



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

Case Reference : CHI/29UM/LSC/2013/0115
CHI/29UM/LAC/2013/0018

Property : Flat B 301 High Street
Sheerness
Kent
ME12 1UT

Applicant : Catherine Mary Willens

Representative :

Respondent : Influential Consultants Limited

Representative : John F Thompson, director

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

Tribunal Members : Judge Tildesley OBE
Mr C C Harbridge FRICS
Ms L Farrier

**Date and venue of
Hearing** : Determination on the Papers
without an oral hearing 18 June
2014 at Court 5 Medway
Magistrates' Court, The Court
House, The Brook, Chatham, Kent

Date of Decision : 31 July 2014

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of **£ 2,157.67** comprised of £1,490.14 (reserve) and £667.53 for services for 5 February 2011 to 30 November 2011 is payable by the Applicant.
- (2) The Tribunal determines that the sum of **£ 5,629.94** comprised of £177.21 (reserve); £1,758.49 for services and £3,694.24 paid from the reserve fund for 1 December 2011 to 30 November 2012 is payable by the Applicant.
- (3) The Tribunal determines that the sum of **£2,850.31** comprised of £1,207 (reserve) and £1,643.31 for services for 1 December 2012 to 30 November 2013 is payable by the Applicant.
- (4) The Tribunal determines that the sum of **£3,515.98** comprised of £610 (reserve) and £2,905.98 for services for 1 December 2013 to 30 November 2014 is payable on account by the Applicant.
- (5) The Tribunal determines that no administration charge is payable in respect of legal and Tribunal fees, and disbursements for the period 15 August 2011 to 5 February 2012¹.
- (6) The Tribunal determines that no administration charge is payable in respect of legal and debt recovery fees for the period 14 June 2012 to 4 September 2012.
- (7) The Tribunal determines that administration charges totalling **£2,427.00** are payable in respect of legal fees for the period 22 January 2013 to 12 June 2013.
- (8) The Tribunal determines that the Applicant has a balance of **£10,116,22** to pay in respect of outstanding service charges and administration charges. The balance includes an amount of £1,219.20 for re-fencing for which there is £350 in the reserve fund. The balance of **£10,116,22** takes no account of any potential interest charges for late payment.
- (9) The Tribunal takes the view that there is no authority under the lease to recover costs in connection with Tribunal proceedings through the service charge. The Tribunal, therefore, makes no order under section 20C in respect of these proceedings and those on 9 January 2014. If the Tribunal is wrong on the construction of the lease it would have made section 20C orders preventing the Respondent from recovering

¹ The Tribunal has adopted the Applicant's three groups for administration charges, even though the first group straddles two service charge years.

its costs in connection with these proceedings through the service charge.

- (10) The Tribunal makes no order for costs in favour of the Respondent in respect of the travel and other costs incurred by Mr and Mrs Thompson.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and where applicable administration charges payable by the Applicant.
2. The matters for determination are as follows:
 - The actual 2011 service charges so far as they have not already been the subject of a determination by a previous Tribunal (the period 5.2.2011 to 30.11.2011.).
 - The actual 2012 service charges (the period 1.12.2011 to 30.11.2012).
 - The actual 2013 service charges (the period 1.12.2012 to 30.11.2013)
 - The estimated 2014 service charges (the period 1.12.2013 to 30.11.2014).
 - Administration charges: £1,510.11 (15.8.2011 to 5.2.2012); £1,261.60 (14.6.2012 to 4.9.2012), and £2,427.00 (22.1.2013 to 12.6.2013).
 - Section 20C application in connection with these proceedings.
 - Section 20C application in connection with the proceedings for dispensation from consultation heard on 9 January 2014 at Chatham.
 - Application for the Respondent's costs (Mr and Mrs Thompson's travel and hotel costs) in the sum of £407 arising from the cancellation of the oral hearing.

3. The Tribunal on 13 November 2013 directed the applications to be heard together. The parties agreed that the section 20C application in connection with 9 January 2014 proceedings could be dealt with on the papers and at the same time as the other applications listed for 18 June 2014.
4. The relevant legal provisions are set out in the Appendix to this decision.
5. The detailed reasoning for the charges are set out in schedules 2 to 6.

