



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

- Case Reference** : CHI/00HE/LSC/2022/0003/AW
CHI/00HE/LSC/2022/0002/AW
- Property** : 3 The Carriage House, Killiow Park, Kea,
Truro, Cornwall. TR3 6AG
- Applicant** : Mrs Guadalupe Thornton
- Respondent** : The Killiow Coach House Management
Company Limited
- Representative** : Belmont Property Management (Mr Martin
Foy)
- Type of Application** : Service charges and costs - Sections 20C and
27A Landlord and Tenant Act 1985 (the Act);

Paragraph 5A of Schedule 11 to the
Commonhold and Leasehold Reform Act 2002
(CLARA)
- Tribunal Members** : Judge C A Rai
Mr M C Woodrow MRICS
- Date type and venue
of Hearing** : 26 July 2022
Paper determination without an oral hearing
- Date of Decision** : 31 August 2022

DECISION

The application

1. The Applicant submitted three applications to the Tribunal. Her first Application made under section 20C of the Act was dated 8 November 2021. The other applications made under section 27A of the Act and Schedule 11 of CLARA are both dated 2 January 2022.
2. The Tribunal issued its initial Directions on 25 March 2022. In those Directions it stated that it had no jurisdiction to vary the Applicant's leases of the Property in the circumstances described in her applications but that it "does however have jurisdiction to determine some of the matters referred to in her application" which it listed in paragraph 7. Those were identified as:
 - a. No S.20 consultation in respect of a Qualifying Long-Term Agreement for gardening work by the owner of No 2.
 - b. No proper consultation about redecoration of the Carriage House
 - c. Badly executed work
 - d. Work on private properties charged as Common Parts
 - e. Mistakes in insurance cover
 - f. The management of the reserve fund
3. The Tribunal directed that a telephone case management hearing (CMH) would be held. At the CMH on 20 April 2022, Mr D Banfield FRICS Regional Surveyor, explained that the Tribunal would determine the application based on the existing terms of the Applicant's leases. The Applicant requested a more detailed breakdown of the proposed exterior decoration costs in response to which request Mr Foy said he would approach the relevant contractor for more details.
4. Mr Banfield directed that the applications, now consolidated under the two case numbers referred to above, would be determined without an oral hearing unless the Tribunal on receipt of the bundles decided that the papers made this unsuitable.
5. Mr Banfield directed that the Tribunal would not inspect the Property but would examine photographic evidence unless either party made a separate application. Neither party requested an inspection or an oral hearing.
6. The parties have provided further information and evidence included in an electronic bundle comprising **305** pages prepared by the Applicant. In addition, the Tribunal has seen two sets of Directions dated 25 March 2022 and 20 April 2022 and a bundle of photographic evidence comprising **16** pages. The bundles did not include any further details of the cost of the proposed exterior decoration. In response to the Tribunal's further Directions dated 1 August 2022 the Applicant submitted an electronic bundle (**82** pages) and the Respondent submitted a letter and copies of reconciled accounts information (**5** pages). Where this decision contains a reference to numbers in square brackets this is to the pdf page number of the bundle. Where the number is preceded by a 'P' this is a reference to the pdf page number of the photographic bundle. Where this is preceded by 'A' this is a reference to the Applicant's additional documents and where this is preceded by 'R' this is a reference to the Respondent's letter dated 12 August 2022.

Introduction and Background

7. The Applicant occupies a unit of accommodation within a building described on the leases in the bundle as “The Carriage House”, Killiow, Kea, Truro. The parties describe the building as the Coach House, the Respondent uses “Coach” as part of its name and the headlease of the building refers to it as the Old Stable Block and land at Killiow. For convenience the Tribunal have adopted the description most commonly used, which is “The Carriage House”.
8. The Applicant has stated that in 1989 the old stable block and coach house of the Killiow Estate were converted into six separate residential units sited around a central courtyard. On 10 October 2003 Planning Permission was obtained for the conversion of two of the six units into a single dwelling. The Applicant has stated that the two leases of the units originally known as units 3 and 4 were not merged.
9. The Applicant bought 3 The Carriage House in June 2013. She has not disclosed what legal advice she obtained prior to that purchase, but from the information in the bundle it is apparent that the two units, although by that time occupied as a single unit, remain demised under two separate leases.
10. In 2018 the Respondent engaged Belmont Property Management (Belmont) to manage The Carriage House which is a grade II* listed building. The Property Manager with responsibility for the management is Mr Martin Foy.
11. Mr Foy has responded to this application on behalf of the Respondent. The correspondence he has sent to the Applicant is mostly addressed to 3 & 4 The Carriage House but the statements and invoices refer to 3/4 The Carriage House. Although two statements and two invoices appear to have been enclosed with each letter, these contain different references which are either 293/01/03 or 293/01/04.
12. The Applicant claimed, when challenging her service charge contributions, that she was unaware that the Property was subject to two separate leases and/or that as a consequence she would be obliged to contribute towards communal expenses under both leases. She also claims that she opposed the engagement of Belmont as manager.
13. The Applicant applied to the Tribunal to vary her leases but was informed as is recorded in the initial Directions dated 25 March 2022 (referred to above) and during the CMH, that the Tribunal has no jurisdiction to deal with an application on the grounds she has put forward and that instead her applications would be determined on the exiting terms of her two leases.
14. In the 27A Application, the Applicant has challenged service charges for the following periods: -
 - a. 2013 – 2020 (past years) and
 - b. 2021 – 2024 (etc) (future years)

