had been disputed by the Applicant.
- 10 The Tribunal was not willing, on the morning of the second day of the final hearing to allow the Applicant to expand the issues he was disputing so as to now contest the routine cleaning costs. The Applicant had been given more than sufficient opportunity to frame the extent of his case, and had chosen not to dispute routine cleaning costs. It was not appropriate for him to now seek to challenge these invoices, without having given the Respondent prior warning of his intention to do so. There was no particular reason advanced by the Applicant as to why he hadn't been able to challenge these costs previously. The Tribunal noted in particular that the Applicant while a lay person, had been to the Tribunal on a number of other occasions (see [43] re 2013, and [44-6] re a hearing in 2011), and so was not inexperienced in the Tribunal's procedure. Further the Applicant had been told in the Tribunal's directions, as far back as 05/02/2016 of the need to frame the specific matters in dispute by reference to a schedule [28]. The Tribunal also noted that the Applicant was apparently managing 11 properties, some on behalf of others, and so was not unaware of complexities of managing properties.

- 11 Further both the Applicant and the Respondent produced additional material on the morning of the second day of the hearing, which they asked the Tribunal to admit into evidence:
- a. The Respondent produced a statement of account in relation to each of the 4 properties which is owned by the Applicant. This was produced in response to a point made the Applicant on the first day and a resulting query of the Tribunal, concerning the costs of a previous Tribunal hearing, and whether these were being claimed through the service charge or just from the Applicant.
    - i. Having considered the nature and detail of the documentation produced by the Respondent in this regard and the extent of the point it was intended to address, the Tribunal considered that this documentation should be admitted. There was no specific prejudice to the Applicant who had raised the point himself, the documentation was self explanatory, at least in relation to the point in issue, and the Applicant raised no specific objection.
  - b. The Applicant in turn sought to rely upon a supplementary bundle which while referring to invoices already included within the original bundle, also included new photographs of the areas in question. All of the photographs were taken by the Applicant in May 2016. The Applicant stated that he had not provided these photographs before as he had only recently realised their relevance and had not had an opportunity previously. The Respondent objected to the photographs being admitted into evidence, pointing out that while the Applicant was not legally represented he was no stranger to the Tribunal having involved been in 4 FTT cases (on Mr Doyle's estimation) previously. Mr Doyle submitted that Ms Cole would, had she seen these photographs previously, have wished to consult her own records in more detail and potentially have been able to produce further information in relation to the same.
    - i. The Tribunal took time to consider its position in relation to these new photographs. The Tribunal found that the Applicant having taken the photographs in May 2016, seemingly was aware of their relevance to his case at that point, and yet had at no stage before the final hearing sought to disclose these to the Respondent. However, the Respondent was already on notice, as a result of the Applicant's statement of case and list of disputed invoices, that there were issues surrounding these invoices. Taking into account the overriding objective, the Tribunal considered that it was appropriate to admit the Applicant's photographs (contained in the supplementary bundle) into evidence.
- 12 Further on the 01/08/2016 (days after the final hearing) the Tribunal received a further letter from Applicant in which he sought to raise issues stemming from the statement of account which the Respondent had handed up to the Tribunal on the second day of the hearing. The Applicant had not sought to raise these points during the course of the hearing, despite having been

provided with a copy of the same by the Respondent. The Tribunal refused to accept such late submissions and evidence from the Applicant: the Respondent had had no opportunity to comment on the same; it had the effect of re-opening the evidence heard by the Tribunal, at length over two days, and was not in any event relevant to the issues which the Tribunal needed to determine in relation to the reasonableness of the service charges levied in 2013; 2014 and 2015 by the Respondent. The statement of account had been submitted by the Respondent and allowed into evidence for a specific isolated purpose, which was not connected with what or whether payments had been made by the Applicant. The Tribunal therefore indicated to the Applicant that it would not be accepting such further submissions/evidence in this regard.

#### The FTT decision of 2014

- 13 Part of the Applicant's case related to a previous FTT (Property Chamber) decision dated 13/01/2014, and which was included in the bundle at [43]. That determination related to the Applicant's service charges, in respect of the same properties, for the service charge years 2010; 2011; and 2012. An entirely differently constituted Tribunal reached a decision on the reasonableness and payability of those service charges. That case came to the FTT having referred from the County Court in the first instance.
- 14 Without reciting the entire subsequent history it appears that as a result of that Tribunal's findings, the Respondent subsequently, and in different proceedings, applied to the County Court for a third party debt order against the Applicant relying on the figures detailed at paragraph 301 of the previous Tribunal's judgment. The Respondent chose to use the figures at paragraph 301 of the previous Tribunal's decision, while the Applicant argued that the relevant figures were those referred to at paragraph 305 of that decision.
- 15 The Applicant argued that the Respondent had used the wrong figures in its application to the County Court. The Applicant stated in his evidence to this Tribunal that in his view the previous Tribunal's findings and conclusions had been clear, and that the Applicant had used incorrect figures when applying to the County Court. He conceded that there had been a hearing before a District Judge in the County Court proceedings, and that he had raised this argument then, only to be told by the District Judge that he had to use the figures given by the Tribunal.
- 16 Both parties had sought clarification from the previous Tribunal about which figures were correct, however the previous Tribunal had refused to amplify on its decision [86][87].
- 17 The Tribunal explained to the Applicant that it was not able, within these proceedings, to go behind the conclusions of the previous Tribunal as detailed in its decision at [43]. Nor were the current Tribunal able to expand upon the reasons or thinking of that previous Tribunal, nor clarify what the Tribunal had meant in relation to its conclusions or figures. The Tribunal explained to the Applicant if he was or had been unhappy about the previous Tribunal's decision from January 2014 his remedy was to seek to appeal that decision/determination. Any such application now would however be well out of time.

- 18 However, Mr Doyle for the Respondent, very properly conceded to the Tribunal that it was clear that when making the Third Party debt order application, there had been a mistake in the figures which had been used by the Respondent. He acknowledged that it couldn't be correct that both the actual and the budgeted figures for 2011 were used; he acknowledged that the correct figures to be used when citing figures which the FTT had found as reasonable, were:
- a. Actual 2010 £691.96
  - b. Actual 2011 £1146.28; and
  - c. Budget 2012 £984.15.
- 19 In terms of the Order which had actually been made by the County Court District Judge, and was really what the Applicant's complaint was about, that was not something which this Tribunal could properly look at. The Tribunal noted it didn't have either the original county court proceedings (referred to at [84-305]) detailing which issues/ matters had been transferred to the previous Tribunal, nor the full papers concerning the third party debt order claim. In terms of the amount which the County Court District Judge made the Third Party debt order against the Applicant in relation to, that too was not something which this Tribunal could properly deal with: the County Court judge had presumably formed a view at the time as to the amounts which were properly outstanding on the Applicant's accounts. That was not something which this Tribunal could get involved in or properly go behind.
- 20 Having said that however the Tribunal indicated to Mr Doyle, and Mr Doyle accepted, that given the Respondent's acknowledgment that something had indeed gone wrong with the figures used in the County Court proceedings to obtain the third party debt order, that something would be need to be done by the Respondent to reflect that mistake and make the necessary amendments.
- 21 The Applicant had already been told during the case management hearing on 09/03/2016 [36-4] that it was not possible to "...re-open the question as to the reasonableness of the charges for 2011 and 2012 as this had already been determined by a previous Tribunal."

The 2012 Actual figures.

- 22 Finally, the Applicant applied on the morning of the first day of the hearing to challenge the actual figures within the 2012 service charge. He pointed out that the 2014 decision had used only the budgeted figures for 2012, and now that the actual figures were available for that year he wished the Tribunal to consider those too.
- 23 The Tribunal considered the Applicant's request in this regard, but refused to look at the 2012 actual figures, it being inappropriate or in accordance with the over-riding objective to do so. In reaching this conclusion the Tribunal noted the following particular matters:
- a. The Applicant's own schedule of items in dispute did not detail any matters in relation to the figures from the 2012 service charge accounts

that he was disputing [891]. It listed invoices which he challenged from 2013 – 2015.

- b. The Applicant's oral submission to the Tribunal was that he had not, in fact, come prepared to deal with the 2012 service charge actual figures and would need further time in order to so prepare.
- c. The Tribunal had already delayed the start of proceedings on the 26/07/2016 for the Applicant to go home after the inspection and pick up his papers for the hearing. He had attended at the inspection, seemingly thinking that the hearing would not start until the following day, as opposed to immediately after the hearing.
- d. The final hearing had been listed for some time, and taking into account the Tribunal's own resources, the Tribunal felt that an adjournment to now allow the Applicant to expand on his case and prepare further submissions on this point, when he had not attended the hearing prepared to do, was inappropriate.