The Proceedings

6. On 7 October 2013 the Tribunal received the applications.
7. On 11 October 2013 the Tribunal directed that a case management hearing be held.
8. On 13 November 2013 the Tribunal held a case management hearing at which the parties attended. Judge Norman directed that
 - Featurekey Properties Limited and Mr and Mrs Thompson should not be joined as parties. Judge Norman was not satisfied that any useful purpose would be served by the joinder.
 - By 8 January 2014 the Respondent to provide the Applicant with details of the actual 2013 service charge and of the estimated 2014 service charge.
 - By 23 January 2014 the Applicant to provide the Respondent with her response to the 2013 and 2014 service charges.
 - By 20 February 2014 the Applicant to provide the Respondent and Tribunal with her statement of case.
 - By 10 April 2014 the Respondent to provide the Applicant and Tribunal with its statement of case.
 - The target dates for the hearing were the first available two consecutive dates after 30 April 2014.
9. On 4 February 2014 the Applicant requested an extension of one week to 27 February 2014 for service of her statement of case which was granted by the Tribunal. As a result of which the Respondent was given

a one week extension to 17 April 2014 for service of its statement of case.

10. On 18 February 2014 the Tribunal notified the parties that the hearing would take place on 13 and 14 May 2014. The Tribunal advised the parties that the Tribunal would comprise Judge Norman, Mr Harbridge FRICS and Mr Gammon MBE.
11. On 9 March 2014 the Respondent requested recusal of Judge Norman.
12. On 4 April 2014 Judge Tildesley informed the parties that he did not consider there were grounds to excuse Judge Norman on the basis of bias. Judge Tildesley, however, decided with Judge Norman that it would be better for the convening of a new Tribunal because both parties were unrepresented and their presentation may be hindered by the perception of bias. Judge Tildesley indicated that he would chair the hearing but this would require a new hearing date which was subsequently fixed for 18 and 19 June 2014.
13. The Respondent also in its March correspondence indicated that its representative, Mr Thompson, might require reasonable adjustments at the hearing because of his current state of health.
14. On 20 May 2014 Judge Tildesley responded to various procedural points raised by the Applicant in correspondence. Judge Tildesley stated he was satisfied that the Applicant's statement of case met the necessary procedural requirements. Judge Tildesley also advised the Applicant that if she required further information from the Respondent it would be necessary to make a formal request for the Tribunal's determination. No such request was made.
15. On 28 May 2014 the Applicant requested an adjournment of the hearing on 18 and 19 June 2014 on the grounds of ill-health and current severe mobility difficulties.
16. On 30 May 2014 Judge Tildesley wrote to the parties asking them in view of their respective poor states of health to consider whether the various applications could be dealt with on the papers without an oral hearing. Judge Tildesley emphasised a determination on the papers required the consent of both parties, and that it was a matter for each party to choose the option of a paper determination. Judge Tildesley explained that if the Tribunal was uncertain about specific issues in the parties' statements of case the Tribunal would invite clarification from the parties. Finally Judge Tildesley stated the Tribunal would inspect the property on 18 June 2014 but there was no need for both parties to be in attendance. Judge Tildesley indicated the purpose of the inspection was to enable the Tribunal to form a view of the state of the

property. The Tribunal would not hear representations at the inspection.

17. On 31 May 2014 and 3 June 2014 the parties independently agreed to a paper determination subject to the Tribunal's offer to request clarification if the Tribunal considered it necessary.
18. On 18 June 2014 the Tribunal inspected the property in the presence of the Applicant. After the inspection the Tribunal reconvened at Medway Magistrates' Court to consider the parties' statements of case and the documents supplied in the hearing bundle.