15. The Tribunal is unable to make a determination about service charges for future years for which no demands or estimates have been issued. Its decision is therefore restricted to dealing with the Applicants specific queries about the service charges demanded between 2018 and 2022. As far as it has been possible the Tribunal has also addressed those queries raised by the Applicant which relate to some of the earlier years between 2013 and 2017. The Tribunal cannot deal with service charge demands which postdate the applications.
16. The Respondent's representative Belmont was appointed in 2018 so Mr Foy has stated that Belmont cannot respond to the Applicant's complaints relating to earlier service charge years.
17. Neither party initially provided the Tribunal with copies of all the service charge demands issued to the Applicant for the service charge years between 2018 and 2021 but the Applicant, in response to the Tribunal's further Directions, has provided the Tribunal with copies of correspondence, demands and statements received from Belmont dated between January 2019 and August 2021 which she helpfully presented in date order.
18. No service charge accounts have been provided for any service charge year but Mr Foy has provided the Tribunal with copies of "year-end reconciled management information which he says has been prepared in accordance with the members wishes" [R 3-5].
19. Although the Respondent company purports to manage the Property, albeit through Belmont, it filed dormant company accounts in January 2021. The annual confirmation statement filed at companies house in January of each year since 2017 was last updated in January 2019 when it recorded that the members of the Respondent are Mrs Belshaw, Mrs Turle, Mr and Mrs Bryce, Mrs Thornton and Mrs Charnley.
20. Belmont has stated that it was appointed by four of the six leaseholders in May 2018. The terms of its appointment are described as "limited" and Mr Foy confirms that its accounting records are not presented to a Chartered Accountant for review but presented to the owners for their own review. He said that the record of all service charge costs, together with supporting documentation, is available [45].
21. In or about October 2021, Belmont instructed Stephens Scown Solicitors to recover unpaid service charges from the Applicant. Their letter [111] appears to have been the catalyst for the Applications to this Tribunal.
22. The Applicant made three applications to the Tribunal which it suspects may have been prompted, in part at least, by her frustration with the amount of money she was being asked to contribute towards service charges in comparison with the other four residents of the Carriage House. She has consistently expressed the view that the division of the service charges is unfair.

23. Although the Tribunal has not inspected the Property it is apparent from the information supplied in the bundle that the Carriage House consists of 5 units on four sides of a building which surround an inner courtyard. The units are not the same size. Most of the units are on two storeys; part of the Applicant's unit has is a single storey.
24. When the building with originally converted into six dwellings, the leases divided the service charge liability equally between the six units without taking account of size or area. All the other leaseholders are aware of the Applicant's dissatisfaction with the amount of her service charge but there is no incentive for any of them to collaborate in changing their leases because each is financially benefitting from the Applicant paying a third of the service charge and insurance costs.
25. Presumably, the other leaseholders may have considered how the proceeds of an insurance claim should be distributed if all five properties were destroyed or damaged. The Applicant might be justified in claiming she should be entitled to one third of the total amount. The Tribunal suspect that none of the other leaseholders would agree or accept such a claim, despite currently collectively insisting that the Applicant is liable to pay twice as much as each of them.
26. There is covered inner walkway adjacent to three sides of the building, excluding the rear side which comprises the Applicant's Property. Although the Applicant must benefit from the use of the walkway, she does not benefit from being able to use it for external storage, which she claims that the other leaseholders do. She is therefore aggrieved that although paying twice as much in service charges than any other leaseholder, she is deriving less benefit. She also says that her views with regard to the service charges and the services have been ignored because the other four leaseholders decided, contrary to her wishes, to appoint Belmont to manage the Building. Her application was made in respect of all service charge years since she bought her property, but she has admitted that until Belmont were appointed the leaseholders did not issue formal demands. No service charge accounts have ever been prepared and although copies of all the statements from the Nationwide account might have provided a complete record of all receipts, only extracts from a random selection of statements have been included in the Bundle.
27. The evidence suggests that prior to 2018 emails were sent to all leaseholders by one of the leaseholders when monies were required and everyone contributed an agreed sum which was paid into the Nationwide Building Society account and used to pay for services and insurance. Individual contributions were recorded indicating that the Applicant contributed twice as much as any other leaseholder. The same percentage of contributions has been demanded since Belmont were appointed as managing agent.
28. Sometime after the building was redeveloped, but before the Applicant bought the Property, units three and four, which until then had been occupied as two separate units, were converted into a single dwelling. The head landlord must have given consent both to the planning application and the conversion works as the leases contain a restriction preventing such development.

29. The first application was made under section 20C of the Act. The Tribunal is satisfied that the Applicant did not understand the nature of that application.
30. Subsequently the Applicant submitted two further Applications, a section 27A which included supplementary applications under section 20C and paragraph 5 of schedule 11 to CLARA. She also made a separate application in respect of administration charges under schedule 11 of CLARA.
31. The Tribunal has concluded that the Applicant did not understand the difference between service charges and administration charges. By submitting three applications she appeared to be venting her frustration with regard to her service charge contributions, which she considers to be unfair. Although the Tribunal already referred to the limits of its jurisdiction in its initial directions it has expanded the explanation in this decision.

The Leases

32. The Applicant has disclosed copies of three leases to the Tribunal. The two leases of Units 3 and 4 demise that part of the building which now comprises the Property. The lease of Unit 3 is dated 28 November 1996 and the lease of Unit 4 is dated 26 September 1997. Both are underleases and refer to the Landlord (originally Lark Homes Limited) and the Head Landlord (then James Bernard Killigrew Penrose).
33. Under the terms of the leases the tenant is obliged to pay the service charge calculated in accordance with the Third Schedule. The common parts are the parts of the estate intended for use by some or all of the tenants and other occupants of the estate. The estate is described as the Carriage House Killiow Kea Truro [251]. The Property is described as Unit 3 and Unit 4 in the second lease. Both leases are similar and refer to plans showing the property edged red and the estate and its grounds edged blue. There are no copies of those plans in the bundle.
34. Each lease was granted on condition that the Tenant is entitled to or owns a share in Killiow Coach House Management Company Limited (clause 7.1) [255].
35. The Third Schedule [257] to the lease of Unit 3 headed “**Service charge**” is set out below: -
 1. “Service Costs” means “the amount the Landlord spends in carrying out all the obligations imposed by this lease (other than the covenant for quiet enjoyment) including the cost of borrowing money for this purpose. “final service charge” means one sixth of the service costs, “interim service charge instalment means a quarterly payment on account of the final service charge until the Landlord gives the Tenant the first service charge statement and after that it is a quarter of the final service charge on the latest service charge statement.