#### The 2013 service charge

- 24 The Applicant indicated to the Tribunal that he wished to challenge a number of invoices provided by the Respondent relating to the 2013 service charge. He detailed these in his schedule at [891] by reference to an R number. A large number of invoices were challenged/ questioned by the Applicant, and it is in the Tribunal's view appropriate to deal with them, in this judgment, by grouping categories of challenged invoices together; this is despite the fact that during the hearing the Applicant took the Tribunal to each and every invoice he challenged within the 2013 service charge accounts.
- 25 As can be seen from the Schedule at [891] the Applicant sought to challenge a number of invoices (7) for communal electricity, as supplied by British Gas. The Applicant alleged that British Gas were uncompetitive.
- 26 The Tribunal found that the invoices in question were reasonable, and rejected the Applicant's argument in this regard:
  - a. The Applicant had produced no comparable evidence through which to justify or support his assertion that British Gas were 'uncompetitive';
  - b. The Applicant didn't challenge all the British Gas invoices, only some;
  - c. The Tribunal pointed out to the Applicant that bills for an electricity supply can fluctuate depending on whether a bill is based on an estimated or actual reading; and
  - d. This was precisely the same point which the Applicant had raised in the 2013/2014 Tribunal proceedings in relation to communal electricity [68-172]. The importance of comparable evidence had been highlighted to him during those proceedings, yet once more he sought to make, effectively, the same unsupported point in these proceedings.
- 27 The Applicant indicated that he was not in fact challenging the Respondent's management fee (see items 23 and 26 on the Applicant's schedule at [891]).

- 28 The Applicant sought to challenge a number of invoices, he had described as 'referral fee' and 'reminder fee' (see items 24, 27-33, 35-39 [891]), as being inappropriate to be included within the service charge. The Respondent's Ms Cole explained that in fact these charges were not included within the service charge. She explained that these invoices had been included in error in the disclosure given to the Applicant. Ms Cole explained that when carrying out the disclosure exercise for the Applicant's claim, she had merely photocopied the entire packet of documents which the Respondents were sending to their accountants; this included invoices which were recharged to individual owners under the provisions of their leases only. Therefore the invoices listed as 'reminder fee' or 'referral fee' were not part of the Applicant's service charge at all and were matters only for the individual leaseholders referred to on the face of each invoice. As these charges were not matters within the Applicant's service charge, the Tribunal did not need to deal with them.
- 29 Item 25 [294] was a service charge item and was challenged by the Applicant. It related to the cost of producing and posting letters to leaseholders. The charge amount to £0.55 for each leaseholder. The Applicant argued that such a charge was inappropriate given that a management fee was being charged as well. In the Tribunal's view, and taking into account the level of management fee that was charged, and that only one such letter was charged for in 2013, considered such a charge was a valid and reasonable charge. In the Tribunal's view it was reasonable for the cost of such a letter (amounting to £0.50 postage and £0.05 cost per letter) was reasonable and appropriate. The Tribunal was also satisfied that such fell outside the general figure for management of the development but was recoverable under the terms of the lease through the service charge provisions. In the Tribunal's view, the cost of £0.55 per letter was reasonable.
- 30 Item 40, R115 [396], this invoice related to the costs incurred by the Respondent's managing agent, and charged to the Respondent, in relation to Ms Cole's attendance at and preparation for the FTT hearing in 2013. The Applicant argued that the previous Tribunal had not expressly stated that he should pay the Respondent's costs of those proceedings. The Tribunal noted that the previous Tribunal in its decision of January 2014 had in fact refused to make an order under section 20C of the Landlord and Tenant Act 1985 [82-298], expressly stating that it was that Tribunal's view that "...it was reasonable for the Applicant (freeholder) to pursue the Respondent (there, Mr Oparah) for payment and in doing so it has been put to expense."
- 31 The Tribunal found that the cost of attending and preparing for hearings before a Tribunal were recoverable through the service charge pursuant to clause 9 of Part II of Schedule 5 to the lease [22], namely "Expenditure to be recovered by means of the Maintenance Charge .... 9. The costs incurred by the Management Company in bringing or defending any actions or other proceedings against or by any person whatsoever."
- 32 The Tribunal considered that both the hourly rate (of £75) and the time spent (9 hours) preparing for the previous hearing and attendance at that hearing – which had seemingly lasted a day, were reasonable.



- 33 The Tribunal also satisfied itself, by reference to the statement of account which the Respondent had produced on the second day of the hearing, that the Respondent's costs of the previous LVT were claimed through the service charge and not merely against the Applicant.
- 34 In relation to items 65, 66 and 68 these were challenged by the Applicant on the basis that the charges were unreasonable and uncompetitive. These invoices can be found at [316] [346] and [394] of the bundle. The Applicant alleged that the Respondent only used one contractor and that they had used this contractor for a long time. He provided no comparable quotations or evidence.
- 35 Ms Cole in her evidence to the Tribunal was clear that the Respondents had a number of contractors that they used, but that sometimes it was difficult to get quotes for small jobs worth only a couple of hundred pounds. They did however test contractors quotes in relation to bigger pieces of work. The Tribunal noted that in fact as evidenced from the Applicant's own schedule the Respondent had used at least two contractors, in the 2013 service charge year, in relation to works. Further the Applicant had once more failed to provide any comparable evidence from another contractor/source which suggested that the work covered by these invoices was uncompetitive. The fact that the Respondents had been using a particular contractor for a long period of time, was not in the Tribunal's view evidence of that contractor being uncompetitive or the prices charged being unreasonable. The Tribunal noted that the previous Tribunal had in its 2004 decision repeatedly commented on the Applicant's failure to provide any comparable evidence in support of his alleged criticism of the cost of works/ services. Despite this, the Applicant had once more adopted entirely the same approach to these proceedings. The Tribunal considered that the cost of works covered by these invoices was reasonable.
- 36 Item 67, was challenged by the Applicant on the basis that this was a non-service charge item, and something which he said should be private work. The invoice in this regard can be found at [393] and related to the external fence of a specific property. The Applicant explained that fences to particular properties' garden areas were matters for the individual leaseholders and that this was not something which should be recovered through the service charge.
- 37 The Respondent explained that in fact, fences to individual properties' gardens was something which was covered by the buildings insurance which was in place for the development. The Tribunal noted that the lease required at paragraph 7 of the Fifth Schedule [21] that the freeholder was to keep the property and the development insured against certain risks. The property was defined within the lease at clause 1 [16]. Ms Cole was adamant that the buildings insurance cover in place covered garden fences as well as fixtures and fittings within the individual properties where any claim made were to fall within the terms of the building insurance policy and resulted from one of the insured risks. So where here, the damage to the fences ( which being part of the fixtures and fittings of a property) was caused by storm damage (an insured risk) there was a proper insurance claim. She explained that previously the premium charged to obtain insurance for the development had been in the region of £40,000, and that this had now been very significantly reduced – this

was recorded in the previous Tribunal's decision too [56-60]. Ms Cole explained that rather than make a claim on the insurance policy, the directors of the Respondent had decided that it was more cost efficient and reasonable to pay for certain costs of repairs which would have been covered by the insurance through the service charge. She pointed in particular to the fact that the current excess on the buildings insurance was £500, and so claims below this amount would have had to be paid in any event, and that in relation to the excess this was to be treated, in accordance with the RICS Service Charges Residential Management Code in force at the relevant time (paragraph 15.15), as part of the costs of insurance. Paragraph 15.15 of the said code reads: "When a claim has to be made for an insured risk on a buildings policy, it is common for the claim to be the subject of excess imposed by the insurance company. This should be considered part of the cost of insurances, otherwise it could be impossible to insure certain buildings without excess or alternatively the premium would be extraordinarily high and uneconomic."

- 38 The Tribunal accepts Ms Cole's analysis in this regard, and her evidence in relation to the extent of the insurance cover. She went onto explain that if there were evidence of the damage being claimed for as having been caused by the negligence etc of the leaseholder or his/her family etc, then the cost would be recovered from them individually. However where, as with the invoice currently being considered, the damage to the insured item was caused by the storms suffered at that time, it would have been covered by the insurance. In those circumstances the Tribunal agreed with Ms Cole that it was entirely appropriate, and sensible, for the Respondent to make a commercial decision to put such a charge through the service charge rather than making a claim on the buildings insurance; making a claim was a matter likely to impact on the cost of any subsequent premium payable when the insurance was renewed. This was especially the case with the invoice in question at [393] as this was for the sum of £584.26, where the insurance excess was £500.
- 39 The Tribunal noted that, again this was similar to an argument raised by the Applicant and determined by the previous Tribunal in 2004 [64-136] "... it was reasonable for the Applicant (there the freeholder) to decide not to make a claim against the buildings insurance policy to cover the cost of the works because of the adverse effect it was anticipated that would have upon future insurance premiums."
- 40 The Tribunal therefore concluded that this sum could properly be claimed through the service charge.
- 41 The Applicant next sought to challenge a series of invoices from a contractor called Graham Libby. Items 71 to 98 [892][893] were all challenged by the Applicant on the basis that either:
- a. The work was unreasonable/ uncompetitive;
  - b. The work was required as a result of previous poor cladding/ roof works and/or should have been covered by a warranty;
  - c. It was private work and a non-service charge matter or
  - d. Clarification required/ it was unreasonable.