The Property

19. The property, 301 High Street Sheerness, was an end terrace two storey house which was built about 100 years ago, having a frontage to High Street and a return frontage to Maple Street to which the house has vehicular access.
20. Construction was traditional with solid brick walls, partially rendered and all colour washed, beneath a main pitched and gabled roof, and a mono-pitched roof over a rear two storey projection. The main roof was clad with historic profiled metal sheeting to resemble interlocking tiling. The rear roof over Flat C had recently been replaced. The Respondent has also carried out decoration of the exterior of the property.
21. The accommodation comprised two self contained flats (Flats A and B) and a self-contained maisonette (C). There was a communal ground floor entrance hall with access to the rear garden and a staircase and landing to the first floor. There was a small front garden and a fenced rear garden with double vehicular gates to Maple Street. The subject property, Flat B, was on the first floor.
22. The Tribunal inspected the exterior of the property, the communal hallway and staircases, the gardens and the loft of Flat B. The Tribunal noted a bowing to the flank wall to Maple Street, and evidence of past movement to the front and rear elevations. The rendering at the base of the Maple Street elevation had been cut back to the brickwork. The exterior decorative condition was generally good, having recently been decorated.
23. Internally the Tribunal's attention was drawn to two areas of damp staining in the hallways and noted that plasterwork was disrupted and the decorative condition poor. The back garden was unkempt and overgrown, which had a new wooden fence at the rear, and the side facing Maple Street.

The Lease

24. The Applicant held the property under a lease made between Daniel Gerarde O'Grady of the one part and Michael Anthony Freeley and Valerie Freeley of the other part. The lease was dated 23 February 1990 for a term of 99 years from 1 December 1989. The Applicant's title to the leasehold was registered at the Land Registry on 9 January 1997.
25. The Respondent acquired the freehold of the property known as 301 High Street Sheerness around 1 June 2007, and was registered with absolute title at the Land Registry. Mr and Mrs Thompson the Respondent's directors held the leasehold to the rear maisonette (Flat C), whilst Featurekey Properties Limited, a company owned by Mr and Mrs Thompson, held the leasehold to the ground floor flat (Flat A).
26. Clause 1(2) of the lease sets out the Applicant's liability to pay a service charge as an amount by way of further or additional rent:

“There shall also be paid by way of further or additional rent a fair and reasonable proportion (as hereinafter defined) of the amount which the landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure:

(a) in performing the landlord's obligations as to repair maintenance and insurance hereinafter contained

(b) in payment of the proper fees of the surveyor or agent appointed by the landlord in connection with the carrying out or prospective carrying out of any of the repairs and maintenance hereinafter referred and the apportionment of the costs of such repairs maintenance and collection between the several parties liable to reimburse the landlord for the same and such fees for collection of rents hereby reserved and any other payments to be paid by the tenant under this clause.

(c) in payment of the rents rates taxes water gas electricity and other service charges or outgoings whatsoever in respect of any part of the building not included or intended to be included in this demise or in a demise of any part of the building but excluding all charges or outgoings whatsoever relating to the office on the ground floor of the building and the storage areas in the basement of the building (which are shown green on the plan).

d) in providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the landlord shall in the landlords absolute discretion deem necessary for the general benefit of the building excluding the area shown green on the plan and its tenants whether or not the landlord has covenanted to incur such expenditure or provide such services facilities and amenities or carry out such works.

e) in complying with any of the covenants entered into by the landlord or with any obligations imposed by the operation of law which are not covered by the preceding sub-clause.

(f) for the purpose of the clause a fair and reasonable proportion shall mean the proportion that the square footage of floor area within the

flat hereby demised bears in relation to the total square footage of floor space within the building as a whole”.

Provided that all sums shall from time to time be assessed by the surveyor or agent for the time being of the landlord and such sums shall be paid by the tenant within 28 days of being demanded”.

27. The agreed proportion of the charge payable by each tenant of the three flats in the property was:
 - Flat A : 22.54 per cent
 - Flat B : 39.38 per cent
 - Flat C: 38.08 per cent
28. Clauses 3 (1) and 3(2) of the lease require the tenant to make payments without deduction, and if the payment is not made within one month of being demanded to be liable to pay interest on such sums with the accrual of interest until the payment is made. Clause ?(3)² specifies the rate of interest which is five per cent above the base rate of Bank PLC from time to time or 12 per cent per annum whichever shall be the greater.
29. The landlord's covenants in respect of repair maintenance and insurance are set out in clause 4. The covenants are subject to the tenant making the required contribution to the charge.
30. Clause 4(1) provides that the landlord shall at all times during the said term to take reasonable care and to keep in good and substantial repair and in clean and proper order and condition the exterior roof and foundations and those parts and appurtenances of the building which are not included in this demise or in a demise of any part of the building but excluding those parts and appurtenances of the building shown edged yellow on the Plan.
31. Clause 4(2) states that the Landlord as often as reasonably necessary to decorate the external and internal communal parts of the building previously decorated in a proper and workmanlike manner and to keep all internal communal parts of the building cleaned and lighted.
32. Clause 4(3) provides that the Landlord shall keep in good order the grounds of the building not included in this demise or in a demise of any part of building.
33. Clause 4 (4) a) requires the landlord to keep the building insured against loss or damage by fire storm tempest explosion and such other

