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

Case Reference : LON/00AU/LSC/2015/0349

Property : Flat 16 Mount Carmel Court, 20 Eden Grove,
London N7 8EQ

Applicant : Mr Mohamed Bharadia

Representative : Mr Omar McDoom

First Respondent : Stadium Investments Ltd.

Representative : Thrings Solicitors

Second Respondent : Ashmore PM Ltd.

Representative : RPC Solicitors

Type of Application : For the determination of the reasonableness
of and the liability to pay a service charge

Tribunal Members : Judge Dickie
Mr P Casey, MRICS
Mr P Clabburn

Date and venue of Hearing : 9-13 May 2016
10 Alfred Place, London WC1E 7LR

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) Pursuant to Section 27A(4) of the 1985 Act, the Tribunal has no jurisdiction to determine service charges payable for the years up to and including that ending February 2014, these having been admitted or agreed by the tenant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by him in respect of the service charge years 2008 – 2016 (including the budget for the year 2015/16). The relevant legal provisions are set out in the Appendix to this decision.
2. The Applicant holds a long lease granted in about 2005 of premises known as Flat 16 Mount Carmel Court, 20 Eden Grove, London N7 8EQ, a three bedroom flat with parking space in a Victorian school conversion comprising 19 flats in a building (Carmel Court) forming part of a wider estate of approximately 520 new build flats and 50 commercial premises completed in around 2007 and known as VizioN7, Eden Grove (“The Estate”).
3. All the leases of properties on the Estate impose a duty on the leaseholder to pay a service charge to the Manager, who has obligations under the lease covenants to provide the relevant services. The First Respondent is the lessor and the Second Respondent is the current Manager appointed by the First Respondent and incorporated with directors in common with Lee Baron Limited, its guarantors and agents, for the specific purpose of managing the Estate. The First Respondent has been the provider of insurance for the estate, the cost of which is disputed.
4. The leases provide a mechanism for the transfer of liabilities and assets between Managers. The original Manager under the leases was Consort Property Management, a division of OM Property Management Ltd, a Peverel Group company ('Peverel'). The First Respondent, exercising its right under the leases, replaced Peverel as Manager with Ian Gibbs Estate Management Limited (“IGEM”) with effect from 1 September 2011. IGEM was itself replaced by the current Manager with effect from 1 November 2014.

5. The Tribunal carried out an inspection of the Estate before the hearing in the presence of the parties. The principal blocks which comprise the Estate are known as Garand Court, Buckler Court and Carronade Court, which each form crescent shapes around landscaped communal spaces for the enjoyment of residential occupiers. At ground level a further area between Carronade Court and Buckler Court provides a landscaped amenity space and vehicular access for the commercial occupiers, which residents cross at high level using a bridge linking the two blocks. At the other end of Carronade Court access to the commercial units situated there is gate controlled, and vehicle access is for deliveries only. The Estate has a 24 hour concierge service located in two offices, underground parking and a residents' gym. The Tribunal inspected the exterior areas of the Estate, passing through some residential communal areas. It did not inspect any internal communal areas of the commercial properties or the interior of any flat or commercial unit other than the gym.

6. At the hearing, the Applicant was represented by Mr Omar McDoom, the First Respondent by Mr Fidler, solicitor, and the Second Respondent by Mr Duckworth of counsel. The Tribunal heard evidence from Mr John Gibbs, who had day-to-day conduct of the management of the Estate on behalf of IGEM during this period, from Mr Dean Clarke of Lee Baron Limited, head of residential mixed use and responsible for management of the estate.

The Lease

7. The lease for the subject property could not be found and the Tribunal was provided with a copy of the leases for Flat 10 and 18 Mount Carmel Court, understood to be the same as that for Flat 16 in all material respects. The leases on the Estate are in common form and operate, in summary, as follows. The Manager covenants, in Clause 6, to provide the services referred to in the Sixth and Tenth Schedules to the lease. The Sixth Schedule – Maintenance Expenses is divided into various Parts, denoted by letters A-F as set out below. Notably, the corresponding lettering is not used to name the various schedules in the Manager's service charge accounts, which relate to each Part of the Sixth Schedule expenditure. Those schedules are numbered 1-7, though the numbering has not been consistently applied throughout the period in question. That used in the majority of those accounts is below in square brackets:

Part A -Estate Costs [Schedule 1].

Part B(i) - Common Parts (Block) [Schedule 2 Common Parts Block Charge (A Carronade, B Buckler, C Garand, D Culverin, E Mount Carmel)].

Part B(ii) – Common Parts (Residential) [Schedule 3 Block Internal Costs, A – Block internal costs private excluding Mt Carmel, B – Housing Association Shared Ownership, C – Mount Carmel].

Part C – Parking Area Costs [Schedule 4].

Part D – Domestic Cold Water Costs [Schedule 5].

Part E – Costs applicable to any or all of the previous parts of this Schedule.

Part F – Exclusions from Maintenance Expenses.

The Manager places gym expenditure into a separate schedule [Schedule 7].

8. The tenant covenants in Clause 4 and Paragraph 2 of Part One of the Eighth Schedule to pay the Lessee's Proportion, defined in the Seventh Schedule to be a specified proportion of the expenditure on each of Parts A to D of the Sixth Schedule, including in each case whatever Part E expenses are relative to the matters mentioned in that particular Part. The service charge year runs from 1 March to 28 February.
9. The tenant is required by virtue of Paragraph 5.1 of the Seventh Schedule to pay, by means of two half yearly payments (on 1 March and 1 September), an estimated service charge, being an amount estimated by the Manager or its managing agent as the Maintenance Expenses for the forthcoming year. At the year end, the Manager is required to prepare service charge accounts; to obtain a 'certificate' from an accountant in relation to those accounts and then to serve both documents on the tenant. There is an issue between the parties as to whether, in addition to the provision of the certificate, the express or implied terms of the lease require the Manager to conduct and provide to the tenant a full audit of the service charge accounts. If there is a shortfall between the estimated service charge paid and the amount due at the end of the year, the difference is payable by the tenant within 21 days of service of the accountant's certificate. If there is a surplus, it is credited as a contribution towards the next year.
10. The landlord covenants, in Clause 5, to pay service charges in respect of the commercial units, in so far as it has not recovered these directly from the commercial tenants, in the proportion specified in Paragraph 1 of the Ninth Schedule.
11. The lease specifically contemplates the possibility that the Manager might change during the term. Provision is made, in Clauses 7.12 for:
 - (i) The landlord to serve written notice of its intention to replace the Manager;

(ii) For the tenants and the new Manager to enter into a deed of covenant, within 28 days at the expiry of that notice, in which they respectively assume the same rights and obligations that had previously been conferred/imposed on them by the Lease.

(iii) Clause 7.13 then provides:

“For the avoidance of doubt it is hereby acknowledged and agreed that from the date that any deed of covenant referred to in clause 7.12 is entered into by the Replacement Manager the Manager shall be released from all its obligations under this Lease (save for any antecedent breach) to the intent that from the date of the appointment of the Replacement Manager no right of action shall arise in favour of the Lessee against the Manager.”

12. The replacement of IGEM by the current Manager from 1 November 2014 was effected by means of the following documents:

(i) A deed of appointment entered into on 15 April 2015 between the landlord, the Manager and Lee Baron Ltd (as guarantor) under which the current Manager covenanted to perform the obligations imposed on “The Manager” in the lease for a fixed annual management fee of £75,000, subject to further fees for additional services.

(ii) Deeds of covenant, entered into with the individual tenants on the Estate, in accordance with clause 7.2 of the Lease, under which the tenants covenanted with the current Manager to perform the obligations required by the lease and the latter covenanted to do likewise.

13. The Tribunal has also been provided with a sample copy of the commercial leases, which are also in tripartite form and contain service charge provisions that follow much the same form as the residential lease. The tenant's proportion of the Maintenance Expenses is set out in like terms in the Third Schedule, and the Second Schedule similarly divides the Maintenance Expenses into Part A– Estate Costs, Part B(i) - The Common Parts (Block), Part B(ii) - The Common Parts (Non Residential) [Schedule 6], Part C – Parking Area Costs, Part D – Cold Water Costs, Part F – Exclusions from and Credits Against Maintenance Expenses.

The Scope of the Application – Undue Influence

14. Notably, though the application sought a determination whether all charges in the period 2008-2016 were reasonably incurred, it named the lessor and the current Manager as the only Respondents, not the previous two Managers during that period. The Tribunal issued

directions on the application after a case management hearing that took place on 10 September 2015.