- 42 The Tribunal was taken through each invoice in turn by the Applicant. Again the Applicant failed to produce any comparable evidence in support of his challenges. The Tribunal was not satisfied that there was any legitimate challenge to any of those invoices. The Tribunal considered that all the invoices were reasonable and for work properly undertaken and within the terms of the lease.
- 43 The Applicant criticised previous works undertaken to both the roof and cladding works to the elevations of the blocks, saying that given further works were subsequently required it wasn't reasonable for the leaseholders to have to pay for these further works. He stated that the works should all have been carried out in such a manner as to once and for all resolve all issues with disrepair to the blocks elevations and the roofs. Ms Cole's evidence in this regard can be summarised as follows:
- i. Ms Cole explained that the blocks had previously been in a serious state of disrepair, indeed the Tribunal noted that this had been remarked upon by the previous Tribunal in its 2014 decision [46-12 and 13]. She explained that the Respondent had been hampered by a lack of funds as to precisely what work it had been able to afford to tackle the disrepair issues.
  - ii. Ms Cole explained to the Tribunal in some detail that some works had been carried out to the roof in 2010/2011, in an attempt to ameliorate the problem: it had been recognised by the Respondent that the roof was in a serious state of disrepair, however the funds to affect a complete and permanent/ long term solution to this disrepair were just not available. The Respondent had therefore undertaken a repair which was the best it could afford at that time. It had lessened the problems with the roof, certainly in the short term, although it was recognised that it was not a long terms solution. Ms Cole explained that the Respondents had paid for two new layers of felt to be laid over the existing roof surface, but as the existing roof was defective (the roof didn't have the correct falls on it), and those defects were not able to be addressed, there was no guarantee of the new roofing works, and it was accepted that these were only a mid/short term solution. In her words, there were still some problems but it was much better than it had been before;
  - iii. Ms Cole also explained that cladding works had been carried out to various elevations of the blocks in the development. These had been done one elevation at a time, and sometimes different contractors had been used. In relation to one particular elevation of one block, the Respondents had appointed contractors called 'Willow' to carry out the cladding works. They had, unbeknownst to the Respondent sub-contracted the work, and when, within the currency of the guarantee, the works were found to be defective the contractors were no-where to be found. The Respondents then sought to reclaim some at least of the costs of remedial works from the surveyors who had been appointed to oversee those works, as the Respondents

considered that had the surveyor been properly performing his function, this should have been spotted and rectified at the time.

1. Evidence of the attempts made by the Respondents to recover these additional costs can be seen at [272], item 74, where 50% of the cost of the works was paid by the surveyor, Dan Butt of Now Survey.
  2. Ms Cole explained that the Respondent's recovered all that they were able to get from the surveyors in this regard.
- iv. Other elevations on the development, had had similar works carried out to them, and these works had been properly carried out, and therefore had been far more successful. Ms Cole though explained that there were nonetheless still problems, the works were again only what the Respondent was able to afford at the time, and in the face of the particular heavy storms in 2012 and 2013 there had been further problems with water penetration through the cladding [903-14];
- v. Ms Cole explained that the works which were currently ongoing at the site were a godsend for the leaseholders and the Respondent; the external wall insulation works currently being carried out were a permanent solution to the previous problems to the elevations of the blocks and that the cost of these works was largely being covered by grants from the council [903-15]. Further works would however, it was recognised, be needed to the roofs.

44 The Tribunal found that the repair works detailed in the invoices which had been carried out to the roofs and the elevations of the various blocks were reasonable and were appropriate in what the Tribunal recognised were difficult circumstances. The Applicant himself made reference to the restricted finances of those living in the properties within the development. This clearly impacts upon the Respondent's ability to raise funds to carry out works to the blocks, and consequently informs the type of works which can be carried out on the development. The Tribunal considered that the steps that the Respondent took in relation to works covered by the invoices in question were reasonable, and the Respondent had taken appropriate and reasonable steps to recover what sums it could from others – e.g. the surveyor, where appropriate. The Tribunal were not able to comment on whether other steps could have been taken against the surveyor given that it was not aware of the terms of the surveyor's engagement/retainer nor any advice the surveyor may have provided about the life expectancy or effectiveness of the works carried out previously.

45 Ultimately, the Respondent was in a position where works were needed to both the roofs and elevations of the blocks on the development; it was necessary reasonable and appropriate for it to carry out those works.

46 While the Applicant had, in relation to a number of the Graham Libby invoices sought to argue that the costs were unreasonable (see for example item 73 [271]), he had failed to provide any comparable evidence in support of such assertions. In the absence of specific evidence to the contrary, the Tribunal considered, using its experience and expert knowledge that the costs of the

works detailed in the invoices was not excessive. Further and in relation to the specific invoice challenged at [271] the Applicant stated that in his view the charge was excessive for the work done. Though in the next breath he stated "I don't know what work was done. I accept I have no comparable evidence." In the Tribunal's view, and on the basis of the evidence before it, the Tribunal found that the amount charged under this invoice, given the description of works contained in the invoice, was reasonable. The Tribunal reiterated to the Applicant that the question was not whether works could have been done cheaper, but whether (in relation to this issue) the cost was reasonable given what work was done.

- 47 Some of the invoices, for example, items 79, 89, 92, 93 and 95 the Applicant challenged as being for private work, and asserted were non service charge items. On first blush, one could see why the Applicant was concerned about these charges; Item 79 refers to the invoice at [277] – and relates to internal redecoration at 19 Williams Close. Ms Cole explained that this decoration was required as a result of water damage caused during the storms of 2012/ 2013 and the failure of the external fabric of the building. As detailed above, she explained that this was covered by the buildings insurance obtained covering the development, however the Directors of the Respondent took the view that it was commercially sensible to pay for the cost of these repairs through the service charge, rather than putting in a claim on the insurance. This was not only because of the expected adverse impact on the costs of any renewal premium, but also because as Ms Cole said, given the number of claims that there would have been, it was expected that water damage would become uninsurable at the development as a result; something which the Respondent's understandably wanted to avoid.
- 48 The Tribunal, noted with some concern that this was exactly the same issue raised by the Applicant, and answered by the Respondent and decided by the Tribunal in relation to very similar invoices within the 2014 previous Tribunal's decision; see in particular at [64-136]. The Applicant was seemingly therefore well aware of the reasons for these sorts of invoices, and had had the Respondent's treatment of this sort of charge examined by a previous Tribunal. He sought to raise substantively the same issue within these proceedings without adding anything further to his case/ challenge or addressing the matters raised by the previous Tribunal
- 49 The Tribunal found that the Respondent's treatment of such costs in this regard was entirely sensible and a reasonable management decision.
- 50 The Applicant made a specific further point in relation to item 93 [367], concerning works done in relation to a leak from 104 Williams Close into 98 Williams Close. The Applicant argued that he managed flat/ maisonette 98 Williams Close and that no work had been done in that property and that this was, in his words, "a fake invoice".
- 51 The Tribunal rejected that suggestion entirely: it is clear from the wording of that invoice that the work done was in 104 Williams Close; it was work done to rectify the leak. It is not alleged by that invoice that any work was done within 98 Williams Close. The Applicant then alleged that in fact no work was done

within 104 Williams Close either, as all that had been required was the turning off of a tap. The Applicant though accepted that he had not been inside 104 Williams Close and so in fact had no direct knowledge of what work had or hadn't been done to remedy the leak. He may have understood from others that the leak had been caused by an overflowing tap, but the Applicant had not called any direct evidence to establish this. By comparison, Ms Cole was able to recall this incident specifically, and the Tribunal considered it highly unlikely, on the balance of probabilities, that not only would a contractor manufacture an invoice in the manner alleged by the Applicant but that also if that had been the case this would not have been challenged by the owners of 104 Williams Close themselves. In fact, the evidence before the Tribunal was that this invoice was not being recovered through the service charge, but rather from the leaseholders of number 104 Williams Close directly as Ms Cole contended that there had been evidence to suggest that they, or their tenants had been aware of the leak for some time and had done nothing to rectify it. Thus this invoice was not in fact a service charge item in any event. While the Applicant sought to argue that it was evidence more generally of effectively fraudulently practises by the contractor Libby, the Tribunal rejected such an assertion. The Tribunal accepted the evidence of Ms Cole in relation to the works required in relation to this leak/ invoice: she was clear that she remembered the incident in question (and the Tribunal noted that she had also indicated in relation to other invoices when she had been unable to recollect the specific issue in question). The Tribunal found her evidence entirely credible.