² The copy lease lodged with the Land Registry has a missing page, hence a question mark regarding the clause.

risks (subject to normal excesses) in the full replacement value including all professional fees debris removal and site clearance and the cost of any work which might be required by or by virtue of any Act of Parliament and three years loss of rent.

34. Clause 4(10) requires the landlord to keep in good and substantial repair those parts of the building shown edged in yellow on the Plan.
35. The lease contains no comprehensive definition of building. Recital (i) states that the building includes the grounds thereof and the extent of which is for identification only outlined in blue on the site plan drawn on the plan annexed to the lease.
36. Under clause 3 (13) the tenant is liable personally to pay all expenses including solicitors' costs and disbursements and surveyors' costs incurred by the landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under sections 146 or 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court.

Previous Tribunal Proceedings

37. On 9 December 2008 (decision released 17 April 2009) the Tribunal determined that service charges in the sum of £11,707.04 (£4,610 being the Applicant's contribution) were payable for the period 1 December 2007 to 1 February 2009. An order was made under section 20C of the 1985 Act. The Tribunal determined that the Respondent was able to charge the Applicant both for work done and for future work. The use of the word agent under clause 2(b) was sufficiently wide to include the services of a solicitor and or manager. The Tribunal also decided under clause 2(d) the service charge was not limited to expenditure on repair and maintenance and may include other expenditure for the benefit of the building in the Respondent's absolute discretion.
38. On 19 March 2010 (decision released 22 March 2010) the Tribunal determined the Applicant was not in breach of the covenant in the lease regarding the entry of the Respondent and its duly authorised agent to inspect the state of repair and condition of the flat.
39. On 28 July 2010 (decision released 22 September 2010) the Tribunal determined that contributions of £5,117 to the reserve fund for 2009 and 2010 were payable by the Applicant together with service charges of £3,150.74 and £3,664.23 for 2009/10 and 2010/11. The Tribunal also ordered the Applicant to pay an administration charge of £1,991.88. The total amount payable by the Applicant was £8,705.76. The Tribunal also determined that the Applicant was in breach of the covenant not permitting the Respondent to enter the flat. Finally the

Tribunal refused to grant dispensation for the appointment of manager. The Tribunal considered that the wording of clause 1(2) of the lease permitted both an amount for the forthcoming year and contributions to a reserve fund. The Tribunal also decided that the lease did not require the audit of service charge accounts.

40. On 1 February 2012 (decision released 2 March 2012) the Tribunal determined that the premium for Directors' and Officers' insurance was not recoverable under the terms of the lease. The Tribunal also found that the Applicant was not in breach of the covenant in the lease prohibiting structural alterations to the flat.
41. On 17 October 2012 the Tribunal determined that the service charges for the years February 2011 to February 2012, and February 2012 to February 2013 were not payable by the Applicant because they had not been properly demanded in accordance with the terms of the lease. The Tribunal decided that the accounting year for service charges was from 1 December each year, having regard to the fact the charges were reserved as rent which was payable on 1 December of each year.
42. The Tribunal, however, went onto to state which costs for the two years in question were reasonable, and those which were not. The Tribunal decided that the costs associated with insurance, Thomason engineering report, office supplies and postage, gardening works, fire insurance revaluation external decorations and structural engineer were reasonable. The costs incurred on Directors' and Officers' insurance and software, however, were not authorised by the terms of the lease. Finally the Tribunal declared that a total figure of £500 was a reasonable estimated figure for the expenditure head, "Works, Maintenance and Supplementary Service Charge".
43. On 9 January 2014 (decision released 15 January 2014) the Tribunal refused to grant dispensation from consultation for the works carried out to the garden walls and gates at the property.