2. The Landlord must:
 - (a) keep a detailed account of service costs;
 - (b) have a service charge statement prepared for each period ending on 31st December during the lease period, which:
 - (i) states the service (sic) for that period with sufficient particulars to show the amount spent on each major category of expenditure;
 - (ii) states the amount of the final service charge;
 - (iii) states the total of the interim service charge instalments paid by the Tenant;
 - (iv) states the amount by which the final service charge exceeds the total of the interim service charge instalments (“negative balance”), or vice versa (“positive balance”);
 - (v) is certified by a member of the Institute of Chartered Accountants in England and Wales that it is a fair summary of the service costs, set out so that it shows how they are or will be reflected in the final service charge, and is sufficiently supported by accounts, receipts and other documents which have been produced to him.
3. On each day on which rent is due under this lease or on such other appropriate quarter dates as determined by the Landlord from time to time the Tenant is to pay the Landlord an interim service charge instalment.
4.
 - (a) If a service charge statement shows a positive balance, the Landlord must pay that sum to the Tenant when giving the statement;
 - (b) If a service (sic) statement shows a negative balance, the Tenant must pay that sum to the Landlord within fourteen days after being given that statement.
36. The Fourth Schedule [258] to the lease of Unit 3 lists the services to be provided by the landlord which include repairing the roof, outside, main structure and foundations of the buildings within the estate, contributions towards the costs of repairing property shared with occupiers of other parts of the estate, decoration of the outside of the building every three years, repairs and decoration of the common parts and repair of common services.
37. That schedule also refers to heating and lighting and cleaning common parts and repairing the grounds and services within the estate, maintaining the grounds including providing signage and planting and tending the garden and providing facilities and arrangement for security signage indicating occupation and rubbish disposal.
38. In addition, it includes the costs of insuring against public liability, employers' liability and obtaining insurance valuations of the building, any contributions necessary to “top up” an inadequate insurance claim and the costs of keeping the accounts, preparing and rendering service charge statements and retaining accountants to certify both the accounts and statements.
39. The Fifth Schedule [259] to the same lease provides that that the Landlord is to maintain a “reserve fund” to accumulate in advance the expected costs of

carrying out the “reserve fund works” described as being the major repairs to roof and foundations and the exterior decoration.

40. The lease of Unit 4 contains identical provisions to those contained in the lease of Unit 3.
41. In response to the Further Directions dated 27 July 2022 Mr Foy has confirmed that, as far as he is aware, all of the leases of the units within the Carriage House are similar.
42. In summary, the Applicant is obliged to contribute one third ($2 \times \frac{1}{6}$) of the costs of maintaining and repairing the roof, outside, main structure and foundations, the maintenance of the common parts of the building and the costs of the services carried out as detailed in the leases.
43. The landlord of the property is obliged to insure the property and procure that the tenants' interest is noted on the policy and whenever reasonably required produce a certificate of the insurance and a receipt for the last premium [266].
44. Although the Services to be provided in the Fourth Schedule to the lease refers specifically to the costs of insuring public liability and employers liability and to costs of obtaining buildings insurance valuations, there is no reference to the costs of reimbursing the landlord in respect of the buildings insurance “Service costs” defined in paragraph 1 of the Third Schedule include the amount which the Landlord spends in carrying out all the obligations imposed by this lease.....save for in relation to the covenant for quiet enjoyment (See paragraph 35 above).

The issues

S.20 consultation in respect of a Qualifying Long-Term Agreement for gardening work by the owner of No 2.

45. The Applicant has submitted that she was not consulted about a qualifying long-term agreement relating to the employment of Mrs Charnley, the leaseholder and occupier of Unit 2, to carry out gardening work. She has also questioned the costs of the work carried out by Alex Jordan. She has produced a document headed Belmont’s service charge reconciliation [86] in which she has extracted the landscaping costs shown on the Belmont Service Charge reconciliation produced in September 2021 [85].
46. Both documents refer to the costs incurred over a period of more than a single service charge year. The service charge year runs from 1 January to 31 December and the reconciled management information produced by Mr Foy is in respect of this 12-month period during 2019, 2020 and 2021.
47. Mr Foy informed the Tribunal that the reconciled management information has been prepared in accordance with the members wishes [R2].

The Tribunal’s decision

48. The information in the bundle disclosed that landscaping costs of £6,029.60 were incurred between 28 May 2018 and 17 August 2021. The relevant service charge accounting period is between 1 January and 31 December. That is reflected in the Belmont management information for the three years ending on 31 December 2019/2020 and 2021.
49. Landscaping costs for 2019 total £2,068.95. Landscaping costs for 2020 total £1,648.86. Landscaping costs for 2021 total £1,897.25 [R3-5].
50. As the Applicant has correctly identified long term agreements (agreement for periods in excess of one year) which result in any leaseholder paying more than £100 per year in respect of their liability under a single lease are subject to section 20 of the Act and **the Service Charges (Consultation Requirements) (England) Regulations 2003 [SI2003/1987]** “the Regulations”.
51. The costs referred to in the management information are not shown as costs paid to a single supplier. The schedule produced by the Applicant shows that Mrs Charnley, Grasshoppers, Paul Stephens and Alex Jordan have collectively provided landscaping services. The payments listed in the Belmont service charge reconciliation schedule [85] suggest that none of the suppliers have contracted to supply regular services or are paid regular monthly payments. Instead, each is paid as and when services are required and provided.
52. The costs disclosed do not demonstrate the existence of any contractual agreement with a supplier for regular expenditure that will exceed £600 per year and result in any of the six leaseholders paying more than £100.
53. The Tribunal has therefore not found any evidence of the existence of any long term qualifying agreements in respect of landscaping works.