15. On 21 December 2015 the Applicant applied for witness summons for Mr Ian Gibbs, who had been in charge of management of the Estate for IGEM. The Second Respondent applied for IGEM to be added as a party as properly responsible for any shortcomings or breaches of covenant during the period of its management. It disputed that it could be liable for the breaches by the First Respondent or the previous Managers. If not parties, and if the Tribunal found that there had been overpayment during the period 2008 to 2014, the Second Respondent observed it would be necessary to re-litigate the case in the County Court. The First Respondent considered it was illogical for the Applicant to seek to join IGEM or to issue a witness summons against Mr Gibbs, without doing the same in respect of Peverel.
16. The Second Respondent considered that, if the Tenant has made overpayments of service charge to a previous Manager, such a finding would not found a claim against the current Manager, in that the Applicant would have no claim either (i) for restitution of any overpayments from the (current) Manager or (ii) a defence of equitable set-off against the tenant's future liability for service charge due under the current deed of covenant. The Tribunal, Mr Duckworth said at the hearing, does not have jurisdiction to resolve any dispute about those matters (*Warrior Quay Management Ltd. V Joachim* (2008) LRX/42/2006).
17. The Tribunal considered the application to join the previous Managers as parties at a further case management conference that took place on 9 February 2016. It is worthy of note, however, that in responding to that application the Applicant preferred that the previous Managers *not* be joined. He merely wished Mr Gibbs of IGEM to be a witness. He undertook to pay his costs in attending. The Tribunal Judge declined to join the former Managers as Respondents, or to order further disclosure.
18. A practical consequence of these proceedings being brought against the Second Respondent as the only Manager is that it has no direct knowledge of the management of the Estate in the years prior to its appointment (other than what can be gleaned from documents). Owing to the cooperation of Mr Gibbs, including with regard to disclosure, evidence in relation to the IGEM years was available to the extent that Mr Gibbs had been notified by the Applicant about the issues he disputed, but there was no evidence from Peverel (which company in fact no longer exists) and the current Managers have experienced difficulty in obtaining documentation regarding that period.
19. The Applicant's rationale for challenging service charges which he was liable to pay to previous Managers, who remained liable for previous

breaches according to the lease, but not wishing those Managers to be a party to the proceedings, is something which emerged as a distinct theme from his written submissions and the oral representations made on his behalf by Mr McDoom at the hearing.

- 20.** Mr McDoom made clear in introduction that the Applicant's case was not principally against the Manager at all, since many of his concerns in fact related to the decision and actions of the landlord. It was the Applicant's belief that the landlord, who was liable to pay service charges in respect of any vacant commercial units, and allegedly was facing significant difficulties in letting about 50 commercial leases on the Estate when new, acted out of self interest in choosing to appoint a Manager it could influence in making management decisions financially favourable to the landlord.
- 21.** Such influence was said in particular to relate to decisions as to the allocation of service charges to the residential leaseholders rather than the commercial leaseholders, and to persuade the Manager to recover certain items through the service charge that were not strictly recoverable as such. Furthermore, the Applicant considered that the landlord had ensured its financial advantage in the insurance arrangements (placed by the Managers with the landlord's block policy and in respect of which the First Respondent retained a commission), and in agreeing with the Manager an unreasonable rent for the residents' gym, which the landlord retained, such rent being recouped from the leaseholders through the service charge.
- 22.** The Applicant in correspondence dated 9 January 2016 took pains to emphasise that he had not applied for IGEM to be joined as a party, and he said:

“As will become apparent from my case statement and the evidence in support, my position is that the First Respondent is responsible and liable for several of the issues that arose during IGEM's tenure through the exercise of his undue influence over the Manager as I intend to show further through my application of 21 December 2015.

“... The First Respondent can seek his own remedies directly against his appointed previous Manager Peverel and any other party and should not entangle my application with his own affairs.”
- 23.** The Applicant has thus proceeded to bring his case on the basis that the First Respondent would be liable to him and have then to seek a remedy against the former Manager(s). The Applicant has had full knowledge that the Second Respondent would argue it is not the proper Respondent in respect of an earlier Manager's breaches.

24. The Applicant had carried out a most detailed forensic analysis to show the areas of the service charge allocation which were favourable to the landlord and which, he said, were wrong or unreasonable. Mr McDoom said that this analysis revealed pervasive bias in favour of the landlord, and sought to demonstrate that this showed the landlord's hand bringing pressure to bear upon the Managers. It appeared to be the Applicant's case that this analysis would speak for itself and allow the Tribunal to conclude that the landlord must have been responsible for pulling the Manager's strings.
25. However, there was in fact no evidence at all to support the suspicion that the landlord had actively sought to exert influence on the Managers. What the Applicant was alleging was a dishonest coercion by the landlord improperly to deprive the leaseholders, but there was no evidence of such dishonesty. In fact, the evidence of Mr Gibbs and that of Mr Clarke for the current Manager did not support the Applicant's theory that undue influence was exerted over them in making any decisions regarding the service charge at all. The Tribunal thus dismisses any such allegation.

Preliminary Issues

26. The manner in which the Applicant chose to present his case did not make for an easy task for the Respondents or the Tribunal. Preparation of his case in response to the Tribunal's directions was characterised by his descent into prodigious detail in respect of his applications for disclosure. Identifying the germane issues and evidence was made more difficult by virtue of his having stated, restated, developed, amended and reframed his case in a sequence of lengthy documents. His statement of case consisted of 29 densely typed and single spaced pages. The Tribunal directed the production of a Scott Schedule, and the Applicant produced a document which totalled 72 pages of items in dispute, graphs and comparative tables which were not helpful. His challenge to many items in his expenditure was that it was "unreasonable in amount", without giving reasons as to why that was so.
27. In an apparent attempt to ensure that the Applicant clarified and simplified his position, the Tribunal ordered him to serve a statement of the numerical value of his case (i.e. what discount he expects on the service charges demanded for the nine years in question). The Applicant then served a nine page Further Statement of Case attaching a table entitled "Estimated Discount Due (Conservative)".
28. The matter was listed for hearing over five days. The Applicant served a witness statement restating and expanding on his case over 34 pages single spaced. He also served witness statements from Mr Omar McDoom, Mr Norman Wilson (the leaseholder of flat 10 Mount Carmel Court) and Binit Hindocha (the leaseholder of 47 Garand Court).

- 29.** At the hearing, Mr Duckworth objected to the Applicant's Further Statement of Case as being outside of the scope of the Tribunal's Further Directions, and to the witness statements on which the Applicant sought to rely. He objected to new issues raised for the first time in the Applicant's witness statement, which in fact contained almost exclusively argument rather than evidence. The Tribunal observed that the Applicant relied on four documents which effectively performed the same function in arguing his case, namely his statement of case, his further statement of case, his witness statement and a skeleton argument. At 14 pages of single spaced text, there was nothing skeletal about the Applicant's skeleton argument. The density with which he argued, repeated, and subtly altered his dispute through these several documents made his case difficult for the Tribunal to follow.
- 30.** Mr McDoom suggested that the Further Statement of Case was merely an explanatory note supporting the statement of numerical value which the Tribunal had ordered, but in fact it went further than that. It introduced some new issues to the dispute and was not in any event asked for by the Tribunal's directions. Mr Duckworth observed that it included new arguments relating to the payability and recoverability of VAT, and to the Water Resale Order 2006, which would take up significant Tribunal time.
- 31.** Though Mr McDoom submitted that new issues were not raised earlier by the Applicant owing to disclosure failures by the Respondent, that issue was determined by the Judge at the case management hearing that took place on 9 February 2016. The Tribunal therefore found that the Applicant's argument for raising new issues now for its determination was not sound.
- 32.** In light of this fact, and since the document was not directed, nor was permission obtained for its production, the Tribunal excluded this Further Statement of Case. This did not prevent the Applicant from making submissions based on evidence before the Tribunal in support of the figures set out in his Estimated Discount Due document.
- 33.** New issues were also raised in the witness statement of Mr Bharadia. Whilst the Tribunal considers it likely that he would have obtained permission to file and serve a witness statement of his own as to matters of fact, the document which he called a witness statement was nothing of the sort – the Tribunal was unable to identify any matters of factual evidence within it. It was instead a detailed submission elaborating or expanding on all arguments in his case. The Tribunal thus declined to give permission to the Applicant to rely on this witness statement, though stressed again that he was not prevented from using it as a basis for his submissions on issues already raised, and indeed that was clearly its more appropriate use, which in fact Mr McDoom conceded during oral submissions on this preliminary issue.

34. As to the remaining witness statements, no permission was given for them, and in spite of the Respondents' insistence in correspondence that such permission be obtained from the Tribunal, the Applicant did not seek it. To a large extent these statements were similarly flawed in that they contained very little evidence indeed. They were filled with comment and argument, and in the case of the statement of Mr Wilson, an inappropriate report of a failed mediation.
35. Mr McDoom conceded that these statements should be excluded if that of Mr Bharadia was admitted. However the Tribunal found no merit in the application to admit them in evidence and decided to exclude them all.