- 52 The Applicant sought to make another point during the course of the hearing, comparing the invoice at [462] for works done in 2014 with that done in 2013 [277]. As the Tribunal pointed out to the Applicant, the invoices covered different rooms within the subject property. The Applicant sought to allege that there was only water ingress to the rear elevation as a result of the cladding works. Ms Cole explained that she specifically remembered this flat and that there were two different sources of water ingress: one was indeed related to the rear elevation and the cladding work which had been previously carried out to the rear elevation, however she also explained that there were also issues with water penetration from the roof of the block affecting this property. The Applicant responded to Ms Cole's evidence saying he didn't believe that the work was necessary. It was not clear from the Applicant's submission, why he didn't think the work was necessary.
- 53 The Tribunal entirely accepted Ms Cole's evidence in this regard. The Tribunal accepted that not only was such work was required, but it was reasonable in extent and that the cost of the same was reasonable and had been properly treated by the Respondents and could be reclaimed through the service charge.
- 54 The Applicant also sought to challenge under item 80, invoices at [278][289][293][307][309][398], totalling some £29,280, being the cost of cladding and redecoration works to one particular block, namely 45-64 Mantle Close. The Applicant merely asserted that the cost of these was unreasonable. He did not expand on this in his oral evidence, and did not produce any evidence of comparable costs for the cladding and redecoration works undertaken.

- 55 As the Tribunal sought to explain to the Applicant, and has seemingly been explained to him previously in the 2014 decision, if the Applicant alleges that something is unreasonable it is for him to provide a cogent basis for alleging the same. On the basis of the evidence before the Tribunal there is no proper basis for the Tribunal to conclude that the costs covered by these invoices are unreasonable.
- 56 In relation to item 81, the Applicant referred the Tribunal to [285], this invoice concerns the payment of a 5% retention payable in relation to works carried out at a different block (block 65-76 Mantle Close) at the end of the relevant retention period. The Tribunal noted that this was not the block which had suffered the poor workmanship during cladding works (carried out by Willow's sub-contractor), but works to an entirely different block undertaken by a different contractor. The Tribunal were not directed to any specific evidence showing that there had been any problems with these works to this block within the currency of the retention period: therefore it was not clear why the Applicant felt this invoice should be challenged. In his oral evidence the Applicant gave no coherent basis of challenge concerning this invoice. Having heard Ms Cole's evidence that there was a 6 month retention period the Applicant then sought to allege that the problems started after the six month period had elapsed. He was however, unable to point to any documentary evidence of this, in relation to problems with this block, when asked to do so. Further, in the Tribunal's view if there were no problems within the retention period then contractually the Respondent would have been obliged to pay the retained sum. The Applicant then altered his argument, so that he claimed that 6 month wasn't a long enough retention period. He failed to provide any documentary or comparable evidence to substantiate his position in this regard. The Tribunal considered that a 6 month retention period was reasonable in all the circumstances, in particular given that it would have seen the works over the majority of the winter season, seemingly without any specific problems being highlighted.
- 57 Item 86 on his Schedule was challenged by the Applicant as being 'unreasonable' (referring to invoices at [303][323][320] [332][371]. When these were looked at during the course of the hearing, the Applicant altered his basis of challenge to these invoices, saying that his concern was that he hadn't seen any other quotes for this work. When the Tribunal pointed out to the Applicant, the documentation at [827](albeit in relation to a different block to those covered by the invoices being considered at this point), [838] Libby's quotation for the works to the block in question and in particular [833] – part of the section 20 process documentation setting out the two quotes obtained in relation to works to the block covered by the invoices in question, he conceded that there had in fact been another quote obtained. The Applicant agreed that he was not challenging the section 20 consultation process, and that he could in fact now agree these invoices.
- 58 The Applicant went onto challenge items 96 and 97, [378] [379], being invoices concerning works and scaffolding costs to numbers 5 and 8 Williams Close. Part of the costs were reclaimed from the surveyor who undertook the original work (on the basis discussed above). The Applicant stated that given both

numbers 5 and 8 Williams Close were on the ground floor, he couldn't see why scaffolding would have been required.

- 59 The Tribunal found, and the Applicant agreed, that the properties in question were two storey maisonettes. The Tribunal found it possible that there could be works required to the first floor elevation which might properly and reasonably require scaffolding to be erected – rather than work being done from a ladder. Given the description given on the invoice it was not possible to identify the specific remedial works undertaken to the elevations in question. However the Tribunal considered that if there had been any real or proper argument about the reasonableness or appropriateness of scaffolding being used in this instance, the surveyor who had ultimately paid 50% of those costs would have objected to the same. The Tribunal heard from Ms Cole that in fact the surveyor had agreed to pay, and the Tribunal understood, had paid, such costs. The Tribunal therefore concluded on the balance of probabilities that such costs were appropriate and reasonable.
- 60 Items 101 to 104, referred to invoices at [366][386][388] and [391] and concerned items of bulk rubbish removal. The Applicant alleged that the costs were excessive, pointing specifically to the fact that there was a 'dump' approximately 1 mile away.
- 61 The Tribunal noted that the Applicant had failed to find any comparable quotes which he compared these charges against. The Tribunal noted that in subsequent years the Respondent had been able to identify another cheaper bulk rubbish/ fly tipping removal contractor and used them. This new contractor was in fact a contractor which was already used on site for other conventional cleaning tasks, and had on the death of the original owner been taken over by other family members and the ambit of work they engaged in then expanded to include bulk rubbish removal. That new contractor was not available in 2013 for this sort of work.
- 62 In all the circumstances the Tribunal considered that these costs were reasonable at the time. The distance to the dump is, in the Tribunal's view, but one small factor in considering the reasonableness of cost: the distance to the dump will impact only on fuel consumed, it doesn't alter the number of people needed to lift/ remove items or the need for or capital cost of transportation, and/or fees for professional use of the disposal site.
- 63 Item 105 [319] was challenged by the Applicant on the basis that the price charged was excessive, and the works "...could have been done for less." The Applicant produced no comparable evidence which the Tribunal could use to compare the respective costs. In the circumstances the Tribunal considered that the costs detailed in the invoice were reasonable. The works included not only the replacement of 16 external lights but also re-wiring work carried out by a professional electrician to those 16 lights.
- 64 Item 107 [369] referred to the cost of fence panels damaged by a storm. This item was challenged by the Applicant on the basis that it was a non-service charge item and amounted to private work. The Tribunal has detailed above its conclusions in relation to such items, and approved of the Respondent's



practice of not making a claim on its insurance policy, but putting such costs through the service charge.

- 65 Items 110 to 112 [279][313][390]: The Applicant alleged that these were non-service charge items. The Tribunal accepted Ms Cole's evidence that the invoices at [279] and [390] were not claimed through the service charge, and had been reclaimed from the individual leaseholders. They did not therefore fall to be considered as part of the Applicant's service charges. In relation to the invoice at [313], Ms Cole explained that this related to the costs of a previous Tribunal hearing in 2013. Ms Cole produced, through Mr Doyle, on the second day of the hearing a statement of account which showed that such invoices were not being claimed directly from the Applicant, but that they had rather been put through the service charge pursuant to paragraph 2 of Part II of the Sixth Schedule of the Lease [22]. The statement of account showed certain charges as having been billed directly to the Applicant's account, only to be immediately refunded and put through, Ms Cole explained, as service charge items. The Tribunal was therefore satisfied that the invoice at [313] was properly reclaimed through the service charge.
- 66 Item 117 [287] was queried by the Applicant on the basis that he didn't understand what it related to. Ms Cole explained it concerned the cost of the hire of a room for the management company's AGM. The Tribunal were satisfied that this charge could properly be reclaimed through the service charges pursuant to paragraph 10 of Part II to the sixth schedule of the lease [22]. The cost of arranging and facilitating the AGM of the management company was in the Tribunal's view, a proper cost of administering the management company. Once this was explained to the Applicant he indicated his agreement to the same and withdrew his challenge.
- 67 Finally in relation to the 2013 service charge year item 119 in the Applicant's schedule [331] was challenged: this was the cost of Now Surveyors in producing the written specification for the cladding works in 2013 and on site supervision of the same. The Applicant contended that the leaseholders had had "...zero service for this money..". As detailed above, Ms Cole explained and the Tribunal accepted that there had been criticisms of the surveyor's on site supervision of the works, which had resulted in further works being subsequently required to rectify problems which arose. Ms Cole explained that the Respondent had sought to recover as much as they could from the surveyor in relation to the costs of those additional works. On the basis of the limited evidence before it in this regard, it appeared that this approach was reasonable. The Tribunal was not privy to what if any advice had been given by the surveyor previously about the likely effectiveness of these works. Nor did it appear to the Tribunal that all of the surveyor's oversight had been criticised, the Tribunal understood Ms Cole's evidence to be directed specifically at the surveyor's oversight of the cladding works to one elevation of one block and subcontracted to the company 'Willow'.
- 68 In terms of the fee detailed at [331] the Tribunal accepted that a 10% of the contract value was a standard fee for the work covered and was reasonable. The Tribunal also noted that there was seemingly no criticism of the surveyor's work in relation to the production of the specification of the works.