No proper consultation about the external redecoration of the Carriage House

54. Two invoices dated 16 July 2020 were sent to the Applicant under cover of a letter dated 17 July 2020, which purported to relate to the 2020 external decorations. That letter said that the work would be undertaken by Paul Jeffrey and commence in August 2020 [A 45 – 47].
55. On 3 February 2021 Mr Foy sent a notice of intention to carry out external works “because of the timing of the cyclical programme”. The notice described the works as “Works to prepare and redecorate all external surfaces of The Coach House that have previously been painted, along with other associated works” [129 and 135]. The notice was sent with the intention of complying with Part 2 of Schedule 4 of the Regulations. The Regulations require that proposed works are described in general terms and state the landlord's reason for considering it necessary to carry out the proposed works and invite written observations from the parties on whom notice is served.
56. The Applicant has claimed that she does not know what works are to be carried out.

57. On 24 May 2021 Mr Foy sent copies of two estimates from L Phipps and P Jeffrey for £9,552 and £8,520 respectively. The notice stated that copies of all estimates were enclosed but those copies have not been disclosed to the Tribunal. The notice records that no comments or observations were made during the first stage consultation period [131 and 136]. Written observations from the leaseholders were invited before the end of the consultation period which was 24 June 2021 failing which Mr Jeffrey would be awarded the contract.
58. The Tribunal has seen no detailed description of the works proposed or completed. On 28 September 2021 [137] Mr Foy wrote to the Applicant stating that works would be carried out by WMS instead of Mr Jeffrey who could no longer carry out the job. WMS would charge the same amount. He referred to the erection of scaffolding and suggested that any further “compliant (sic) or concerns be directed to the Directors of the Management Company”. A copy of the WMS quotation has been included in the bundle [81]. It is for £9,120 (including VAT) to include the fully external clean down to all previously painted masonry (sic), the preparation of woodwork, undercoat and gloss following Dulux specification and varnishing the walkway ceilings. It also includes separate quotations for other work to the six properties [81]. Mr Foy’s letter states that “as requested we will not instruct any work on your property” [137].
59. The minutes of the meeting which took place on 14 October 2021 record that the external painting was being carried out by WMS under the management of Belmont and was progressing well save in relation to the light colour of the posts in the courtyard [139].
60. The Applicant has suggested that little information about the qualifying works was contained in the consultation notice. With the caveat that it has not seen the other two estimates, the Tribunal agrees.
61. There is no evidence that the external redecoration costs related to anything other than the painting and redecoration of the communal areas, unless the reference to “all walls” included walls belong to individual properties. Exterior decoration to the rear of properties including all previously painted surfaces has been quoted for, but not as part of the communal expense. The invoices sent to the Applicant dated 16 July 2020 are for £1,240 which is one sixth of the provisional estimate of £7,440.
62. Covered external walkways adjoin the three sides of the courtyard, the use of which the Applicant has suggested benefits those leaseholders whose properties are adjacent disproportionately. Common parts are defined in the lease as the parts of the estate intended for use by some or all of the tenants and other occupants of the estate. The walkways are used in common with more than one tenant and are therefore within the definition.
63. Although the Applicant has claimed that she has been required to contribute towards the cost of the redecoration of other leaseholders' windows, the quotation from WMS makes no specific reference to the decoration of the windows as being part of the communal redecoration costs.

64. Mr Foy has not provided any more information about the specification for the external redecoration despite agreeing at the CMH to obtain a more detailed breakdown of decorating costs and by **6 May 2022** which he was to send to the Applicant. If he could not obtain more details, he was supposed to send her an explanation of the reason.

The Tribunal's decision

65. The Tribunal has not seen any information, documents or evidence which indicated that the provisional contribution of £1,240 demanded from the Applicant in respect of each of her two leases (a total of £2,480) is for the redecoration of any part of the estate which belongs to another leaseholder. WMS has separately quoted for the external redecoration of individual units and the leaseholders have been invited to negotiate with that firm should they wish to employ them. It would clearly be inappropriate for Belmont to supervise or retain any involvement with regard to such works unless paid separately by the individual leaseholders.

Badly executed work

66. The Applicant has provided some photographic evidence of repairs which seem to have failed soon after being carried out. Mr Foy has addressed this in his statement. Neither party has quantified the actual costs of rectification nor how the further repairs necessary will be paid for, or if it is likely that further remedial work can be carried out without additional cost to the Applicant.

The Tribunal's decision

67. In the absence of any further information, the Tribunal cannot make a meaningful determination. It accepts that it is appropriate for the Applicant and the other leaseholders to receive dispensation from making any further payments to resolve the problems. Mr Foy appears to have been employed to manage these works and it is his responsibility to arrange for the defects to be rectified. Leaseholders are only obliged to pay service charges which are reasonably incurred and where works have been carried out to a reasonable standard.

Works carried out on individual properties and charged to the service charge account

68. The Applicant's complaint appears to relate to the years before Belmont was appointed. Since the other members of the Respondent have clearly stated that Mr Foy represents them in relation to the entire dispute, he cannot abdicate responsibility by stating that those complaints predate his firm's appointment. If he is representing the Respondent, he should have obtained all the relevant information from them to enable him to deal with this part of the Application.

The Tribunal's decision

69. The Applicant's specific complaint relates to gardening works which were carried out on private gardens. If that is correct, which is a factual matter, and any of the Respondents have actual knowledge, some adjustment between the

parties can and should be made. This can be undertaken between the parties. The Tribunal has no jurisdiction to order an adjustment but confirms that the works carried out to an individual leaseholder's garden are not services within the definition in the lease and therefore cannot be discharged from the service charge fund and do not constitute service charges.