Jurisdiction

36. Issues of jurisdiction arose for the Tribunal's consideration. Pursuant to s.27A(4) of the 1985 Act it has no jurisdiction in respect of service charges which have been admitted or agreed by the tenant. For the reasons below, the Tribunal has concluded that it has no jurisdiction to determine service charges for the period up to and including the service charge year ending February 2014.
37. The Second Respondent invited the Tribunal to conclude that service charges for complete years in respect of which Peverel was the Manager (being the period up to and including the service charge year ending February 2011) have been admitted to or agreed by the tenant for the purposes of s.27A(4). Mr Duckworth relied on the decision of the Upper Tribunal in *Cain v London Borough of Islington* [2015] UKUT 0542. The Tenant has in fact made payment to the service charge that was sought during the Peverel years without any challenge at all. The very first challenge by the Applicant to service charges occurred after the appointment of the current Manager in November 2014, and was in respect of the service charge year ending February 2015.
38. The Tribunal accepts this submission. Furthermore, it cannot assume a jurisdiction which is not conferred on it by statute, and considering the parties' submissions on the point, which it invited at the hearing, it reaches the same conclusion in respect of the service charges for the period ending February 2014. Whilst it is the case that in *Cain* the Upper Tribunal was considering a more historic period of time than this, the Tribunal is unable to distinguish between the conduct of the Applicant during the period of appointment of the first Manager and the second Manager. It was identical. He paid his service charges without murmur, query or objection throughout the entirety of that time.
39. An agreement or admission may be express, or implied or inferred from the conduct of the tenant, but must be clear. *Cain* is authority for the proposition that even mere inaction over a long period of time can be

sufficient to found such an inference. It would be inappropriate to reach such an inference based on a single service charge payment, but where there have been repeated payments over a period of time of sums demanded, such an implication or inference may in the circumstances become irresistible. His Honour Judge Nigel Gerald [at 17 and 18] said:

“And those circumstances may be a series of unqualified payments over a period of time which, depending upon the circumstances, could be quite short, it always being a question of fact and degree in every case.... Self-evidently, the longer the period over which payments have been made the more readily the court or tribunal will be to hold that the tenant has agreed or admitted that which has been demanded and paid. It is the absence of protest or qualification which provides the additional evidence from which agreement or admission can be implied or inferred.”

40. No discontent with the management by IGEM had ever been expressed by the Applicant during its tenure as Manager. Indeed, there is a record that the Residents' Association thought Mr Gibbs a very useful Manager (in contrast to there being evidence, in the form of Residents' Association meeting minutes, of some dissatisfaction with Peverel's management, and with the dramatic increase in service charges by Lee Baron). Though the Applicant does not bring this application with the formal support of the Resident's Association, the evidence does show a general level of satisfaction with IGEM as Manager and the Applicant never expressed the contrary.
41. The fact that the Applicant had not wanted IGEM or Peverel to be a party, but merely for Mr Gibbs to be a witness, was illustrative of the fact that the proceedings were brought as a challenge to the current Manager, and to the First Respondent. Even though these previous Managers had not allocated the service charges in exactly the same way, no dispute was raised while either was in situ in respect of the service charge. Agreement to service charges on the circumstances of this case may be deduced from conduct even if not communicated expressly.
42. The Tribunal makes a further observation on the facts of this case. Given the lease terms, the legal costs of the Manager can be recovered as a service charge, but those of a former Manager cannot, at least directly. This was an observation made by Mr Gibbs in response to the Second Respondent's application to add IGEM as a party (though the Tribunal did not hear full representations on the point). In light of this fact, it was incumbent on the Applicant to bring any dispute more promptly. He had warning from the First Respondent in advance of each change of Manager. He would have been aware on each occasion that the Manager's responsibilities under the lease were about to cease, and that resolution of disputes would be rendered more complex after a change of Manager had taken place. The fact that he raised no such disputes is further evidence, in addition to the facts addressed in *Cain*,

which causes the Tribunal to conclude that he had in fact agreed the service charges.

43. The value of the claim relating to the IGEM years which related to apportionment was low, and IGEM would have had the right to re-litigate those matters. The Tribunal's determination as to its absence of jurisdiction to consider the years up to that ending in 2014 is to a great extent in fact coterminous with the issues put forward by the Applicant in respect of the years prior. Having failed in his attempt to show undue influence by the landlord in respect of the former Manager(s,) the central plank of the Applicant's case in respect of the Peverel and IGEM years in any event fell away.
44. The current Manager is not actually a party to the lease, but derives its rights and owes its duties under the separate contractual arrangements referred to above. The Tribunal is nevertheless satisfied that it has jurisdiction to hear this application under s.27A of the 1985 Act. Section 18 of that Act defines a 'service charge' as an amount 'which is payable by a tenant'. The statute does not say that the amount must be payable under the tenant's lease. Furthermore, in this particular case the contractual agreement under which the service charge is payable to the replacement Manager is specifically contemplated by the lease and entered into by the tenant further to an obligation to do so contained in the lease.
45. In order to deal proportionately with the application, the Tribunal has determined only those issues which were presented orally by Mr McDoom at the hearing. The Applicant reported to fellow leaseholders that he had spent 1000 hours in his investigations and case preparation. Little of this time appeared however to have been spent in rationalising, structuring and simplifying his numerous and multi-stranded challenges to the service charge. Mr McDoom provided most worthwhile assistance to the Applicant in doing so at the hearing and the Tribunal has determined those arguments so presented, understanding (as confirmed by Mr McDoom in closing submissions) that this refinement was the definitive statement of the disputes finally pursued against the Respondents.

The issues

46. By the date of the hearing some of the issues identified in dispute had fallen away. In particular:
 - (i) Signage – The budget for the year ending 2016 included provision of the signage on the Estate which the Applicant challenged on the grounds of failure to consult. However, the current Manager has in any event determined not to undertake that work during this year. Mr Clarke wrote to the leaseholders on 19 November 2015 to advise that after consultation with the Residents Association and commercial

tenants group and since the service charge budget for the period 1 March 2015 – 29 February 2016 had been increased way beyond lessee's expectations, signage and planned estate external works were no longer going ahead:

“In normal circumstances these unused funds would have been included in the year end service charge reconciliation, however due to the high increase in the budget it has been agreed by all that the appropriate action is to apply the credits against any future service charges immediately.” and a credit note was apparently issued.

- (ii) Window Cleaning, CCTV Maintenance, Door Entry and Gates Maintenance, Aerial and Satellite Maintenance, Plant and Machinery Maintenance, and Pest Control were not challenged other than in respect of their apportionment.
- (iii) Interest on the reserve fund was not in dispute at all.
- (iv) An issue of the compliance of service charge demands with the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987 was not pursued.

Issues in Dispute – Service Charge Apportionment - Introduction

- 47. The Applicant had a number of concerns about the allocation of service charges under the various Parts of the Sixth Schedule. Mr Gibbs and Mr Clarke were cross examined regarding the disputed areas of apportionment.
- 48. Mr Gibbs said that when IGEM took over the management of the development from Peverel it reviewed the way in which the service charge was apportioned. The managing agent's fee had previously been applied solely within the Estate charge to which all units contributed. The Lessor and its solicitor asked that this be apportioned across the charges in accordance with how each lessee would benefit from that service. IGEM took legal advice on the matter and pointed out that a proportion of the costs of all the site staff (both concierge and on-site manager) and external cleaning, should be put within the Estate charge so that the commercial units would contribute towards the cost of the concierge and security function that was provided within the external areas.
- 49. Mr Gibbs said that more generally during its tenure IGEM brokered between the lessor and the leaseholders in respect of particular matters, and he for example ensured that increased hours of the site manager were split with the lessor, and that the lessor / commercial units contributed towards water and sewerage rates.

50. Mr Clarke said that on appointment of the Second Respondent as Manager, and reviewing the manner in which the service charge was apportioned between the residential and commercial lessees, he made some changes in setting the 2015/16 budget and was happy that the benefit of each service provided was thus given to the group which was paying for it, and in the correct apportionment. There had been no allocation to the non-residential common parts Schedule prior to 2015/16. Now schedule 6 has been used for those costs.
51. As a general observation, the Tribunal noted Mr Gibbs' and Mr Clarke's acknowledgement that, though this is a large and complex mixed use Estate, none of the Managers had ever conducted an objective study which could have been used to support a particular approach to apportionment. Where the lease permits the recovery of expenditure across more than one Schedule, each Manager has apportioned as it saw fit based on personal judgement and experience, rather than any empirical analysis of the cost of work carried out to various elements of the Estate. This was particularly true of the allocation of cleaning, concierge and security, maintenance, management and electricity.
52. Accordingly, while the Tribunal is dissatisfied in a number of respects with the Second Respondent's allocation of service charges, as set out below, its own decision on what represents a reasonable apportionment is in some cases by necessity based on inadequate evidence. The Applicant, an individual leaseholder, was not in a position to produce empirical evidence of the services provided by the Manager to commercial leaseholders on this complex development. What he did succeed in doing was in identifying a number of heads of expenditure in respect of which the Manager could not justify its decision over apportionment.
53. The Tribunal has accordingly done the best that it can on the available evidence to reach decisions as set out below as to a reasonable method of apportionment. However, in respect of the current year's final accounts, and future years, it may be that in respect of some heads of expenditure as identified by the Tribunal better empirical evidence can be obtained by the current Manager to inform apportionment.

Gardening and Landscaping

54. For the period in issue, the great majority of gardening and landscaping costs had been allocated in Schedules 3 A-F and 4, with an element apportioned to Schedule 1 for the Estate. The Applicant's position was that the Managers' approach had been wrong in principle, since the lease required all gardening and landscaping costs to be allocated to Schedule 1, and the Tribunal agrees.
55. The Estate Costs in Part A of the Sixth Schedule include:

“Keeping the Communal Areas (including all fixtures, fittings and equipment therein or thereon) any gardeners' or management stores and any other related facilities generally maintained and in a neat and tidy and good condition and working order and tending and renewing any lawns flower beds shrubs and trees forming part thereof as necessary and maintained repairing and where necessary reinstating any boundary wall hedge or fence (if any) on or relating thereto including any benches seats garden ornaments sheds structures or the like and paying all outgoings of whatsoever nature in relation thereto.”