The Reasons

44. The Tribunal structures its reasons in two parts. The first part deals with specific questions arising from the construction of the lease and the application of statute. The second part is set out in six schedules which give the determinations for the service charges for each year in dispute and the administration charges.
45. The starting point of the Tribunal's consideration is the lease. Previous Tribunals have considered the parties' representations on specific clauses in the lease. The Tribunal intends to provide a comprehensive overview of the lease building upon previous interpretations with the aim of dealing with the various points raised by the parties in these

applications. In so doing the Tribunal, may offer a different construction from previous Tribunals.

46. The Tribunal's construction of the lease is, however, subject to two provisos. First, there is a missing page from the Official Copy lodged with the Land Registry. The Respondent objected to the Applicant's attempts to reconstruct the missing page. The Tribunal understands the Respondent's concerns, and has restricted its consideration to the Official Copy. The Tribunal, however, considers the present situation unsatisfactory. In the Tribunal's view, this could have been overcome by reference to the leases of the other flats in the property, which more than likely were in the same format as the lease for Flat B.
47. The second proviso is that the lease makes reference to a coloured plan. The Tribunal has been supplied with various copies of the plan but the colourings on those plans are indistinct. The colouring is relevant because it defines those parts of the building which are the subject of the Respondent's repairing covenant.
48. The lease is an old lease with a service charge provision restricted essentially to the repair and insurance of the building. This restricted purpose colours the construction of the various clauses in the lease which deal with the recovery of service charge.
49. Given the restricted nature of the service charge provision, the Tribunal does not consider the sweeping up clause in 1(2)(d) sufficiently wide to enable the Respondent to recover through the service charge legal and other costs incurred in connection with Tribunal proceedings. The general rule is that in order to recover legal costs through the service charge clear and unambiguous lease terms are required³.
50. Equally the Tribunal does not consider that clause 1(2)(b) assists with the recovery of legal costs. The Tribunal notes that a previous Tribunal has said the word *agent* in 1(2)(b) can include the services of solicitor. The Tribunal, however, doubts this as the word *agent* should be read in conjunction with the preceding word *surveyor* in the context of the overall focus of 1(2)(b) which is about the repair and maintenance of the building. The Tribunal accepts that clause 1(2)(b) refers to the collection of the charge and such fees for the collection of rent, the Tribunal, however, does not consider these phrases sufficiently explicit to encompass costs incurred in Tribunal proceedings.
51. Ultimately the question of whether costs associated with legal proceedings can be recovered through the service charge depends upon the wording of the individual leases. The Tribunal, however, considers that the wording of clauses 1(2)(b) and 1(2)(d) is about repair and maintenance of the building, and not about the costs of proceedings

³ See 7.002 of Service charges and Management 3rd Edition Tanfield Chambers

before the Tribunal. It is interesting to note the Respondent has ceased to recover its legal costs through the service charge, and is now pursuing the option of an administration charge relying on clause 3(13) of which more will be said later.

52. The Tribunal agrees with the previous decisions that clause 1(2)(b) enables the Respondent to recover the administrative costs associated with management of the building. This has so far authorised the recovery of reasonable postage and stationary costs incurred by Mr Thompson who at the moment is managing the property on behalf of the Respondent. The Tribunal also considers that clause 1(2)(b) authorises the payment of an accountant provided the accountant is engaged with services directly related to the administration of the building, such as assessing the charges or sending out the demands.
53. Clause 1(2)(b) also authorises the engagement of surveyors or structural engineers to investigate and report upon structural faults with the building. The reference in the clause to the prospective carrying out of any of the repairs and maintenance in the building would support this.
54. A previous Tribunal ruled that clause 1(2)(d) is sufficiently wide to recover costs of improvements to the building. The Tribunal advises caution because the scope of improvement has to be considered in the light of the wording of the landlord's repairing covenant which refers to substantial repair. The Tribunal is, however, satisfied that clause 1(2)(d) authorises the installation of fire safety measures because it is for the general benefit of the building.
55. The Respondent's repairing covenant is limited to those parts of the building which do not form part of the demised premises. Clause 1(1)(a) defines the demised premises as including the loft area but excluding the roof structure. The Tribunal assumes that the same definition for demised premises applied to Flat C. The Tribunal has, therefore, ruled out expenditure which on the face of documents related to Flat C.
56. The Respondent's performance of the repairing covenant is subject to the Applicant making her contributions towards the service charge.
57. Clause 1(2)(a) requires the Applicant to pay towards the Respondent's obligations for insurance. Clause 2(4) defines the extent of the Respondent's insurance covenant which is to insure the building. The covenant does not extend to the taking out of Directors' and Officers' liability insurance. This expense is incurred by the Respondent in its corporate capacity and not as a landlord.
58. The lease pays scant attention to the machinery of service charge collection. A previous Tribunal has determined that as the service