Insurance

70. Prior to the Applicant purchasing the Property, individual members of the Company had insured their own properties and that arrangement only changed following the Applicant relaying what her lawyers had told her at the meeting of the Directors held on 20 August 2013. This is recorded in the minutes of that meeting [A 8]. Following that disclosure, Mr Calvin Martin one of the leaseholders, sent an email to the owners of the other four properties confirming that he had obtained quotations from two insurance companies. He recommended that cover be obtained from NFU to commence on 25 November 2013. The email referred to a 1/6 pro rata premium [A 9].
71. An email dated 11 November 2015 from Gweneth Turle sent to the Applicant and other leaseholders refers to the insurance premium renewal and refers to contributions of £277.29 each but £554.58 for the Applicant [A 10]. On 9 November 2014 Gweneth Turle emailed the leaseholders requesting six shares of £270.
72. An email dated 7 November 2017 from Gweneth Turle about the insurance policy due for the renewal that year refers to a contribution of £277.83 but also to an unsolicited credit of £3,000 from the Applicant “sitting in the Bank” and that “I will take her two shares in the sum of £555,66 out of that leaving her with a remaining amount of £2,444.34 still in the kitty” [A 10].
73. From the evidence supplied to the Tribunal the Applicant has consistently paid one third of the cost of the buildings insurance since she bought the Property. She herself instigated the joint policy since prior to her raising the issue at her first “Directors Meeting”, the occupiers had each insured their individual properties.
74. The Applicant stated that the leases include an obligation not to act in a way which will or may result in the insurance of the Property being void or voidable. She referred to clause 4.12 [28] which is a tenant covenant. She says that the insurance policy has always contained mistakes and omissions which “rendered it voidable” and that Belmont did not provide her with relevant information but sent her double invoices amounting to one third of the total cost of insuring the building [11].
75. The bundle contains a copy of page 1 (of 5) of the current buildings' insurance schedule [104]. The Respondent is the policyholder and the period of insurance is between 26 March 2022 to 26 March 2023. The total premium is £3,019.04. The buildings are described as “converted into Six Separate Apartments”. The sum insured is £3,649,426 (index linked).

76. The Applicant has suggested that Belmont omitted to check that the detail of the buildings insurance cover was accurate but simply continued with the policy “that Ms Belshaw had contracted in 2013 the accuracy of which nobody else was ever asked to check” [28].
77. Mr Foy stated that property insurance had been provided by Cornish Mutual for many years and issues with regard to the cover were passed to the insurers [44]. A full reinstatement cost assessment was undertaken by Barrett Corp Harrington (chartered surveyors) in December 2020 [148]. That still refers to six units and six apartments. It is not clear why Belmont did not correct that error. The Respondent was directed by the Tribunal to explain why the insurance reinstatement costs assessment [148] identified that the building comprised six units not five. It has not complied with that direction.
78. Mr Foy also said that a regular review of the insurance with NFU takes place each year. A copy of the review dated 22 March 2022 is in the bundle [156]. That refers to the risks covered and considered but contains no description of the Property. Whilst the identity of the policy holder was checked and recommendations made, there is no suggestion that these were adopted.
79. Whilst the Lease does not contain a direct tenant obligation in the leases by which a tenant is obliged, or covenants, to contribute specifically towards the cost of buildings insurance, the Respondent instead relies on the definition of “Service costs” which includes the amount the Landlord spends in carrying out all the obligations imposed by the lease.
80. Furthermore, the Respondent has confirmed that the Headlease was transferred to the Respondent “in or around 1992” [R 2]. That lease contains a lessees covenant (with the head landlord) in paragraph 19 of the Third Schedule that the Tenant to keep the demised premises insured [291].
81. Since the Respondent is now Landlord under the Headlease, and is responsible for maintaining buildings insurance, each member of the company would be obliged to contribute towards those costs

The Tribunal’s decision

82. Only an extract from the buildings insurance schedule for 2022/2023 has been disclosed in the bundle. The policy is in the name of the Respondent. The lease specifically requires that the interests of the “Tenant” and any mortgagee are noted on the policy Clause 5.2(c) [254] but no evidence that this has been done has been provided by either party.
83. Notwithstanding that the Respondent has not strictly complied with the terms of the lease, it is clear that the leases contain a contractual obligation for the Applicant to contribute one sixth of the cost of the joint insurance premium in each lease. Therefore, the contribution of one third of the cost of the premium is correct. The evidence in the bundles discloses that the Applicant has consistently contributed one third of the building insurance premium from the date that the joint policy was put in place. The Tribunal has concluded that insurance cover has never been provided by Cornish Mutual despite Mr Foy’s

statement. All the evidence in the bundle indicates that the policy was with NFU Mutual until the current year.

84. It is difficult for the Tribunal to understand the Applicant's claims that the policy is inaccurate now or has been in the past. She has quoted from a tenant (not a landlord) covenant in the Lease. It is the leaseholder, not the Respondent, who covenants not to jeopardise or invalidate the policy. The Applicant is correct in stating that the policy continues to refer to six and not five units. The Respondent has been aware of the change since planning permission for the conversion was granted and implemented. Belmont are aware that this is wrong but has not attempted to rectify the error. Instead, they have compounded it by not correcting the error when obtaining an assessment of the insurance cover, as is evidenced by the property description in the December 2020 reinstatement cost assessment [148].
85. Whilst it appears that the Applicant has now been provided with information about the insurance policy, it is appropriate to remind the Respondent that the Schedule to the Act contains provisions requiring the Respondent provide this information and within a specified period. Failure to comply with these provisions is a summary offence (Paragraphs 2,3 and 6 of the Schedule to the Act).