56. The “Communal Areas” are defined in the residential and commercial leases as “all gardens and grounds within the Estate available for the use by two or more Properties, which are in turn defined as “all of the Dwellings and the Non-Residential Units and any parking space within the Estate”.
57. The Tribunal finds that all gardening and landscaping costs of the communal gardens and grounds in the periods in dispute must be recovered as Estate costs through Schedule 1, and it is inappropriate to seek to construe such costs as falling within the wording of the other schedules. There is insufficient evidence to apportion any of that cost to the Common Parts (Block) (which refers to landscaped areas which are structural parts of the Blocks) since the Tribunal cannot identify where they are, but this is something the Manager should consider when reviewing apportionment for the future.

Cleaning

58. Mr McDoom argued similarly for the Applicant that all costs of cleaning should be allocated to Schedule 1 for the Estate charge, or alternatively that those costs should be allocated more equitably than at present. Cleaning costs as a Maintenance Expense appeared across a number of Schedules in the accounts. The vast majority appeared in the Block Internal schedules, to reflect the regular cleaning of the internal common parts within the residential blocks.
59. Cleaning was not charged to the Non Residential Common Parts [Schedule 6] – which are any internal common parts within the Blocks used exclusively by the commercial leaseholders. It was not clear whether any such areas were cleaned, where they are, or indeed if they exist. The Tribunal observed on its inspection that part of the external communal area between Buckler and Carronade Courts was laid out with picnic tables and bins for use as a rest area available for the commercial units, and would presumably require frequent (and probably daily) cleaning of food waste. The Tribunal was given to understand that this area provides a fire escape route for the residential occupiers, and of course its attractiveness is of benefit to them as they pass over the bridge above it. This area falls within the defined

Communal Areas under the leases, for which cleaning costs are recoverable under the Estate Schedule 1.

60. Mr Clarke said that cleaning was carried out under the contract with providing a total of 181.25 hours per week, or approximately 26 hours per day. However, he had no data as to the time the cleaners spent cleaning each constituent part of the development, nor was it apparent that cleaning was contracted by reference to the amount of time the contractor estimated as necessary to clean various areas of the Estate. Furthermore, no Manager has ever undertaken a desktop study (based on floor areas, frequency or some other objective criteria), or an exercise with the contractors to identify the time spent cleaning all such elements. Thus the Managers had failed to obtain verifiable data to inform the allocation of service charges for cleaning, and had apportioned on the basis of what they felt was right. The Tribunal is critical of this approach, which is unjustifiable.
61. Mr Gibbs in 2014/15 had allocated 7.5% of the cleaning cost to the Estate schedule and 86% to the residential block internal schedules, 5% to the car park and 1.5% to the gym. Mr Clarke in his 2015/16 estimate had allocated 15% to the Estate schedule, 79% to the residential internal schedules, 4.6% to the parking schedule and 1.4% to the gym.
62. There was no rationale for the variation in apportionment to the Estate schedule, which is the only cleaning cost to which the landlord contributes. Taking into account the physical arrangements observed on inspection, and the likely requirement for greater frequency of routine cleaning of some external areas than the internal ones, the Tribunal considers Mr Clarke's apportionment of 15% is reasonable and Mr Gibbs' is not and should be adjusted accordingly. However, in future, including for the 2016 year end accounts, the Manager must do much better in obtaining empirical evidence on which to base a reasoned judgement on apportionment.

Fire Equipment Servicing and CCTV Maintenance

63. Mr Clarke had altered the apportionment used by Mr Gibbs in that for his 2015/16 budget he had not made an allocation to Schedule 2 in respect of the Common Parts (Block). The Applicant considered this was wrong in principle. Parts B(i) (Common Parts Block) and B(ii) (Common Parts NRU) in the commercial leases explicitly recognise the recovery through the service charge of the cost of maintenance of fire protection equipment "relating to the internal parts" of the Common Parts (Block) or Common Parts (Non-Residential) respectively. Mr Clarke had allocated all such costs (as "Life Safety Systems Maintenance") to Schedule 3 – Common Parts Residential. Thus the commercial leaseholders contributed nothing towards it. He explained that this change was a judgement based on his view as to the benefit received from this service.

64. It seems clear to the Tribunal that within the envelope of this integrated Estate, as well as within each individual block of residential and commercial properties, fire protection systems are for the benefit of all leaseholders. The Tribunal disagrees with Mr Clarke's personal judgment that the commercial leaseholders do not benefit from these fire protection systems. Furthermore, he was wrong in failing to apportion these charges to the Common Parts (Block) in part, so that all leaseholders, whether residential or commercial within each block, would contribute to them. Mr Gibbs' apportionment was not challenged, and the Tribunal can do no better therefore than determine that for the 2015/16 budget it should be applied, in percentage terms, to Mr Clarke's estimate. The Tribunal did not hear specific evidence as to the location of sensors and alarms across the Estate, and in particular there was no evidence of such systems within any Common Parts (NRU). If these do exist, an appropriate allocation must be made in the year end accounts, which may also be influenced by a proper analysis of the actual costs to individual blocks, which was not available to the Tribunal.
65. The Applicant challenged the costs of approximately £14,000 in 2014/15 for CCTV maintenance within the Estate charge since the contract was not put out to tender by the Manager. However, he did not produce any evidence that the cost was unreasonable and the Tribunal allows it. Its allocation there was correct, though Mr Clarke removed an allocation for this expenditure from the Estate charge 2015/16 budget, and any actual costs will appear in the year end accounts.

Electricity

66. The commercial units have only paid a proportion of Estate schedule electricity. The Applicant disputed this apportionment as none was allocated to the commercial common parts, (Part B(ii) of the Sixth Schedule), though the residents have no access to the low level area between Buckler and Carronade Courts (other than a means of emergency escape, the Tribunal understands) and it contains electrical devices (such as the vehicle gate, lighting, CCTV and water pumps for the water features there).
67. The Applicant calculated that the result of this allocation is that for the 2015/16 budget the commercial units combined effectively pay only 0.64% of the total cost of the landlord's electricity. Mr Clarke sought to justify this by saying that the commercial units use very little – they do not use the lifts or have internal communal lighting, or fire alarms, and there is a limited amount of lighting in the commercial areas.
68. For the year ending 2015, Mr Gibbs had allocated 4.7% (£5407.14) of electricity costs to the Estate schedule and for the 2016 budget Mr Clarke had allocated 5% (£5,520). With approximately 570 units

contributing to the Estate costs, that produced an average of only around £10 per annum for landlord's electricity per unit. However, the Tribunal had no evidence before it as to the likely consumption of the electrical installations enjoyed by the commercial leaseholders. The Tribunal is therefore in an invidious position. It does not have expertise reliably to analyse the relevant usage, but from a common sense perspective a £10 annual charge for electricity to all external lighting, security features, the access gate and intercom, water pumps, CCTV etc. is obviously too low. The overall apportionment of the landlord's electricity to the Estate schedule, and thus to the commercial units is unreasonable.

69. It would have been difficult for the Applicant to have produced evidence of consumption. The landlord's supply of electricity to the residential communal areas and to the commercial units was individually and separately metered said Mr Gibbs. Disclosure of the bills had been sought but not obtained. The Tribunal, dealing with the Applicant's sequential requests for large amounts of disclosure did not make an order for this. Bills could nevertheless have been produced to demonstrate that the apportionment was reasonable.
70. An empirical assessment of the appropriate apportionment must inform the actual service charge for the present year, but in respect of the estimate, and the previous year's service charge, the Tribunal can do no better than determine that the resulting cost to the Estate charge should be the equivalent of an average of £50 per annum per unit. This still represents only a modest annual charge for all Estate electricity per unit. The Manager must ensure in the future that apportionment of this cost is carried out on a more transparent basis.
71. Having made this adjustment for the years in dispute, with respect to apportionment to other schedules the Tribunal determines not to interfere. The service charge provisions in the leases are silent with regard to electricity. The Tribunal has found that all of the grounds of the development fall within the definition of Communal Areas. The costs of all fixtures and fittings therein is recoverable as an Estate charge. Electro-mechanical access facilities within the external common parts of the Estate are Accessways, and their maintenance etc. is an Estate cost. Part E gives the Manager discretion to provide further services to the Estate, the Common Parts Block, Residential and NRU which it considers reasonable. The Tribunal has insufficient evidence of the location of electrical appliances – lighting etc. - to be able to make a judgement as to any costs that should be allocated to the Common Parts (Block) and Common Parts (NRU). However, this is another matter the Manager should consider when reviewing apportionment for the future.