charge is payable by way of further or additional rent the accounting period for the service charge is 12 months starting on 1 December each year.

59. The parties are agreed that the Respondent is entitled to demand payments as may be *reasonably required* on account of the service charge. In this respect the Respondent in 2013/14 has demanded payments on account for major works on which no consultation as yet has been carried out. The Tribunal finds the demands for the prospective costs of such works does not fit the description of *reasonably required*, although the Tribunal accepts that the potential expenditure might form part of a supplementary service charge demand following more detailed proposals.
60. A previous Tribunal decided the same wording which justified payment on account was sufficient to warrant the establishment of a reserve to fund over time major works. The Applicant has not challenged the authority to create a reserve nor the reasonableness of the contributions to the reserve. Schedule 1 sets out the details of the reserve set up by the Respondent, and the assumptions underpinning it. The restriction of as *may be reasonably required* applies equally to contributions to the reserve, which may impact on the size and the regularity of those contributions once priorities have been completed.
61. The lease does not specify the mechanism for a balancing payment at the end of the accounting period. Mr Thompson for the Respondent has sensibly introduced end of year demands based on actual expenditure, which is in line with section 19(2) of the 1985 Act. This requires adjustments to be made once the relevant costs have been incurred following payment on account. There is no provision in the lease that allows the Respondent to retain overpayments which must be returned to the Applicant. The Tribunal notes that Mr Thompson observed this principle when the Respondent issued a credit note for the service charge year ending 30 November 2013.
62. The chief objection raised by the Applicant is the requirement under the lease for the demands to be assessed by a surveyor or agent for the time being of the landlord. At the moment Mr Thompson performs this task endorsing all demands in his name followed by the words *surveyor and manager*. According to Mr Thompson, he had been appointed to act for the Respondent in these capacities.
63. The Applicant's argument appears to be that the clause in the lease requires independent oversight of the charges demanded. In her view, Mr Thompson fails the test of independence because he is the director and an employee of the Respondent. Thus the demands issued by Mr Thompson on the Respondent's behalf are invalid.

64. The Applicant is correct in that the clause envisages some-one independent of the Respondent to assess the charges made. In this respect Mr Thompson and the Respondent are legally distinct persons, and as such overcome the first hurdle in that the landlord itself is not carrying out the assessment. The second aspect of the separation of roles is whether Mr Thompson having regard to his close connection with the Respondent would exercise an independent judgement in relation to the management of the blocks.
65. This second aspect is a question of fact. On balance the Tribunal concludes that Mr Thompson having regard to his professional background as a surveyor has exercised independent judgment. The Tribunal considers this has been demonstrated by the steps he has taken to address the repair and maintenance issues associated with the property and to regularise the mechanisms for the collection of service charges. The Tribunal, therefore, finds that the demands for the service charges in question have been validly made.
66. The Tribunal, however, notes the genuine concerns of the Applicant about the transparency of the service charge accounts. Given the Respondent has now budgeted for the services of an accountant it may be advisable for the accountant to perform the role of the assessor in future years, subject to the Applicant paying her contribution to the charges.
67. The Tribunal is satisfied the Respondent has met the various statutory requirements for the demands, namely giving the name and address of the landlord, and providing the necessary information in respect of tenant's rights.
68. The Applicant has not disputed that she is liable to contribute 39.38 per cent of the service charge. The lease requires charges to be paid within 28 days of being demanded, and allows interest to be levied on late payments.
69. The above analysis of the lease and the legislative requirements for charges to be reasonably incurred and for the works and services to be of reasonable standard provides the overall setting for the detailed findings on the disputed services charges which are found in the following schedules:
- Schedule 2: service charge year ending 30 November 2011.
 - Schedule 3: service charge year ending 30 November 2012.
 - Schedule 4 : service charge year ending 30 November 2013.