Management of the Reserve Fund

86. The Tribunal has not been provided with evidence that previous leaseholders ever opened a reserve fund account. The payments made by the Applicant were paid into the Nationwide account, which was the service charge account and applied towards her share of the service charge liabilities. Other leaseholders' contributions were held in the same account and applied towards the cost of the services. There is no evidence that any leaseholder failed to contribute its share of the charges, but there is evidence that the Applicant always contributed two shares, one in respect of each lease.
87. In 2017 the Applicant paid £3,000 to Mrs Turle which was paid into the Nationwide account as acknowledged by her in her email dated 7 November 2017 [A10] in which she refers to that sum and that she is taking the Applicants two shares of the insurance premium for 2020/2021 (£555.66) from that credit. Mrs Turle referred to the payment as "Guadalupe's unsolicited cheque" which implied it was not paid in response to a request. An earlier email dated 5 August 2017 sent from Mrs Turle to all the other leaseholders states "Please note that the unsolicited cheque from Guadalupe Thornton in the sum of £3,000 has been deposited in Killiow Carriage House Residents' Association account at Nationwide for safe keeping until required" [A12].
88. The balance of £2,444.33 matches the total credits shown on the two service charge statements sent to the Applicant on 3 November 2020 by Belmont [A50, 52].
89. Clause 5.5 of the lease [254] is a landlord's covenant "TO maintain a reserve fund in accordance with the Fifth Schedule". There is no evidence that the

landlord has ever maintained a reserve fund. Since its appointment Belmont have not made any attempt to ensure compliance with this obligation.

The Tribunal's decision

90. There is no evidence that a reserve fund account was ever opened on behalf of the leaseholders of the Carriage House. There is some evidence that all service charges paid by the Applicant were paid into the Nationwide account.
91. One extract of a statement from the Nationwide account shows that the account was in the name of Mr and Mrs Turle, Mrs P Smith and Mrs P Murley and that the credit balance on 22 August 2017 was £3,455.75 [A14].
92. The Tribunal has not seen complete copies of any statements for this account although the Applicant has taken screen shots of various statements [A20].
93. No information, ledgers, records or accounts showing the service charge expenditure and receipts have been provided to the Tribunal for the period between 2013 and Belmont's appointment.
94. Although the Applicant has said that she was asked for contributions to a reserve fund, as required under the terms of the lease, which requires that such a fund is maintained, the Tribunal has concluded that this did not happen.
95. What the Applicant did, along with the other leaseholders at the time, is pay sums "on account" of anticipated expenditure.
96. Following its appointment, Belmont documents the "on account" payments properly in its service charge demands.
97. The Tribunal has concluded that the Respondent, in breach of its obligations under the lease, has not set up a reserve fund.
98. All payments demanded from leaseholders have, until Belmont was appointed, been paid into the Nationwide account which appears to have been held in the name of the "residents association" presumably to avoid the Respondent filing accounts at Companies House.
99. Several leaseholders were joint signatories to that account and Mrs Turle effectively managed the Carriage House, collected service charges, arranged insurance and paid for the services as and when these were required as well as paying any contributions due to the head landlord.
100. It is impossible for the Tribunal to analyse if all payments received from the Applicant were appropriately applied.
101. The funds held in the Nationwide constituted individual service charge payments received from leaseholders and used to defray the costs of the services provided. None of the funds were held "in reserve". There is no evidence that any other leaseholder expected that a reserve fund would be set up. All contributions made by the Applicant to the service charge fund appear to have been credited to the Nationwide account.

102. Despite the absence of any service charge accounts, it appears from the evidence in the bundle that the funds held in the Nationwide account were eventually transferred to Belmont. Mrs Turle provided a copy of a statement from Nationwide at the meeting held on 31 October 2019 which had been sent to her at 1 The Carriage House showing a credit of £3,129.39 and it is recorded that Belmont were to be advised to ensure the address of the recipient is changed [141].
103. The minutes of the meeting held on 14 October 2021 record that “statements were still being received at No 1 address from Nationwide showing a zero balance” [138]. Those minutes also record that the annual statement received from Belmont was difficult to comprehend.

Generally

The Applicant’s share of the service charges

104. Although the Tribunal has no jurisdiction to consider an application for variation of the Applicant’s leases, and has already confirmed this to the Applicant, it may be helpful for it to expand on its reasons. This explanation does not form part of its decision, nor has it influenced its decision.
105. The Applicant has consistently complained that she is liable to pay one third of the services charges and insurance for the Carriage House. The Property, (now known as 3 The Carriage House) was originally two separate properties demised under two separate leases. It would be impossible to vary the Applicant’s share of the service contributions under those leases **without the agreement of the Respondent and the other four leaseholders of units 1, 2, 5 and 6 The Carriage House.** This must have been apparent to the Applicant’s lawyer who should, and indeed may, have advised her of the financial consequences which resulted from the combination of the separate units 3 and 4 into a single unit. Whilst the Applicant may, with some justification, have found the way in which Belmont has demanded the service charges confusing, she is contractually bound to pay the service charges due under both of her leases.
106. The Applicant has disclosed an email sent by Mrs Turle to the other leaseholders dated 10 May 2015 which refers to repair work to the access road. The Tribunal has assumed (albeit without other evidence) that this refers to costs recoverable from the Respondent under the Head Lease. Mrs Turle wrote “You will see that, on this occasion, Guadalupe’s house has been treated as one unit as it was agreed that as she is a comparatively new resident, she has not contributed to the use of the road” [A10]. The costs were split five ways. The Tribunal doubts that this explanation was correct as the Applicant’s predecessors would have used the road.
107. Paragraph 17 of the Third Schedule to the Head Lease [290] contains a lessee’s covenant to contribute towards the cost of repairs and maintenance including the private drains and roads, “such proportion to be determined where appropriate by the Surveyor to the Lessor”.