Security and Concierge

72. The Applicant argued that the security and concierge costs are unfairly apportioned. When IGEM took over management of the Estate they took legal advice as to the proper apportionment of these charges. Peverel had not previously apportioned anything to the Manager's Schedule 1 – Estate Costs. During its tenure IGEM allocated security and concierge charges to Schedules 1, 3, the Car Park and Gymnasium.
73. Mr Gibbs summarised the concierge and security services available to the commercial leaseholders, which were also listed in the Welcome Pack provided in evidence which had been produced for marketing of the commercial properties. These services included (i) A security presence and control; (ii) CCTV coverage; (iii) Taking delivery of parcels and letters; (iv) Operating courtyard gate for commercial vehicles to enter; (v) Issuing electric key fobs and gate fobs; (vi) A key holding service; and (vii) assisting with all general enquiries regarding the estate. All of these services are available to residential lessees apart from the opening of (and fobs for) the courtyard gate. He considered that the concierge provided an additional benefit to the residential lessees in the staffing of the concierge desk, where visitors must stop and explain their purpose.
74. Mr Gibbs explained that management or direct engagement of concierge, security and cleaning staff was not the core business of IGEM, and therefore in order to fulfil the management function on the Estate it partnered with MGS and later with SFM Limited who were specialist facilities management companies introduced to it by the landlord. Mr Gibbs thought those companies had common directors with some sort of previous relationship with the landlord.
75. In the final year of IGEM's appointment the contract with SFM then amounted to £388,000. IGEM began, but did not complete, a tendering process on one occasion.
76. In his witness statement Mr Clarke defended the allocation of 13.95% of security and concierge staff costs to Schedule 1 in his 2015/16 budget, being the only schedule under which the commercial tenants contribute to the staff costs. He had first issued an erroneous budget which did not allocate any concierge and security costs to the Estate charge at all.
77. Mr Clarke said that upon the Second Respondent becoming the Manager he reviewed the service charge allocations. He took into account that the two concierge desks staffed 24-hours a day, the cost, and the benefit to the residential leaseholders from this service far outweighed that to the commercial tenants, and he considered the split to be reasonable.
78. The Second Respondent's position was that security and concierge services to the commercial leaseholders were "minimal" or "negligible", and such services were provided primarily for the benefit of residential

tenants, who account for 92% of the tenants on the Estate and should entirely appropriately pay the majority of those costs. However, this view was unsupported by empirical evidence and represented an entirely unsatisfactory approach to apportionment in the view of the Tribunal. It was not suggested that it would have presented a particular difficulty, for example, to conduct a time and motion study which would have illustrated the extent of services actually provided to commercial and residential parts of the Estate.

- 79.** The Applicant challenged SFM's costs of providing the concierge service as unreasonable, but there was no material evidence in support of this assertion. Mr Clarke said he understood that the hours over which the concierge service is provided were agreed with the previous managers as a result of a request by the Residents' Association to extend the hours of coverage. The Tribunal is satisfied that a 24 hour concierge and security service is reasonable and of significant benefit to the lessees, and does not uphold the general challenge to the expenditure.
- 80.** The Second Respondent's approach to allocation is wrong however. The Tribunal is satisfied that a 24 hour on site concierge service is also a significant benefit to the commercial leaseholders, even when they do not call upon it. This was such a benefit that it was advertised in marketing. Within the commercial leases the Manager can charge a service charge for concierge and security in Part A (Estate Costs), part B(i) (Common Parts – Block NRU) and in Part E, but they are charged nothing under the latter two schedules.
- 81.** The concierge monitors the CCTV and there are security patrols of the Accessways and Communal Areas defined in the lease. The concierge opens the gate to that area, and deals with security, emergency and maintenance call outs. This area is not generally accessible to the residents and it is not reasonable that they should pay for the security and concierge services in respect of it. Putting more of the security and concierge charge in the Estate Schedule is one way of addressing this.
- 82.** The Tribunal has considered whether to determine simply that the allocation for the year ending 2016 should be that for the year ending 2015, as this went unchallenged. However, in the year ending 2015 accounts the total expenditure on security and concierge was £404,982.33, and 20% was allocated to the Estate schedule. Each of the approximately 570 units thus contributed under £150 per annum for this service, or under £3 per week. By contrast the residential leaseholders have paid an average of about £12 per week in addition through the other schedules.
- 83.** This contribution of the commercial leaseholders appears to the Tribunal to be unreasonably low for the extent of services available to them. The secure environment in which their units are located must be a matter of real commercial benefit.

- 84.** The solution is not easy to identify on the available evidence. The Tribunal, having at least the benefit of professional experience, including in respect of mixed use developments, determines that no less than a cost of double that currently apportioned to the Estate schedule could be justified. The reallocation for the years ending 2015 and 2016 to that schedule must be 40% of total costs.
- 85.** Having made this adjustment, the Tribunal will not on the limited available evidence determine a different apportionment between schedules. Once again, this may well be appropriate for the year ending 2016 actual accounts and in future, once the Manager has ensured it has some supporting evidence of the time spent by the concierge (not forgetting that the payable cost is not just the time spent by the concierge but that for the availability of a beneficial call out security service to all and for which all on the estate expected to and must pay, whether they call on it or not).

Issues in Dispute – Other

Audit

- 86.** The Tribunal rejects the argument put forward by the Applicant that the lease requires certification of audit by an accountant, and that he is not liable to pay any service charges, including balancing charges, for the years in respect of which the Manager did not obtain fully audited accounts. The Tribunal accepts the position of Mr Duckworth that the lease does not require the service charge account to be audited in the sense relied on by the Applicant.
- 87.** The Applicant relied on Paragraph 9 of Part B of the Sixth Schedule of the lease which includes within the Maintenance Expenses in respect of which a service charge is payable expenditure on:
- “Employing a qualified accountant for the purpose of auditing the accounts in respect of the Maintenance Expenses and certifying the total amount thereof for the period to which each such account relates.”
- 88.** The Tribunal is satisfied that this provision confers a contractual right on the Manager to employ an accountant for the purpose of auditing the service charge accounts as well as certifying the total amount of the Maintenance Expenses for each year, and to recover the cost of doing so through the service charge. The wording of the provision, however, does not impose a positive covenant on the Manager to employ an accountant to carry out these individual tasks. It confers a right to recovery of costs in respect of them. Specifically, it is not implicit in the meaning of “certificate” that this must be a certificate prepared as the result of an audited account. As Mr Duckworth observed, it is notable

in seeking to construe the terms of this lease that the words “audit” or “audited accounts” are not used.

89. The Seventh Schedule contains the Manager's covenants relevant to the service charge mechanism and requires the preparation of a service charge account and the accountant's certificate. The tenant's liability to pay year end balancing charges is triggered by service of this account and the certificate. Mr McDoom relied on Paragraphs 2, 4 and 5.2, which all refer to the certificate (or certification) of the accountant referred to in Paragraph 9 of Part E of the Sixth Schedule. He argued that this meant an accountant's certificate prepared upon audited accounts.
90. However, the account of the Maintenance Expenses referred to in Paragraph 4 is not expressed by reference to auditing of the account, as provided for in Paragraph 9 of Part B of the Sixth Schedule or otherwise. The formal audit of an account results in the production of an auditor's report, but the service of such a report is not a precondition of liability. Indeed, there is no duty to serve an auditor's report at all.
91. The Applicant relied on a 2011 Technical Release of the Institute of Chartered Accountants in England and Wales issuing guidance in respect of residential service charge accounts and referring to the requirement to follow generally accepted auditing principles where a lease drawn up since 1980 required an audit. However, each lease must be construed on its own terms and the wording of the leases in this case do not clearly impose such a requirement. The Tribunal is satisfied that a particular word should be interpreted in the context of this lease.
92. This does not affect the Manager's responsibility under the RICS Code to consider the advantages of an audit, which might have provided benefits in respect of greater rigour regarding some allocations, in particular where these have not been sufficiently supported on an evidential basis by the Manager.

Water consumption

93. The Applicant argued that his water charges were improperly apportioned and unreasonably high and, given the Manager's failure to investigate them, were prima facie unreasonable. Mr Gibbs had conducted some inconclusive investigations into the high water consumption, and considered it may be related to wasted water when there was a failure of the flush mechanisms, or simply because of residents showering a lot. The Applicant relied on the decision of the Upper Tribunal in *Mrs Daphne Marion Wallace-Jarvis v Optima (Cambridge) Limited and others* [2013] UKUT 0328, but the facts of that case were not applicable to those in the present one.

94. The Applicant disputed the apportionment since according to the Ninth Schedule of the lease the landlord should contribute a variable amount towards the water and sewerage charges for each block (24.76% in respect of Carmel Court). Mr McDoom observed that the landlord had not made any contribution to the cold water consumption on the estate from 2007 – 2012.
95. The Tribunal finds however that the Applicant's case on this point was misguided. It was based on his block having its own water meter, but in fact he was not being charged on the basis of a proportion of the block's own consumption. The lease requires him to pay a proportion of water charges across the whole Estate, and this is what the Manager has in fact done.
96. The Maintenance Expense includes at Part D "The cost of consumption by the occupants of the Demised Premises of the metered domestic water provided to the Demised Premises together with associated drainage utilisation costs." The Lessee's Part D Proportion is 0.32% and in the context of this lease that proportion can only be understood when looking at the Estate cost (not block costs). Thus he is required to contribute 0.32% of Estate water consumption, and these charges have been correctly demanded from him.
97. Mr Gibbs said that, further to investigation by IGEM, the commercial units were apparently supplied via a single bulk water meter separate from the meters that served certain residential units. It is understood that while not every residential block has its own water meter, there is an individual meter for the flats in Carmel Court, and Mr Clarke and Mr Gibbs both said the only commercial premises within Carmel Court (which are a nursery) has its own meter too. Even on the Applicant's argument, since Paragraph 5 of the Ninth Schedule requires the landlord to contribute in respect of the commercial units insofar as the Manager or Lessor is not entitled to recover such contribution or any part thereof from any third party, in the present case a third party is paying for the water consumption of the commercial premises.
98. Mr Clarke in evidence agreed that VAT should not be charged on water consumption and that, assuming a refund was obtained in respect of VAT that had been charged, paid and disputed, he would adjust this. The Tribunal was concerned that Mr Clarke was not aware of precisely how many water meters there were and what each one served. However, his investigations can continue and this did not have an effect on the amount the Applicant was obliged to pay under the lease. The lease provides a mechanism for the variation of the Lessee's Proportion should a complete picture of the water and sewerage supply to the Estate suggest that this would be more equitable.