2014 Service charges.

- 69 The Applicant, when addressing the Tribunal on his challenges to the 2014 service charges [894], grouped his challenges under certain headings. For the sake of convenience the Tribunal proposes to use the same groupings adopted by the Respondent when setting out its conclusions in this decision.
- 70 The Applicant repeated his challenges (as detailed above) to the cost of British Gas charges in relation to the 2014 service charges. The Respondent repeats its conclusions that the charges are in its view reasonable.
- 71 Items 42-56 [895], are in the nature of the same type of challenges as detailed above at paragraphs 27 to 29. The Respondent repeats its findings in relation to the same. The Applicant indicated that he was not challenging the management fee, or item 43 [895].
- 72 Items 83 to 89 [895][896] were also challenged by the Applicant; these were invoices by a contractor Venutra Installations. Items 83, and then 85 to 89, were all challenged on the basis that they should not have been included in the service charge as they were private works. The Tribunal has dealt with this basis of challenge above, see paragraphs 47, 48, 49 and 64 herein. The Tribunal considers these items to be reasonable and properly payable through the service charge for the reasons detailed above.
- 73 Item 84 [408], referred to the cost of remedial work required as result of disturbance to tarmac caused by plant roots and the erection of wooden planters in the disturbed areas. When asked what the basis of his challenge was to this invoice, the Applicant stated "I just want her to explain. I am not sure". Having heard Ms Cole's explanation, the Applicant indicated that he was "...content, except re reasonableness. Given the area it's a lot of money for the work done." The Applicant produced no comparable evidence concerning what he might regard as a reasonable cost for such works. The Tribunal concluded that the costs claimed were reasonable.
- 74 One should also specifically mention item 88 at this stage in the judgement. This related to the invoice at [459], concerning the supply and erection of scaffolding, and the supply and installation of UPVC flat boards. The Applicant submitted that the property in question was a ground and first floor maisonette. He stated that he was not disputing that the work "may have been done", but that as he didn't see any scaffolding he was challenging the cost of that within the invoice.
- 75 The Tribunal were not persuaded by the Applicant's memory of what he may or may not have seen in April 2014 (now over two years later), as to whether there was scaffolding in place at a specific property for what might, in the circumstances, have only been a short period of time. The Applicant produced no contemporaneous evidence to support his memory of what would presumably not have been particularly noteworthy event, over two years previously. The Tribunal reject the Applicant's challenge to this item, and find the cost entirely reasonable. For the avoidance of doubt, the Tribunal make it clear that they consider it entirely necessary and appropriate for scaffolding to

be required when works involving lengths of UPVC flat boards at first floor height are involved; that sort of work cannot be safely carried out, in the Tribunal's expert view, from a ladder.

- 76 In relation to item 89 [519] the Applicant alleged that this was something which should have been claimed under the leaseholder's private insurance. Ms Cole explained however that given the terms of the insurance policy in place, as the storage heater amounted to a fixture and fitting within the subject property, it was included within the block buildings insurance. Mr Doyle submitted that although the individual leaseholder was responsible for the heating system and repair normally, as the fire was an insured event, the leaseholder could claim under the block buildings insurance for the damage caused. Therefore and for the reasons detailed above, the Tribunal concluded that the Respondent was entitled to treat the costs of such repairs as it did, putting the costs through the service charge as akin to the cost of the payment of the excess under its insurance.
- 77 Items 92 to 134, being all the invoices from one contractor, Graham Libby, are challenged by the Applicant. He was however able to group his basis of challenge into three heads:
- a. Firstly; there was a group of three invoices the Applicant sought to challenge individually being R129; R32; and R37; and
  - b. Secondly, that the Applicant maintained that all the other invoices, if over £500, should have been put through the block buildings insurance policy; and
  - c. Thirdly there were a group of invoices which formed part of the supplemental bundle which the Applicant handed up at the start of the second day of the hearing.
- 78 Looking first at the three selected invoices R129; R32 and R37. The Applicant agreed that R129 actually related to the 2015 service charge year and should be looked at when that year was considered. In relation to R32 [448] the Applicant alleged that this was a 'fake' invoice. The Applicant maintained that this was a property under his control; it was a property he managed on behalf of someone else. He asserted that there was no missing trim replaced, no scaffolding erected, and that while he had reported water ingress in 2013 it was he who had in fact effected the repair by leaning out of the window and applying silicone to the relevant external area. The Applicant was unable to recall the date in 2013 when he had carried out this repair, but was certain it was in 2013. He had not seemingly made any specific documentary record of this incident.
- 79 Ms Cole on the other hand while accepting that on this occasion she had no specific recollection of this matter stated that two of the directors of the Respondent lived in that block and she believed that it was likely that they had reported the missing trim to her, and that she in turn had organised contractors to carry out the works. She also commented that these two directors paid the service charge like the other leaseholders and she thought it highly unlikely that they wouldn't have questioned this invoice at the time had there not been scaffolding erected. Ms Cole also told the Tribunal that as a

result of the storms which the country suffered in 2012 and 2013 there were lots of different bits of work ongoing at the development at this time.

- 80 The Tribunal found that, on the balance of probabilities, the Applicant had carried out works to this property in 2013, but that did not, of itself, mean that further external works were not carried out later in or around February 2014 – the date of the invoice at [448] (the Tribunal noted that the works order referred to on the face of the invoice was 30/01/2014). The Tribunal considered that this explanation was far more likely to be the case than an entirely fabricated invoice. While it may be the case that the Applicant had not noted scaffolding up at this property; that was not determinative of the issue as to whether scaffolding had been erected. On the balance of probabilities the Tribunal considered it highly unlikely that this was a fabricated invoice. The Applicant's oral evidence on this issue, above fell far short of establishing what he alleged.
- 81 Item 105 referring to invoice R37 at [453] was the next item challenged by the Applicant. He explained that this was a property he owned personally, and that he believed that this too was a fraudulently fabricated invoice. The Applicant stated that there was work which was required internally, (to the wall) and that he had done this himself. The Applicant explained that the tenant who lived in this property had actually had to move out because of the damp problems. He claimed that he had written to Ms Cole about this issue more than once, but was unable to provide the Tribunal with copies of his letters.
- 82 The Tribunal noted that the Applicant had indicated in his schedule [896] that he disagreed with this item. His oral evidence was that he had himself carried out the work required internally. He made no reference in his oral evidence to having completed any external work which was needed. The Tribunal noted that aside from his oral evidence, now some 2 years later, he had produced no documentary evidence in support of his assertion that this was an entirely fabricated invoice. The Tribunal do not accept, on the basis of the evidence before it, that on the balance of probabilities that this is a fake or fraudulent invoice. The Tribunal noted that there were two resident directors living on the development, and that they would be likely to note and query any invoices which didn't tally with work they saw ongoing or were aware of. This was especially so since they too paid the service charge like all the other leaseholders.
- 83 Turning next to the second group of challenged items, namely those costing over £500 which the Applicant alleged should all have been put through as claims under the building insurance policy. The Tribunal has dealt with this issue above in relation to its comments concerning the 2013 service charge, and repeats those findings here. In all the circumstances the Tribunal accepts that the Respondent's treatment of these costs is not only permissible under the terms of the lease and the RICS Service Charge Residential Management Code in force at the time, but that also it made sound commercial sense; as evidenced by the Respondents having significantly reduced the block buildings insurance premium from some £40,000pa. Even though it may have been able to make claims under the building's insurance policy in respect of claims exceeding £500, that did not mean that the Respondent was compelled to do

so. Ms Cole had explained the Respondent's concerns about making repeated claims in this regard concerning water penetration; concerns which the Tribunal understood and found justified the approach taken.

84 Finally the Tribunal considered the specific invoices raised by the Applicant in his supplementary bundle, and his accompanying photographs. The Tribunal noted in particular that the Applicant took the photographs he produced in May 2016, some 18 month to 2 years after many of the invoices he was challenging. In those circumstances the Tribunal found it hardly surprising that the photographs didn't show signs of works undertaken some 2 years earlier. Considering each of the invoices the Applicant referred the Tribunal to in turn:

- a. R78 [499] The Applicant stated that his photograph showed that the side elevation of the block was concrete, and there was, he said, no upvc or timber. He therefore maintained that this invoice too was a 'fake'. The Tribunal pointed out to the Applicant that it was clear to them that the invoice referred to the upvc strip applied at the top of the side elevation to the roof line. The Applicant disputed this saying that the strip was one length of upvc not six lengths as referred to in the invoice. The Tribunal rejected the Applicant's assertions/ challenges in this regard, finding that on the balance of probabilities the work had been done as described in the invoice.
- b. R8 [412]. The Applicant alleged that the photographs he had taken on 24/05/2016 showed no sign of work having been done as described in the invoice. The Tribunal noted that the invoice was dated 19/01/2014; some two years 4 months prior to the Applicant's photograph being taken. The Applicant referred to there being no sign of any gloss paint in evidence. However the Tribunal noted that the Applicant's photograph did not show the wood running the length of the block situated under the door of flat 45. On the balance of probability the Tribunal was not persuaded by the Applicant's submission that this was a fake invoice. The Tribunal concluded that the work referred to in the invoice related to the wood running under the door threshold and omitted from the Applicant's photograph (but seen by the Tribunal during their inspection). The Applicant's challenge to this invoice is therefore rejected.
- c. R9 [413] the Applicant stated that he saw no evidence in his photographs (taken in May 2016) of this work having been done. The Tribunal noted that the invoice was dated 19/01/2014, over two years and 4 months prior to the photographs being taken, and found given the description of works completed (in filled gaps on rear corner of the back elevation where filler and silicone had become dislodged), it hardly surprising that these works were not visible over two years later. That was not evidence that the works hadn't been done or hadn't been reasonably required. The Applicant's challenge to this invoice is therefore rejected.
- d. R10 [415] The Applicant made substantively the same point in relation to this invoice, saying that there was in May 2016 no sign of any brackets to the rainwater goods having been replaced in January 2014. The Tribunal repeats its conclusions as detailed above, and reiterates

that it found the Applicant's submissions in this regard of little assistance and not at all convincing. The Applicant's challenge to this invoice is therefore rejected.