108. Since it would have been necessary for the leaseholders of the original units 3 and 4 to have obtained consent from the head landlord before obtaining planning permission and converting the two units into a single unit, it is likely that the head landlord's surveyor will treat the property as a single unit, since for planning purposes it is a single dwelling.
109. Whilst this has not been specifically raised by the Applicant, her document headed "Belmont service charge reconciliation" [85–88] refers to Killiow Estate contributions in relation to costs collected in 2019 and in respect of which she has paid a one third share. Where those costs relate to charges made by Killiow Estate, the charges should be divided between the number of dwellings and each should pay one fifth of the amount due unless the surveyor for the head landlord determines that a different proportion is appropriate (paragraph 107 above).
110. Although the other leaseholders of The Carriage House could decide between themselves to informally agree to a different division of the service charges, they cannot alter their own legal liability or the liability of the Applicant without varying all six leases. Since this would be to the financial disadvantage of all the other leaseholders, whose contributions would increase, the Tribunal suspect that it is unlikely that such an agreement will ever be reached.
111. Belmont have not provided the Applicant with a clear explanation of her contractual obligations. Mr Foy clearly knew that the Applicant occupied a single dwelling converted from two smaller units, but his correspondence with her was inconsistent intermittently referring to "her two units". Whilst he understood the background to her complaints and frustration, he made no attempt to address this. Instead, his correspondence with her appears to have compounded the error.
112. Mr Foy also informed the Applicant that "the Land Registry indicates that 3 & 4 the Carriage House are two separate properties" in his letter dated 20 March 2019 [A37]. The Land Registry simply records the property registered on a first registration or transfer of title by reference to the information in the transfer deed. If two separate properties are converted into a single dwelling, no change can be made to the land register without an application from the owner.
113. The Tribunal does not know if Mr Foy has ever examined the leases of each unit since his response to the Tribunal's latest directions was non-committal.
114. His firm appears to have always sent a single letter with two invoices to the Applicant when demanding service charges or providing statements. It has referred consistently to six units, despite knowing that there are five units, the leases of which provide that the owner of the combined unit 3 contribute one third of the service charges and insurance contributions.
115. Nevertheless, the Applicant is obliged to pay the share of the service charges which have been demanded subject only to those charges being reasonable and in respect of works which have been carried out to a reasonable standard. Extracts from Clauses 19 and 27A of the Act are set out in the Schedule to this decision.

Company returns

116. Records at Companies House record that the current active officers of the Respondent as Alison Heather Belshaw, Margaret Charnley, Maria Guadalupe Mischeff and Maria Guadalupe Thornton.
117. The Applicant provided evidence of her change of name to Guadalupe Thornton in October 2014 [A80]. She has also stated that she notified the Respondent. The last recorded changes to the register of members at Companies House were made in 2019. No change has been made to the Applicant's name or to correct the duplication in the registers. Belmont continues to address the Applicant as Mrs MG Thornton instead of Mrs G Thornton.
118. The company records also show the resignation of Mrs Turle as company secretary and director in January 2021. No other changes in the officers of the company have been recorded since Belmont's appointment.
119. Annual confirmation statements have been filed on behalf of the Respondent every January. The last statement which recorded any change was filed in January 2019 at which time the current shareholders were recorded as being Mrs Belshaw, Mrs Turle, Mr and Mrs Bryce Mrs Thornton and Mrs Charnley.
120. In response to the Tribunal's directions, Mr Foy stated that the current members of the Respondent include Ms Bett (in place of Ms Turle) but neither Belmont, nor the Respondent have updated the company records.
121. The parties have disclosed minutes of various meetings held between 2013 and 2021, allegedly of the Respondent. None of the minutes refer to the Respondent correctly as "The Killiow Coach House Management Company Limited", its registered name.
122. The headings of the minutes show different descriptions alternating between a residents association and a company. The meeting dates and descriptions are listed below.

20.08.2013	Meeting of the Directors of Killiow Carriage House Residents Association [A8]
11.01.2018	Killiow Carriage House Residents Association AGM [192]
25.03.2019	Extra Meeting Killiow Coach House Management Co [146]
04.03.2019	AGM Killiow Coach House Management Co [144]
31.10.2019	Killiow Coach House Management Co [141]
14.10.2021	Killiow House Management Co [138]
123. Ms Bett attended the last meeting but is not shown as being a member of the Respondent at Companies House. Mr Foy has confirmed in his response to Tribunal Directions that the current members of the Respondent include Ms Bett (in place of Mrs Turle). This does not appear to have been recorded in the Confirmation Statements filed at Companies House, despite Mr Foy confirming that she is a member. If Belmont are keeping the records for the Respondent, they are not doing so accurately.

124. One set of minutes of the meetings disclosed refers to a Directors Meeting when in fact all the meetings appear to be members meetings.
125. The records held at Companies House reveal that the Respondent has always filed dormant company accounts.
126. In response to the Tribunal Direction, Mr Foy stated that “Dormant company accounts were filed as the service charge transactions were not deemed to be reportable via the management company accounts. The company was therefore treated as dormant. We note that this was a consistent approach since the company was incorporated” [Letter dated 12.08.2022 R1].

The Tribunal’s decision

127. Before Belmont’s appointment, the leaseholders of The Carriage House had opened a Nationwide Building Society account which is referred to as being in the name of the Killiow Carriage House Residents’ Association [A11].
128. It is likely that this account was actually held in the name of some of the leaseholders. The extracted statements the Applicant has included in her last bundle appear to confirm this. Banks have been obliged to comply with strict regulation with regard to money laundering during the last decade and it would be very difficult to open any account in the name of an unincorporated association such as the management company. It would have been much easier to open an account in the name of the Respondent.
129. The inconsistent descriptions of the leaseholders' meetings suggest to the Tribunal that there was a lack of clarity as to the constitution of any resident's association. Only the 2019 minutes refer approximately to the Respondent’s name. Either the leaseholders did not understand that a resident's association and the Respondent were different entities or they deliberately chose not to open a bank account in the name of the Respondent to avoid having to file company accounts.
130. The Tribunal suspects that one of the original leaseholders may have decided it would be beneficial to avoid having to file company accounts and suggested that instead the leaseholders could manage the services and the financial transactions between them. However only the Respondent itself could make that decision as it was, and remains, liable to comply with the provisions of the Lease. There is no record of a validly constituted meeting of the Respondent at which such a decision was taken.
131. Whilst it is almost certainly the case that the leaseholders are all shareholders in the Respondent, the records at Companies House do not confirm this.
132. The funds paid into the Nationwide account seem to have comprised all the leaseholders individual service charge payments. No funds were ever held “in reserve” regardless of whether or not it was represented that a reserve fund would be created. There is no evidence of this and the email from Mrs Turle

referring to the “unsolicited cheque for £3,000” received from the Applicant confirms this.