General Repairs and Maintenance

99. The Applicant alleged that an unreasonable amount had been allocated by the Second Respondent for general repairs and maintenance in the 2015/16 budget, but the Applicant had not explained why he considered the costs and budgeted sums to be unreasonable.
100. The Tribunal will not interfere with Mr Clarke's disputed decision not to apportion any estimated charges under this head to Part B(ii) Common Parts (NRU), though any relevant expenditure may of course be recovered through that Schedule at the year end. Accessways and Communal Areas that border Carronade and Buckler Courts form part of the Estate.

Lift Insurance and Maintenance

101. The Applicant challenged his liability to pay for the maintenance of the lift on the grounds that the development is comparatively new. He did not produce evidence that the lift repair costs were unreasonable and the Tribunal is satisfied that the Managers have been required to and have undertaken lift maintenance during the period in question, and allows in full the service charges claimed.
102. The Applicant complained that no part of the lift maintenance and insurance costs were allocated to the schedule for the parking area costs. As a parking space owner, this in fact operated to his benefit. The lifts serve the flats and the car park (the Applicant observed that one lift was also available to the commercial leaseholders to descend one floor to reach the Development Manager's office, though there was no evidence before the Tribunal that this use was more than negligible). He did not propose an appropriate apportionment, however, but left it to the Tribunal to determine it.
103. There are 27 lifts on the estate, 26 of which go from the top floors to the 2 levels within each car park. Mr Clarke said that while the lifts benefit those who use the car park, he did not allocate any of the lift costs to the parking schedule because the bin stores are in the car park and so all of the leaseholders use them.
104. The landlord, however, does own a number of car parking spaces, and does not contribute at all to the lift costs. The Tribunal considers that in principle those who use the car parking spaces with use of the lifts should pay towards the maintenance and insurance of the lifts. The lifts will in the majority be used to access the flats however. By allocating a part of the cost to the parking schedule, those who have parking spaces will pay more of the total than those residents who do not, and this also is fair. The Tribunal considers it reasonable and appropriate to allocate 15% of the costs of maintenance and insurance of the lifts to the car parking schedule.

Reserve fund

- 105.** Mr Clarke's basis for having increased the reserve fund contribution in the 2015/16 budget was based only on assertion that the existing reserve fund was insufficient. He provided no forward plans to support this increase. There was nothing to justify his estimate of the appropriate figure for the reserve fund, and Mr Gibbs considered that his reserve fund had been sufficient. There was inadequate evidence to support Mr Clarke's change of position and thus the Tribunal determines that the service charge contribution in respect of the reserve fund is limited to that set by Mr Gibbs for the years in question, though in future such contributions, which are based on considered forward plans for the Estate determined by the current Manager, may vary.

Management Fee

- 106.** In respect of the management fee, the Applicant argued:
- (i)* There is duplication of fees between the current Manager and Lee Baron.
 - (ii)* The apportionment of the Manager's fees across the various categories of costs referred to in Parts A-D of Schedule 6 to the Lease is unfairly favourable to the commercial tenants.
 - (iii)* The fees associated with the current full-time development manager are unnecessarily incurred, excessive, and duplicate the work done by the Manager.
 - (iv)* Under the current Manager's tenure the budget for the year ended February 2016 has increased by 28% compared to the previous year.
- 107.** During the IGEM years, SFM employed a development manager for all on site management tasks, whose hours were increased from 24 per week to 36 per week part way through the service charge year 2013/14. The costs of the on-site development manager were charged within the concierge costs (20% of which cost was put in the Estates charge as discussed above). At that point the lessor agreed to engage the development manager for a further eight hours per week at their own cost to assist with the marketing and viewing of its units. IGEM undertook back-office and authorisation tasks relating to setting of the budget, the production of accounts, the authorisation of expenditure and the collection of income from lessees. SFM and its on-site development manager undertook front-office tasks.
- 108.** Mr Clarke said that upon the appointment of the Second Respondent as Manager, he considered it was necessary and reasonable to employ a professional full-time manager of the salary of £40,000 per annum to

deal with the day-to-day issues arising on the estate. The Applicant claimed the salary cost was £72,000 for the year 2015-16, which the Second Respondent broke down into salary (which had been budgeted at £50,000 per annum), Employer's NI, a 10% administration charge, plus a recruitment fee of £8,800 including VAT (and a 20% fee of £1760 plus VAT, total £2112.00 charged by Lee Baron), mobile phone purchase and IT equipment / software and support. Mr Clarke said for a development of this size and complexity a dedicated development manager was necessary and did not represent a bias towards the commercial tenants. The Tribunal finds the provision, hours and costs of the onsite manager to be reasonable for a development of this size and nature, and that the total management costs are reasonable and in particular do not represent an overlap of service between the Manager, the development manager or Lees Baron.

- 109.** The Applicant challenged the apportionment of management fees. Peverel placed all management fees in the Estate charge schedule, and Mr McDoom said this was the fairest thing to do, arguing that this was the proper interpretation of the residential leases, pursuant to which the “reasonable and proper fees of the Manager ... as to its general management of the Estate” are a matter recoverable under Part E. However, “the Estate” is defined as the “land buildings and structures”, and if the management fee was to be an Estate service charge only it would have been included in Part A of the Sixth Schedule, rather than in Part E, which is for “Costs applicable to any or all of the previous parts of this Schedule”. Thus the Tribunal concludes that it is not improper to allocate management fees across schedules as appropriate.
- 110.** IGEM changed Peverel’s approach on advice, and apportioned to the Estate charge, Block residential, car parking, gym and water rates. The Tribunal will not unpick Mr Gibbs’ unchallenged decision to allocate the development manager cost as a concierge charge in the circumstances, and given the lack of evidence as to the proportionate benefit afforded by that person, and notwithstanding that Mr Clarke took a different approach. Where the Tribunal has difficulty is understanding how the development manager's time was expended on matters recoverable under various schedules. An evidential approach will resolve this in future.
- 111.** Mr Clarke said that, otherwise, he continued the previous apportionments of management fees. In the 2015/16 budget, 49.05% of management fees were apportioned to Schedule 1 – Estate, 10.33% to the Car Parking schedule, 2.58% to the gymnasium and the balance to the residential blocks Schedule 3 (32.65% to the private blocks, 3.91% to the Shared Ownership blocks and 1.49% to the Mount Carmel block). There was no allocation to Schedules 2A-2F or for the commercial units (Schedule 6).

- 112.** In principle, the Applicant's argument that this apportionment is wrong appears persuasive. Where the Manager expends money it suggests a service has been provided in procuring and managing the relevant contract for which a management fee should be payable. The Tribunal agrees therefore that there is a potential for injustice by the chosen allocation for the years in dispute. Indeed, this much Mr Clarke conceded in his oral evidence in relation to his decision not to allocate to Schedules 2A-2F.
- 113.** Nevertheless, practically speaking, the impact on the Applicant of the failure to apportion to certain schedules is likely to be minimal, given the relatively small expenditure applicable. However, the Tribunal has in this decision ordered the reallocation of a number of service charge items. It is not practical or necessary for the Tribunal to engage in calculating the sums to be so apportioned, but it seems likely that this reapportionment will result in the existing allocation of management fees appearing unfair and unreasonable. The Tribunal thus determines that the management fee should be applied to each Schedule proportionate to the percentage of the total service charge expenditure (other than for insurance) allocated to that schedule. If the Manager wishes to depart from that approach in future it will require a reasonable rationale.

Refuse Removal

- 114.** In the 2014/15 accounts a new expense item was introduced under Schedules 3A, 3B and 3F called "Refuse Removal", and the budget for the year 2015/16 for this item had increased to £4,800. The Applicant challenged these items as the council removes refuse and the leaseholders already pay for this service through their council tax. Mr Clarke considered that a budgeted cost of £4,800 for refuse removal was reasonable to cover rubbish not collected by the local authority. The Tribunal is satisfied that a charge for removal of refuse not collected by the council as part of its general rubbish collection, such as bulky items dumped on the Estate, would be recoverable as a service charge and that (there being no evidence that the budgeted cost was unreasonable) the estimated charge is payable.