- e. R27 [443] The Applicant once more maintained that this invoice was, 'fake'. He explained that the 55 Mantle Close and 54 Mantle Close properties were on different ends of the block and so it was impossible for 55 Mantle Close (a 2<sup>nd</sup> and 3<sup>rd</sup> floor maisonette at one end of the block) have caused a leak into 54 Mantle Close (a ground and 1st floor maisonette at the other end of the block). The Applicant went on to say that he was aware that works had been done at flat 64 (the 2<sup>nd</sup> and 3<sup>rd</sup> floor maisonette immediately above 54 Mantle Close. Though he rejected entirely the Tribunal's suggestion that this was probably what was being referred to, but that there had been an error in numbering. Again, the Tribunal found on the balance of probabilities that there had been an error in the invoice in the numbering used to describe one of the properties in question, and that instead of number 54 Mantle Close being referred to, it should have referred to 64 Mantle Close. The Applicant's challenge to this invoice is therefore rejected.
- f. R 124 [561]. The Applicant referred to his complaint about this invoice as relating to the cost of the work done. He stated that £540 was excessive given the small area involved. The Applicant referred to the cost of upvc as being about £20, but he produced no documentary or comparable evidence to support his contention in this regard. Ms Cole explained that the Respondent had obtained quotes for this work beforehand and believed that the cost involved was reasonable. She was however unable to direct us to a copy of the quotation; though the Tribunal noted that the invoice referred to the contractor having received email confirmation in relation to the works in October 2014. In the Tribunal's expert opinion the cost detailed in the invoice is not excessive when one considered the amount of work involved in the works to this area (including the removal of what had been present originally, the installation of the upvc, including buttoning, the strips and the silicone seal). The Applicant's challenge to this invoice is therefore rejected.
- g. R139 [577]. This invoice referred to three items of work: replacing the wooden strip above the front door with upvc; removing rotten timber 'alongside cupboard door replace with new' and paint black to match existing colour. The Applicant stated that the photograph he had taken showed that the wood to the cupboard door was not painted black. However as explained by Ms Cole and noted by the Tribunal during its inspection, there was a wooden strip running the length of the block under the door and the facade of the block, (not shown in the Applicant's photograph) which is indeed painted black. It was evident to the Tribunal that this was the area of wood referred to in the invoice as having been replaced – the Tribunal considered that the author of the invoice was trying to describe the area of wood running under the cupboard door which was indeed painted black. The Applicant accepted that the other work described in the invoice (to the upvc) was in fact carried out. The Applicant's challenge to this invoice is therefore rejected.

h. R143 [581]. This invoice related to a different contractor, and concerned decoration work to the communal staircases within the development. The work was carried out in December 2014, and the Applicant alleged that the works had been carried out to a poor standard and the cost was excessive for the work done. The Tribunal had looked at the staircases during the course of its inspection. There were, the Tribunal understood, some 8 staircases (some up to four storeys high) over the development, the cost of the work done was £7,584 + vat, amounting therefore to less than £1,000 per staircase + vat. The Tribunal did not consider this to be excessive given the work involved. The Tribunal also noted that the staircases were the subject of pretty heavy use in this development. The Tribunal noted that once more the Applicant has failed to provide any comparable quotes for similar work. On the balance of probabilities and using its expert knowledge, the Tribunal considered the costs of these works to be reasonable. The Applicant's challenge to this invoice is therefore rejected.

85 The Tribunal checked with the Applicant that he had drawn the Tribunal's attention to the specific Libby invoices that he wished to challenge under one of the three groupings he had referred to. He agreed that he had.

86 The Applicant then indicated to the Tribunal that he now agreed that items 137 and 138 [897] were reasonable, and the Tribunal did not need to specifically consider them.

87 The next group of invoices which the Applicant challenged were those of CR Hughes at items 139 to 144 in his schedule. The Applicant alleged that the bulk rubbish removal charges contained in these invoices were excessive. The Applicant claimed that the contractors should have taken photographs of the items removed, and because they hadn't, and the Applicant couldn't recall seeing such items on the development he challenged whether the work had been done at all, alleging that he didn't believe that the items were in fact there; in short he was claiming that the invoices related to fictitious claims of work. The Tribunal noted that in fact at [426] the contractors had itemised the goods that they had removed so that there was some record of the articles in question. The Tribunal was not satisfied that the Applicant's evidence as to what he recalled having seen in terms of dumped/ fly tipped items on the development (now over some 2 years or so ago) was a proper basis for challenging these invoices. On the balance of probabilities the Tribunal was satisfied not only that the work was done, but also that the cost of the works described were reasonable.

88 Item 146 [556] was challenged by the Applicant on the basis that the cost was unreasonable for the work done. The Applicant produced no documentary or comparable evidence to substantiate his assertion in this regard. The Tribunal found, the charges invoiced to be reasonable. The Applicant's challenge to this invoice is therefore rejected.

89 Item 147 [573], concerning the magnet release mechanism on the doors to the communal staircases. The Applicant alleged that there was no need to install magnets in the door closer systems on these communal doors. Though it was clear that the doors had been installed with such a closing system in mind, and indeed such system was in evidence during the Tribunal's inspections on at least some of the stairwell doors. The Applicant accepted that the works covered by this invoice had 'probably' been done. The Applicant's challenge to this invoice is rejected; the Tribunal considered that the works as described were reasonable and reasonably required. This was especially so in the context of the Applicant complaining about the state of decoration of these stairwells, which included some graffiti and some evidence of vandalism and anti-social behaviour potentially occurring in these areas.

90 Item 154 was considered under paragraph 84 above.

91 Items 157 to 160 were invoices by SLC solicitors, and were said by the Applicant to relate to non-service charge items. Ms Cole repeated her evidence that these were indeed items which had been billed to individual leaseholders (and had not therefore been claimed through the service charge) save for the invoice at [491] which was reclaimed through the service charge. Mr Doyle submitted that such charges for legal fees/ costs were recoverable pursuant to paragraph 9 of the sixth Schedule [22]. The Tribunal repeats its findings above in this regard and agreed that the costs fell within the ambit of the provision of the lease. Ms. Cole explained that save for the invoice at [491] these invoices were not in fact charged through the service charge; the invoices had been sent to the Respondent's accountant and had been copied and disclosed to the Applicant in error. The invoice at [491] was, in the Tribunal's view properly recoverable through the service charge. The charges for Court proceedings referred to in that invoice were the original county court proceedings which led to the 2014 Tribunal decision. Those costs did not relate to the third party debt order proceedings which had not been commenced by May 2014. As noted above the previous Tribunal in its 2014 decision declined to make a section 20C order in relation to the costs of those proceedings, thus enabling the Respondent to seek to recover such costs through the service charge if permitted by the terms of the lease.

92 Items 170 and 171 were also challenged by the Applicant as being non- service charge items. The relevant invoices appear at [494] and [545]. Ms Cole explained that [494] concerned the cost of a replacement chest within a property which had been damaged by water ingress as a result of the failure of the fabric of the building. Ms Cole was frank in her evidence that in her view, this item should not in fact have been put through the service charge, as she considered that the chest in question was not a fixture or fitting and should therefore have resulted in a claim by the individual leaseholder against their own home contents insurance. As the chest was not a fixture or fitting it did not fall within the ambit of the building's insurance policy. The Tribunal agreed and found in favour of the Applicant that this item should not have properly been included with the service charge.

93 The second invoice referred to in this regard is at [545] and referred to Christmas tips being provided for cleaning staff. Once again Ms Cole indicated



that she didn't agree with this having been included as a service charge item. The Tribunal considered the wording of the lease, in particular paragraphs 2 and 3 of Part II of the sixth schedule of the lease [22]. These provided:

“Sundry fees 2. All fees charges expenses salaries wages and commissions paid to any Auditor, Accountant Surveyor Valuer Architect Solicitors or any other agent contractor or employee whom the Management Company may employ in connection with carrying out of its obligations under this Lease.....