133. The minutes of the meeting which took place on 20 August 2013 are inconclusive simply recording that it proposed by Calvin Martin that £200 a year be paid by each house and set aside for contingencies and a further £300 for day-to-day expenses (which was agreed by all) [A8]. This could be interpreted as agreement that it was considered that £500 per leaseholder was a reasonable annual payment “on account” of the expenses which they all anticipated would be incurred in the next year.
134. Following the Killiow Carriage House Residents Association AGM on 11 January 2018 [192] it was agreed that Belmont would be appointed to “run the Residents Association at a fee of £150 per share to be paid by the shareholders as determined in the current lease”.
135. Notwithstanding that minute, the Management Contract dated 11 May 2018 is made between Respondent (not the Residents Association) and Belmont. That indicates that Belmont recognised that the resident's association was not an entity that could contract with it and those leaseholders who had attended the January meeting understood that only the Respondent was entitled to recover Belmont’s management fee from the leaseholders.
136. In the absence of any contrary evidence, the Tribunal concludes that the Nationwide account was held in the name of specific leaseholders on behalf of the resident's association to avoid the Respondent holding a bank account.
137. It is appropriate for members of the Respondent to consider whether their past and current actions in relation to the company are now, or ever were appropriate. Factually the Respondent has consistently provided services and collected charges since at least 2013. It is not a dormant company. It does not appear to this Tribunal that the accounts submitted to Companies House since 2013 were either accurate or compliant with the Companies Act 2006.
138. Whilst Mr Foy states that Belmont have acted as instructed by the Respondent, it is obliged to comply with the RICS Service Charge Residential Management Code (3rd Edition) (the “Code”) which has been approved by the Secretary of State (section 87(7) Leasehold Reform and Urban Development Act 1993).
139. Although there is no statutory requirement for the routine preparation and content of service charge accounts the accounts should comply with the provisions of the lease.
140. Belmont, being members of the Association of Residential Managing Agents (ARMA), will be aware of the guidance contained in the publication “Residential Service Charge Accounts Technical Release 03/11 (TECH 03/11) issued by the professional accountancy bodies jointly with the Royal Institution of Chartered Surveyors and ARMA. The relevant provisions of the lease with regard to service charges are set out above (Paragraph 35). The management information produced by Belmont is not compliant with the provisions of the Lease. It does not accord with the recommended guidance referred to above. The Tribunal is

concerned that Mr Foy has justified the presentation of the information he has disclosed on the basis that the information was prepared in accordance with the members wishes. Had that actually been the case, it is unlikely that there would have been a need for this application.

Application for a determination about the reasonableness of an administration charge

141. Although the Applicant has made an application for the determination of her liability to pay an administration charge, no copy of a demand for an administration charge or other evidence that such charges have ever been demanded, has been disclosed by the Applicant. The Tribunal believes that the application was made because the Applicant may not have understood the difference between a service charge and an administration charge. No copy of a demand for the payment of an administration charge has been disclosed. In the absence of evidence that any demand has been made the Tribunal is unable to determine that application.

Application under s.20C

142. The Applicant has applied for an order under section 20C that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant or any other person specified in the application.
143. The Respondents appointed a managing agent to act on its behalf and fulfil its obligations as “landlord”. Belmont has not clarified the extent of the external decoration works that were to be carried out (or by now have been carried out). Mr Foy should have ensured that the demands for the service charges sent to the Applicant clearly distinguished between the Applicant’s two leases, notwithstanding she occupied one dwelling, but instead perpetuated the error that her property was two dwellings as an explanation for her one third liability. He could have done more to clarify the Applicant’s contractual obligations. He should have done more to consider her share of the liability in respect of contributions towards the Killiow Estate charges. She owns and occupies a single dwelling. It cannot be appropriate that she is paying for services used in common with other properties on the Killiow Estate on the basis that her dwelling constitutes two dwellings when it does not and the change of use was approved and consented to by the Killiow Estate.
144. Although the Respondent has instructed Belmont to manage the property, that firm is not complying with the provisions of the lease with regard to the service charges nor indeed with the guidance of its own professional body. The financial information provided to the Respondent is inadequate.
145. The Tribunal has therefore decided to make an order under section 20C of the Act that none of the costs incurred by the Respondent in relation to this application are to be regarded as relevant costs and are therefore not to be taken into account in determining the amount of any service charge payable by the Applicant.

Application under paragraph 5A of Schedule 11 of CLARA

146. There is no specific provision in the lease entitling the landlord to recover legal costs. Nevertheless, the Tribunal makes an order under paragraph 5A preventing the Respondent charging any legal costs in has incurred in relation to this application to the Tribunal.
147. It has made this order because it has found that there has been a failure on the part of the Respondent to clearly explain the Applicant's contractual position.
148. Instead, all its managing agents recording and accounting processes have perpetuated the myth that The Carriage House comprises six units. The Carriage House has not been described correctly on insurance documents. The service charge demands sent to the applicant are not clear. The Applicant is the owner and occupier of a single property. She should have been sent a single service charge demand identifying that she was liable to pay two shares of the service charge because she had acquired the benefits and liabilities of her two leases.

Judge C A Rai

Chairman

Schedule

19.— Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

[...][1](#)[...][3](#)[

20C.— Limitation of service charges: costs of proceedings.

(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][2](#) or leasehold valuation tribunal [or the First-tier Tribunal][3](#) , or the [Upper Tribunal][4](#) , 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.

27A Liability to pay service charges: jurisdiction

- (1) An application may be made to [the appropriate tribunal]² for a determination whether a service charge is payable and, if it is, as to—
- the person by whom it is payable,
 - the person to whom it is payable,
 - the amount which is payable,
 - the date at or by which it is payable, and
 - the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to [the appropriate tribunal]² 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—
- the person by whom it would be payable,
 - the person to whom it would be payable,
 - the amount which would be payable,
 - the date at or by which it would be payable, and
 - 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—
- has been agreed or admitted by the tenant,

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.