Insurance

- 115.** It had been the practice of all three Managers to delegate the task of placing the insurance for the Estate to Anthony Green & Spencer Ltd ('AGSL'), a company in the First Respondent's group. The landlord placed insurance through its broker Lockton "the world's largest privately owned global insurance broker". The Applicant challenged his liability to contribute towards expenditure on insurance for the years in dispute because:

- (i) The landlord has usurped the Manager's role placing the insurance for the Estate and the Manager did not have the power to delegate this task in the way it had. The only express power in the lease being to delegate to a managing agent. The Applicant argued that AGSL had a conflict of interest in placing the insurance.
 - (ii) He had obtained a like-for-like quotation that shows that insurance could have been obtained for less than it was. This included a challenge to the element of the cost of insurance which represented the commission paid to AGSL.
 - (iii) The Estate has been overvalued for the purposes of insurance.
- 116.** The Respondents' position was that the insurance arrangements brought the benefit of a bulk discount that the First Respondent was able to obtain across its substantial property portfolio.
- 117.** The First Respondent had permission to serve a statement with supporting documentation in relation to the disputed insurance, and duly filed a bundle relating to that matter. It chose not to adduce its own witness evidence regarding the insurance however. It produced various documents including a Reinstatement Cost Assessment by Mark Owen, Head of Insurance Risk Management at EC Harris LLP (now called Arcadis) in February 2014, and his desktop reinstatement valuation dated March 2015. The First Respondent also produced an email from an independent insurance broker regarding commission and other disputed aspects of the insurance, but the Tribunal could place little reliance on evidence on disputed matters which was not produced by a witness who could be subject to cross examination. The First Respondent had commissioned a March 2016 report by Savills of the insurance arrangements, though again its author could not be subject to cross examination.
- 118.** Mr Gibbs said that on its appointment as Manager IGEM had reviewed the legalities of the arrangement to delegate the placing of insurance to the landlord, and the cover itself, and satisfied itself that it was happy for it to continue, though no formal agreement with the landlord was put in place. IGEM was shown work undertaken each year with Lockton to obtain competitive quotations in the marketplace for each renewal. Mr Gibbs did not think the residents were prejudiced by this practice.

Delegation

- 119.** Though of course it is the Manager who owes the duty to the tenants and must discharge it, the Tribunal found nothing in the lease that would exclude the power of the Manager to delegate the placing of insurance to another party, including to the landlord. The Tribunal is furthermore satisfied that such delegation is what did indeed take

place. The absence of a written authorisation from the Manager, until put in place on 15 April 2015 by the Second Respondent, was not contrary to that conclusion. The Tribunal dismisses the Applicant's case that this arrangement was somehow prohibited under the lease and thus finds that the service charges for insurance cannot be challenged merely on the ground that the Manager delegated the task. There was no evidence before the Tribunal that the cost of insurance obtained by Lockton was higher by virtue of the Manager's interest being represented by AGSL, leaving aside the question of commission discussed below.

Valuation

- 120.** The insurance for the Estate was obtained based on a revaluation of the reinstatement value. In October 2008 DTZ reviewed the rebuild valuation and advised that it should be £89,783.00. In October 2010 its rebuild valuation after an inspection was £96,109.00. The EC Harris valuation was in the sum of £172,003.722 and this was applied to the buildings insurance renewal from 1 April 2015 to 31 March 2016. The premium for that year, including terrorism cover, was £220,199.38 including the 19.3% commission. The further desktop valuation at £180,704,000 was applied in readiness for the 1 April 2016 buildings insurance renewal.
- 121.** The Applicant considered the revaluation carried out by EC Harris was unnecessary and motivated by the landlord's interests in increasing the amount of insurance and thus its own commission. He argued it was unreasonable to obtain the revaluation, and that the increased reinstatement value was unreasonable. Mr Gibbs said that EC Harris were engaged to report in 2014 by the lessor due to its concerns that the development may have been undervalued due to the high cost of rebuild materials.
- 122.** The Tribunal found nothing in the Applicant's case to undermine the credibility of the professional insurance valuations carried out on the instruction of the First Respondent by independent insurance valuers of repute. He produced no expert evidence himself that the development was in fact over valued for the purposes of insurance, and the Tribunal thus had no hesitation in accepting the EC Harris report. The Applicant referred to BCIS House Rebuilding Cost Index, which he said gave a declarable rebuild valuation of £117,673.914 on 31 October 2015 based on an uplift to the DTZ. However, Mr Harris holds appropriate professional valuation qualifications and the Applicant's analysis did nothing to demonstrate that that valuation was wrong.

Commission

- 123.** The First Respondent received a commission each year for placing the insurance, which in 2015 was £44,000 (amounting to 19.3% of the cost

of approximately £228,000). Mr Gibbs had not been aware that the landlord obtained commission from placing insurance until the Residents' Association raised this matter with the lessor in April/May 2014. Mr Duckworth submitted that, since the landlord had received the commission and not the Manager, the latter's right to recover a service charge could not be challenged on the grounds that a third party had received a commission and that the landlord's commission was not a cost to the tenants. However, the Tribunal disagrees and considers that such a commission is a component of the cost to the Manager of insurance and a matter that falls for its determination in considering the reasonableness of the expenditure on insurance to the leaseholders, who are liable under the leases only for the costs and expenses reasonably and properly incurred by the Manager.

- 124.** Mr Fidler's attention was brought to the decisions in *Williams v Southwark BC* (2001) 33 H.L.R. 22 and *Sadeh and Ors. v Mirhan and Azzniv (Charitable Trust)* [2015] UKUT 0428 (LC) at [46-48] by the Tribunal, but declined to make representations in relation to the principles therein.
- 125.** The onus was on the landlord to prove that the commission formed a part of the cost of insurance reasonably incurred. It was the First Respondent's position that it was entitled to a commission because it was reasonable payment for the work that it carried out in placing the insurance and in claims handling. Mr Fidler relied on a letter Lockton wrote to AGSL dated 31 March 2016 setting out the assistance it obtains from the latter in relation to insurance placement and management. That letter listed various activities, including insurance review meetings, management of the annual renewal and reinstatement valuations, and "overseeing all claims and detailed involvement with overseeing more complex claims to manage claim expenses in conjunction with Lockton and the appointed Loss Adjusters". However, the Tribunal could not question a witness regarding any of this activity.
- 126.** Furthermore, the assertion that AGSL engaged in claims handling was not supported by the evidence and the Tribunal concludes that it does very little in that respect. The First Respondent bore the burden of showing what work it did in exchange for the commission, but it failed to discharge that burden. It elected not to seek to bring any witness and there were a number of pieces of evidence which contradicted the First Respondent's assertion. The Savills report from March 2016 reviewed claims processing by Lockton and the loss adjusters (Woodgate & Clark), but notably did not mention the landlord as having played any role. Furthermore, the commission was not disclosed to the leaseholders, but owing to the landlord's interest in the Estate it ought reasonably to have been.

- 127.** Mr Gibbs gave evidence to the Tribunal that during its tenure as Manager IGEM administered all insurance claims in the communal areas within their management fee, liaising directly with the broker. Mr Clarke's evidence was not supportive of the landlord's case. He said that the Manager did 99% of small claims work and it was rare for the landlord to be involved. RPC solicitors for the Second Respondent said in correspondence "our client confirms that it administers insurance claims made in relation to the development."
- 128.** The landlord failed to establish on the evidence all of its own justification put forward for retaining a commission of nearly 20%. Since it does little or no claims handling it cannot reasonably retain material commission as payment for claims handling. Taking into account the expected activities usual for placing insurance of this type, the Tribunal determines that such commission is unreasonable, and that 10% can be justified as a reasonable component of the cost to the Manager for the services provided by AGSL and is payable.

Reasonableness

- 129.** Mr Duckworth observed that Section 19 of the 1985 Act does not actually require the landlord to obtain the cheapest insurance available on the market. Furthermore, he submitted that the Applicant's alternative quotation was not in any event like-for-like. Mr Fidler also sought in submissions to undermine the credibility of the Applicant's like-for-like quotation on the ground that it did not take into account the fact that the underground car parking extended between more than one block, thus affecting the fire risk.
- 130.** The cost of the landlord's insurance obtained in 2015 was £220,199.84 and for 2016 it was £229,005. The Applicant had obtained a 2016 quotation for insurance from Zurich for a total premium of approximately £178,000 for a declared value of £172,003,000 (building sum insured 50% more at £258,004,50) covering the same risks. Neither included lift insurance. The Applicant referred to an increased rate of Insurance Premium Tax said to apply to a quote obtained in 2016. The quote was provided on an indicative basis subject to a number of matters, on the assumption that the three buildings are separate fire risks, and subject to full claims details.
- 131.** The broker approached by the Applicant told him on 19 April 2016 that the quote had been provided to the existing broker, which had advised that the blocks are interlinked via one underground car park and that they have previously been one fire risk. Zurich would now wish to do a pre cover survey which might alter the premium as the quote was produced on the basis that each block was a separate fire risk.
- 132.** The Tribunal considered that the Applicant's like-for-like quotation for insurance, which he had gone to different markets to obtain, was useful

evidence. He had notified the insurer that he believed there had been some minor claims in the last three years but of low value (in range £500-£3,500 each). Mr Clarke referred to claims totalling approximately £50,000 in value, and in his opinion the claims history would not increase the premium much, though this contrasted with Savill's account of a "poor claims history". The landlord did not engage with the broker in question to verify the like-for-like quotation in light of its position in respect of the insurer's assumptions, but instead directed its efforts towards undermining the Appellant's quotation on the basis of uncertainty which it itself could have resolved.