Employees. 3. All expenditure incurred in respect of any employees of the Management Company on the provision of uniforms clothing or accommodation and all outgoings incurred in connection therefore or payable in respect therefore and the cost of any such other items in connection therewith as the Management Company shall from time to time determine”

- 94 In the Tribunal's view the payment of a Christmas tip to cleaning staff, was in the nature of a gratuity and not a fee charge expense salary or wage paid to an employee or agent. Nor in the Tribunal's view is a Christmas tip something which can properly be said to fall within the ambit of paragraph 3 of Part II of the sixth schedule of the lease, as an expenditure or outgoing incurred in connection to such staff. A gratuity is in the nature of a gesture of good will and not an expenditure of the type, in the Tribunal's view, envisaged by these clauses in the lease. The Tribunal therefore agreed and found in favour of the Applicant that this item should not have properly been included with the service charge.

#### The 2015 Service Charge year.

- 95 Helpfully adopting the same approach as he had previously, the Applicant grouped his challenges to specific invoices he'd identified in his schedule [898]. The first group of challenged invoices included items 33 [898], 35 to 37, and then 40 to 48. Save for item 33 the Applicant made the same point that he had raised previously concerning reminder and referral fees; the Tribunal repeats its conclusions in respect of the same.
- 96 In relation to item 33 [607] the Applicant understandably raised a query concerning an invoice which looked like VAT was being charged twice in connection with the purchase of a bin. Ms Cole explained that while the invoice looked odd, the VAT claimed was £63.55, and not £52.96 to which further VAT was added. She acknowledged that the invoice should just have said recharge VAT £63.65. While noting that it had not seen the receipt in question in relation to the bin, the Tribunal accepted, on the balance of probabilities, Ms Cole's explanation of this invoice.
- 97 The next item challenged by the Applicant was item 75 R42 [646]. Initially the Applicant submitted that the invoice showed £700 had been charged for the removal of bulk rubbish/ fly tipped items. It is clear however that while the

total amount of the invoice is £700, the actual amount for removal of bulk rubbish items is only £120, and concerned the removal of 4 sofas and a bed. The Applicant acknowledged this was the case on it being pointed out by the Tribunal, but still insisted that £120 was too much for the removal of the items and further stated that "...there is no evidence that these things were there."

- 98 The Tribunal accepted, on the balance of probabilities, that the contractor had removed the items referred to on the face of the invoice; there was no cogent basis to doubt that this had occurred. Just because the Applicant claimed he hadn't seen these items when he was visiting the estate (which he claimed to do frequently) was not, in the Tribunal's view, sufficient evidence to impugn the veracity of the invoice. There was no industry standard or requirement to take photographs of items so removed as the Applicant suggested should have been undertaken.
- 99 The Tribunal noted that the cost for removal of bulk items was cheaper than the cost incurred in other years when other contractors had been used. Ms Cole explained that Linden Cleaning services were the cleaning contractors the Respondent used for the site, and that in 2015 the woman who had run the business had unfortunately died. That woman's son then took over the business, and branched out into removals. Ms Cole explained that as Lindens were contractors on the development anyway, and they quoted cheaper prices for bulk rubbish removal that they had used by the Respondent. This was in the Tribunal's view an example of good and proper management practice; a cheaper contractor became available and was henceforth used by the Respondent. The Tribunal noted particularly however that this service was not available from this contractor prior to 2015. The Tribunal also noted that the Applicant had failed to provide any comparable quotation for the removal of bulk items. The Tribunal found the charges invoiced to be reasonable. The Applicant's challenge to this invoice is therefore rejected.
- 100 The Applicant indicated that he was no longer pursuing items 78 and 79 [594][636] on his schedule; therefore the Tribunal did not go onto consider the same.
- 101 In relation to item 82 [601] the Applicant indicated that he disagreed with this invoice, but made no further submissions in relation to the same. The Tribunal found, the charge invoiced to be reasonable. The Applicant's challenge to this invoice is therefore rejected.
- 102 Items 85 [645] and 102 [778], were described as private work on the Applicant's schedule [900], and involved the same points about insurance claims as is noted above arising as a result of water ingress caused by a failure to the fabric of the building. While the Tribunal noted that item 102 concerned some £870, and was therefore more than the £500 insurance excess level, the Tribunal still considered the Respondent's approach to be commercially sensible. This was in particular given the number of such similar claims that had been made. The Tribunal noted in particular Ms Cole's concern that if claims for all the damage caused by water ingress were in fact put through the insurance, that it may result in water ingress becoming an excluded item of

cover. The Tribunal found the charges invoiced to be reasonable. The Applicant's challenge to these invoices is therefore rejected.

103 The next item challenged by the Applicant was item 84 [618]. In fact when asked the basis on which he challenged this invoice, the Applicant stated that he just wanted Ms Cole to clarify the invoice. When Ms Cole indicated that she couldn't remember the invoice/ work specifically, the Applicant stated that his challenge was in fact that it wasn't a reasonable price for the work done. He suggested that £150 was a reasonable price. He failed to produce any documentary evidence in support of that figure, or any comparable quote for the work undertaken. The Tribunal found, the charges invoiced to be reasonable. The Applicant's challenge to this invoice is therefore rejected.

104 Item 86 [673] was challenged by the Applicant on the basis that he considered it unnecessary for the Respondent's agent to have a key to some of the meter boxes. Ms Cole explained that some meter cupboards housed two meters, one being the landlord's meter for communal electricity, the other the leaseholder's own meter. Both leaseholder and freeholder needed to be able to access these meter cupboards. She also explained that in some of the bigger blocks there were 2 communal meters. The Tribunal found the work done and charges invoiced to be reasonable. The Applicant's challenge to this invoice is therefore rejected.

105 Item 87 [693] was challenged by the Applicant on the basis that the VAT figure added to the invoice had been crossed out. Ms Cole explained that Mr Libby (the contractor in question) had changed his VAT registered status and was, at that point in fact, no longer charging VAT. Therefore the amount of the invoice was adjusted to reflect this, and only £480 was paid. The Tribunal considered Ms Cole's explanation to be reasonable. The Applicant suggested to Ms Cole that the figures at [693] and (item 88) at [694] were not reasonable, given that this wasn't an area, in the Applicant's words "...where rich or middle class people live...". The Applicant produced no comparable quotations suggesting that the costs invoiced were not reasonable for the work done. Further the Applicant acknowledged that while he repeatedly criticised the Respondent for using Graham Libby contractors, he had not himself ever suggested any alternative contractors should be used. The Tribunal found the charges invoiced at [693] and [694] to be reasonable. The Applicant's challenge to these invoices is therefore rejected.

106 Next the Applicant turned to item 98 [758], an invoice dated 07/12/2015 for £760 which concerned works to the roof above 107 Williams Close. The Applicant indicated that the contractors had carried out this work before in 2014, though he was at the hearing unable to direct the Tribunal to the specific invoice. The Tribunal in fact subsequently identified the invoice the Applicant was referring to as being at [492] dated 12/06/2014. This invoice was for £450 + vat (a total of £540) and the works described were 'swept off roof, applied aquapoll on all felt joints and upstand'. While the Tribunal noted that similar works were seemingly carried out to the felt roof above 107 Williams Close in both December 2015 and June 2014, this was not, in the Tribunal's view, and without more, evidence of unreasonable or unnecessary work being carried out. Further while the Tribunal noted the difference in price for the works

between the two invoices, it was of note that the later (and larger invoice) encompassed the sticking back of felt, which the earlier invoice did not. Further it was not possible from the description on the invoice to ascertain whether a larger area of roof had been worked on, on that occasion. While the Tribunal could understand the Applicant's concern when comparing these two invoices, without more, there was insufficient evidence to result in a conclusion that the invoices or works done were unreasonable.

107 Item 99 at [775] an invoice for works at 107 Williams Close for £2,110 was challenged by the Applicant on the basis that the charge was excessive, and that he believed £700 was a reasonable figure for the work done. Once more that Applicant provided no comparable quotation as evidence in support of his suggested figure. The Tribunal found the charges invoiced to be reasonable. The Applicant's challenge to these invoices is therefore rejected.

108 The Applicant then challenged item 101 at [777], an invoice from 22/12/2015 for £1,820 for works to the front and rear elevations of 60 Mantle Close (of which £960 concerned the installation of upvc cladding to the wooden panel to the front elevation). The Applicant compared this invoice to that at R124 in his supplementary bundle (but also at [561] in the bundle), which concerned an invoice from 03/11/2014 for works to 67 Mantle Close which cost £540 (£450 + vat). The Applicant complained that though the works were similar (involving the same amount of ship lap cladding) the cost under the later invoice had greatly increased.