- 133.** Whilst decided authorities justify a landlord insuring within a portfolio, even if this is not the cheapest method, that principal is not extended to a Manager deciding to place insurance with a third party's portfolio where this is not the cheapest option. The decided authorities on commercial cases would not have the benefit of section 27A of the 1985 Act. The Manager therefore appears to have a responsibility to ensure on an annual basis that the arrangements represent good value for money for the leaseholders. No doubt in light of this litigation, it appears Lockton sought to obtain quotations from Zurich and others for stand alone cover for the block in April 2016. These were apparently more expensive than the cover in place, though again the Tribunal had no witness evidence and did not have the opportunity to explore further the disparity in the evidence. No doubt henceforth the Manager will wish to ensure annually that it cannot obtain cheaper cover than through the landlord's block policy.
- 134.** The Tribunal's assessment of the evidence in respect of the reasonable cost of insurance is that it is inconclusive, but not necessarily through any fault of the Applicant. His quotation provides support for his case that the landlord's insurance is too high, but the Tribunal is not in a position to put a value on any unreasonable insurance in light of the state of the evidence. The Tribunal has already determined to reduce the landlord's commission to 10%, resulting in a reduction to a cost not very far from the mid point between the competing prices. Given this, and the unresolved issues relating to the Applicant's quote, the Tribunal does not consider additional downward adjustment of the insurance is justified.

Insurance Apportionment

- 135.** The Applicant challenged the allocation of insurance only to Part B(i) of the lease (the landlord's Schedules 2A-F – Common Parts Block (Schedule 2A-F)), given that there was no allocation to Part A (Estate) and Part B(ii) (Common Parts NRU). Mr Duckworth agreed that there ought to have been an apportionment for insurance to the car park schedule (Schedule 4, Part C of the lease) in 2016, as there had been in previous years. He invited the Tribunal to apportion this cost as IGEM had done during its tenure as Manager (there had been an allocation in

the region of £16-18,000 to this schedule in the years 2011-2014). The Tribunal agrees and considers that there is insufficient evidence on the basis of which it could reach another decision on the correct apportionment of insurance in respect of the car park, and notes that Mr Gibbs' apportionment had gone unchallenged.

- 136.** The Manager covenants to insure the Estate, including Communal Areas, Accessways and Service Installations. Logically, therefore, there should be an allocation for the cost of insurance to the Estate schedule. However, the Tribunal had insufficient material to assess this rationally, and the proportion for such allocation is likely to be very small. The Tribunal is not persuaded on the evidence that it should determine such an allocation for the periods in dispute, though for the actual accounts and in future the Manager will need to adopt a justifiable approach, possibly on advice.

The Landlord's Arrears

- 137.** The Applicant complained that prior to November 2014 the landlord was in arrears in respect of the commercial units service charge to the tune of approximately £129,000, and that the landlord should be required by the Tribunal to pay penalties and interest in respect of those arrears.
- 138.** Mr Clarke explained that the debt related to a dispute between the First Respondent and Peverel but Mr Gibbs confirmed that he was unaware of any valid reason for the accumulation of these arrears and that the Residents' Association had been particularly unhappy about them. However, the leases make no provision for interest (if any is payable) on overdue service charges to reduce the service charges payable by other contributor leaseholders, and there is no evidence that the Applicant's service charges were so affected. This issue therefore does not relate to any matter which the Tribunal would be capable of, or might have the jurisdiction to, determine.

Legal Fees associated with replacement of the Manager

- 139.** The Applicant contended that it was unreasonable and unnecessary for the landlord to replace IGEM as Manager and that the legal costs associated with the process were therefore irrecoverable from him. Mr Gibbs gave evidence that these fees included the following:

£7279 plus VAT for settling the terms of the pro forma deed of covenant and the procedure pertaining to the removal of the restriction in favour of Peverel from the registered title of each flat lease. Preparing a schedule of leases for the Land Registry form and dealing with all correspondence. This work was undertaken over a 12 month period.

£1686.50 plus VAT for preparing, negotiating and completing a management agreement between IGEM and the Lessor.

£1087.50 plus VAT for preparing negotiating and completing the management agreement between IGEM and MGS (SFM). This cost was not challenged by the Applicant.

140. The Tribunal rejects the Applicant's challenge to these costs. It heard evidence that IGEM's management was terminated in order to bring all of the lessor's properties under a single management group. This may have caused subsequent unrest owing to increases in the service charge budget, but that is with the benefit of hindsight and it was not inherently unreasonable to decide to replace the Manager. Enquiry into whether any of these costs was not payable as a freeholder expense was not raised in the Applicant's statement of case and thus not entertained by the Tribunal.

Gym Rent

141. The Applicant contended that the rent paid by the Manager to the landlord under the gym lease had been in excess of the market rate, observing that £68,000 had been charged for the year 2015/16. Mr Clarke acknowledged that this figure in the budget was erroneous.

142. The Applicant produced a rent comparison analysis for the gym as compared with other commercial units let on the Estate, on the basis of which he sought to argue that the gym rent, at £24-25 per square foot since 2007, had been too high. However, this was an amateur and inadequate analysis which the Tribunal cannot accept.

143. Mr Clarke said that the budgeted rent for that year was in fact £35,950 plus VAT (total £43,140). He observed that the rent amounted to the equivalent of £19.79 per ft², which is less than the Applicant's suggested market figure of £20-£25 per ft².

144. The Applicant argued that the gym lease is a qualifying long-term agreement for which statutory consultation with the tenants would be required. However statutory consultation requirements do not apply when the landlord enters into a lease, only where it enters into an agreement.

145. Mr Gibbs said at the time of IGEM's appointment the gym rent had been set by the lessor in an agreement entered into with the previous Manager. A new lease on very similar terms was entered into by IGEM with the lessor at the time of their appointment. He said the rent would be determined in accordance with the market rate for the location. Mr Clarke said that a further new gym lease was entered into between the First and Second Respondent to reflect the change of Manager.

146. The Tribunal was concerned that none of the Managers took independent advice, or required an independent professional valuation, before entering into a lease with the First Respondent for the gym. However, there is no evidence on the basis of which the Tribunal could determine that the gym rent is unreasonable. That is a matter which would require appropriate professional valuation evidence, which the Applicant did not produce. His case relied on an attempt to make comparisons with other rents, but there are so many variables which affect the value of a commercial property, it is a matter on which professional expertise is required. The Tribunal, though it has such experience in the residential field, does not pretend to be an expert tribunal in respect of commercial valuation. The Applicant's case in respect of the reasonableness of the gym rent is accordingly dismissed.

Application under s.20C, refund of fees Rule 13 costs

147. The parties may make application as to costs and fees within 28 days of the date of issue of this decision.

148. Mr Duckworth indicated that the Second Respondent intended to make an application for costs against the Applicant under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Respondents considered this litigation to be disproportionate. The Applicant challenged just about every item of service charge over an eight year period spanning three different Managers. The monetary value of many of the items challenged was in the £30-£80 bracket. On the Applicant's own case he would have only stood to recover some £4622 even if he had won on every single point (and leaving aside the issue of recovery given the insolvency of Peverel). The Respondents' costs incurred in the litigation would outstrip that amount many times over. Mr Duckworth said that were it not for the fact that there were 520 flats on the Estate and for the Applicant's insistence that this was a test case, these proceedings would doubtless have been resolved on a purely commercial basis. He therefore indicated his intention to make an application for costs under Rule 13 against the Applicant at the conclusion of these proceedings.

149. The Tribunal will consider such an application if it is made. However, it does have power to make such an order of its own motion and on the material before it if after a five day hearing it would not be minded to do so. The award of an order for costs is in any event discretionary and in all the circumstances, subject to any representations from the Respondent, the Tribunal does not consider the exercise of such discretion would be appropriate.

150. There were elements of the Applicant's preparation of his case which bordered on the unreasonable. He did have a tendency to descend into almost unmanageable detail. However, this is a large and complex estate, and even the most succinct preparation would have placed a

significant burden on the Respondents. Weighed against the Applicant's conduct in this litigation is that of the Respondents. The catalyst for this application was the 2015/16 budget of the Second Respondent, which showed a 28% increase in service charges for the residential lessees. The Tribunal is satisfied that this budget contained numerous errors, and several of them were acknowledged before and during the hearing by Mr Clarke.

- 151.** That Respondents did not accept that the Applicant's view was representative of the general view of the residential leaseholders on the Estate. A note apparently from the Residents' Association said that its committee "does not fully align itself with all key points raised in your submission but the committee fully understands and appreciates the rationale for the application." It believed there was a need for judicial determination in relation to the apportionment, especially of security and water, the gym costs and the insurance.
- 152.** These proceedings will have brought the benefit of greater fairness to service charge allocation in the future, which the Manager has not approached with a view to transparency and objectivity. Had it done so then it is unlikely that these proceedings would have been brought.
- 153.** The Second Respondent reacted appropriately to the Applicant's sequence of documents stating his case, and the Tribunal's directions and determination has supported their objections. Mr Duckworth undoubtedly had a complicated task in analysing the Applicant's case to present his client's, but he did so with professional skill. The Tribunal would also observe that Mr McDoom's lay representation of the Applicant at the hearing was exemplary, and succeeded in distilling the issues in dispute and presenting them clearly.

Name: F. Dickie

Date: 30 September 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions 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.

Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.