109 Ms Cole explained that 67 Mantle Close is a ground and first floor maisonette, while 60 Mantle Close is a second and third floor property. She explained that the work to 60 Mantle Close could not safely be done from a ladder whether from the floor or off the second floor communal metal walkway, and that therefore scaffolding was required; while she accepted the invoice didn't specifically refer to the use of scaffolding at the front elevation, it was her understanding that it was the case that scaffolding had been used, and that accounted for the difference in price. The Applicant submitted that scaffolding was not reasonably required to carry out the works, and that the work to 60 Mantle Close could have been done off a ladder. The Tribunal entirely rejected the Applicant's suggestion that such works could have been safely carried out off a ladder. Not least because of the specific dangers of working at that height whilst handling strips/lengths of upvc. The use of scaffolding was in the Tribunal's view entirely reasonable, indeed necessary and this explained the difference in price between the two invoices.

110 Further in relation to the invoice at [777] item 101 the Applicant challenged the cost of works to the rear elevation as being unreasonable, again suggesting that the works didn't require scaffolding, and that they could have been completed off the private balcony to the property. The Tribunal rejected the Applicant's submissions in this regard: not only would the use of a ladder from the balcony to reach the third floor windows have been potentially very unsafe, but such an approach would have also required the obtaining access to the balcony through the specific private property; obtaining such access can often be problematic and lead to delays/ restrictions in availability etc. The Tribunal found the

charges invoiced to be reasonable. The Applicant's challenge to these invoices is therefore rejected.

111 The Applicant indicated that he withdrew his challenge to the invoice at [776] (item 100), noted as R128 in his supplementary bundle.

112 The Applicant then moved to items 105 – 109, referring the Tribunal specifically to [632]. He claimed that the amount charged was too expensive when considering what was actually done, and argued that a reasonable price for the work would be between £250-300. He produced no evidence in support of this figure, which he suggested for the first time during the hearing and without any supporting evidence/ comparable quotation. The Tribunal noted that the parts and materials were noted on the invoice to cost £245, and so in effect the Applicant's case appeared to be that no, or only minimal, labour charges should have been levied. The Tribunal found the charges invoiced to be reasonable. Electrical works of this nature need to be undertaken by fully qualified and insured contractors, and in the Tribunal's view the costs stated on the invoice appeared reasonable. The Applicant's challenge to this invoice is therefore rejected.

113 Item 106 [633] was also challenged by the Applicant as being too expensive. He claimed that a reasonable price was no more than £200. He provided no documentary evidence or justification for that assertion. Once more, the Tribunal noted that the cost of parts and materials was some £170. The Applicant therefore appeared to be suggesting that the labour costs were excessive. In rejecting the Applicant's submissions in this regard, the Tribunal repeats its comments above about the importance of qualified electrical contractors and their expertise.

114 Similar submissions were made by the Applicant in relation to items 107 [634], and 108 [635], which he claimed should not have cost more than £200 each. In rejecting the Applicant's submissions in this regard, the Tribunal repeats its comments above.

115 The Applicant indicated that he was no longer pursuing items 110 and 111 and that these could be agreed.

116 In relation to items 113 to 121, the Applicant directed the Tribunal to [659] which he sought to challenge on the basis that the cost charged for the removal of bulk rubbish/ fly tipped items was excessive. He claimed that the cost should be no more than £25 (as opposed to the £50 charged) in relation to the invoice at [659]. In relation to the invoice at [670] he said that £100 (as opposed to £200) was reasonable and that at [688] claimed that £100 was a reasonable cost. The Applicant failed to provide any documentary evidence or quotation to suggest that he would have been able to secure the removal and disposal of these items, lawfully, for less than the amounts claimed on the invoice. The Tribunal found the charges invoiced to be reasonable. The Applicant's challenge to these invoices is therefore rejected.

117 The Applicant indicated that he no longer wished to challenge items 125 to 130 on his schedule [900]. Next the Applicant turned to items 133 to 137, referring

to SLC solicitors costs [901]. He explained that his argument concerning these invoices was the same as detailed above. The Tribunal in rejecting the Applicant's challenge to these invoices reiterated its conclusions above; the solicitors costs had not been put through the service charge and were not therefore claimed as service charge items, being reclaimed from the individual leaseholders directly.

118 The Applicant indicated that he now accepted item 144 [739] was reasonable. He then challenged item 149 [745] referring to the ongoing works, and highlighted the planning application fee and the use of Now Surveyors given previous criticisms. Ms Cole explained that this invoice related to the preparatory work and planning application documentation required in relation to the current ongoing work. She explained that she didn't feel able to prepare the plans and paperwork etc. required for the relevant planning consents. The Tribunal considered that this was reasonable in the circumstances. Ms Cole explained that though the Respondents would now no longer use Now surveyors for any overseeing of works on site (given the problems with the cladding works highlighted above, and the reclaiming of fees from the supervising surveyor), the Respondents were happy to continue to use the firm in relation to paper based matters. She explained that the Respondent had sought quotes from both Now chartered surveyors and also another firm Martin McGibbon. The Tribunal found the charges invoiced to be reasonable. The Applicant's challenge to these invoices is therefore rejected.

### Conclusions

119 As a result of its findings above, the Tribunal finds that the service charges for the years 2013, 2014 and 2015 are reasonable and payable by the Respondent save for:

- a. In relation to the 2014 service charge year item 170, invoice R73 [494] £135 is not a proper item to be claimed through the service charge and should therefore be deducted; and
- b. In relation to the 2014 service charge year item 171, invoice R108 [545] £50 is not a proper item to be claimed through the service charge and should therefore be deducted.

### Section 20C

120 The Applicant asked the Tribunal to make an order under section 20C of the Landlord and Tenant Act 1985 [5], that all or any of the costs incurred by the Respondent in connection with the proceedings before the Tribunal were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by him or any other person or persons specified in the application. A Tribunal may make an order under section 20C if it considered it to be just and equitable to do so.

121 Given the weight and nature of the Tribunal's findings detailed above there is no proper basis for making an order under section 20C of the 1985 Act. The Applicant has, bar two very minor items, been entirely unsuccessful in his application. An application which in a number of respects challenged issues

which had previously substantively been addressed by a previous Tribunal in (see paragraphs 26(d); 35; 39 and 48 above by way of example).

Rule 13 unreasonable costs.

122 The Respondent orally applied for a costs order pursuant to Rule 13(1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 that the Applicant pay the Respondent's costs as a result of his alleged unreasonable behaviour. Both the Tribunal and the Applicant were provided with a written schedule of costs on the first morning of the hearing. However, there was no written application pertaining to the same.

123 The Upper Tribunal recently gave guidance on the application of rule 13 in Willow Court Management Co (1985) Ltd v Alexander [2016] UKUT 0290 (LC). At paragraph 43 they stated:

“....such applications should not be regarded as routine, should not be abused to discourage access to the tribunal, and should not be allowed to become major disputes in their own right. They should be determined summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. We consider that submissions are likely to be better framed in the light of the tribunal's decision, rather than in anticipation of it, and applications made at interim stages or before the decision is available should not be encouraged. The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable, and if the tribunal considers that there is a case to answer (but not otherwise) the respondent should be given the opportunity to respond to the criticisms made and to offer any explanation or mitigation. A decision to dismiss such an application can be explained briefly. A decision to award costs need not be lengthy and the underlying dispute can be taken as read. The decision should identify the conduct which the tribunal has found to be unreasonable, list the factors which have been taken into account in deciding that it is appropriate to make an order, and record the factors taken into account in deciding the form of the order and the sum to be paid.

124 Given the Tribunal's findings above, it is not possible to dismiss the Respondent's application summarily. However the Applicant had no real advance notice of the application, and the Respondent only filed and served a schedule of costs on the morning of the first hearing. As the Tribunal's decision was not available to the parties at the time of the hearing, no submissions on such an application could be made at the end of the hearing. The Tribunal therefore indicated that it would give directions to allow for a paper determination to be made on this issue:

- a. The Respondent is by 4pm on 06/09/2016 to file and serve a written application for its costs under Rule 13(1)(b). Such application is to set out the factual basis on which it is alleged that such an application is to be made, and why it is submitted that the Tribunal should exercise its discretion to make an order under Rule 13(1)(b) as well as including a schedule of costs claimed;

- b. The Applicant shall by 4pm on 20/09/2016 serve on the Respondent, and file with the Tribunal, a statement on the issues of costs in reply to that of the Respondent.
- c. The Tribunal will then make a paper determination on the Rule 13(1)(b) costs application. If either party objects to a paper determination being made on this issue, they are to set out their reasons for so objecting in their respective application/ statement and specifically request an oral hearing.

### **Appeals**

- 125 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.
- 126 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.
- 127 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.
- 128 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.

Judge J Brownhill (Chair)

Dated: 2<sup>nd</sup> August 2016



Appendix

Landlord and Tenant Act 1985

**Section 18 Meaning of “service charge” and “relevant costs”.**

(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.

**Section 19 Limitation of service charges: reasonableness.**

(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.

.....

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.]

**Section 27A Liability to pay service charges: jurisdiction**

(1) An application may be made to an 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.]