- Schedule 5: service charge year ending 30 November 2014.

70. Turning to the administration charges, the findings for which are set out in schedule 6. The disputed charges related to costs incurred by the Respondent in instructing solicitors to pursue the Applicant for purported arrears in service charges.
71. The Respondent relied on the wording of clause 3(13) to justify the administration charges. Clause 3(13) provides as follows:

“To pay all expenses including solicitors’ costs and disbursements and surveyors’ incurred by the landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under sections 146 or 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court”.
72. The Court of Appeal in *Freeholders of 69 Marina, St Leonards-on-Sea v Oram* [2011]EWCA Civ 1258 held that the costs incurred in taking Tribunal proceedings were incidental to the preparation and service of a notice under section 146, and could, therefore, be recovered as an administration charge against the tenants.
73. Clause 3(13) permits the Respondent to recover costs incurred in contemplation of proceedings under section 146 as an administration charge. It is not necessary for the Respondent to have commenced proceedings for the forfeiture of the lease before it can recover such costs. Instead the Respondent has to show that forfeiture must at least have been an option which it had in mind when it incurred the expenditure. In this respect the Respondent has relied on solicitor’s correspondence which suggested that the steps taken were part of overall strategy culminating in a potential application for forfeiture of the lease.
74. Such costs fall within the definition of administration charges because they are either amounts payable by the Applicant in respect of a failure to pay the service charges by the due date or in connection with a breach of covenant in the lease. A variable administration charge is payable only to the extent that it is reasonable.
75. The Tribunal’s reasons for its decisions on the administration charges are set out in schedule 6.
76. Essentially the Tribunal finds in respect of the first set of charges that there was no clear connection of the costs incurred with potential forfeiture proceedings. The Tribunal also questioned whether such charges were reasonable. In particular the disbursements incurred by Mr and Mrs Thompson in travelling from France when the Respondent was a UK registered company.

77. The Tribunal held similar qualms in respect of the second set of charges. The Tribunal is not satisfied that the charges were authorised by clause 3(13) in view of the Respondent's admission that forfeiture procedures were put on hold. The drafting of the particulars of claim was made after the Applicant's application challenging the service charges. The administration charges, in any event, were unreasonable because they related to service charges where the Tribunal found that no valid demand had been issued.
78. The Tribunal, however, had no doubts with the third set of charges. The solicitors' correspondence indicated that the demands for payment constituted pre-action proceedings leading to potential sanctions by the court. At the time the demands were issued the Applicant was in arrears with her service charge. Finally the Applicant put forward no evidence which suggested that the charges themselves were unreasonable.
79. The Applicant undertook a forensic enquiry of the service charge statements and bank accounts which in her view showed that the Respondent had failed to take account of certain payments made by her. The Applicant's analysis involved the examination of historical out of date accounting records and as such raised questions about the relevance of her analysis.
80. The Tribunal for the purposes of these proceedings is required to determine the amount outstanding in respect of service charges. The Tribunal starts with the statement of the Applicant's service charges account dated 27 March 2014. This is the most up-to-date statement in the bundle, and appeared to address the Applicant's concerns regarding the statement of account as set out in the second part of her statement of case dated 25 February 2014. The statement recorded the opening credit balance of £130.05, and had deleted the earlier service charge demands for 2011/12.
81. In order to determine the outstanding amount, the Tribunal makes the following assumptions:
- The payment of £9,313.71 compromised on a full and final basis the Applicant's liability to pay service charges up to the period commencing 5 February 2011. The sum of £9,313.71 also included payment of the agreed finance charge of £457. Thus the Tribunal effectively starts with a clean sheet with invoice 400 on 5 February 2011 for the contribution to the reserve fund subject to a small positive balance which arises from inserting the line for reserve fund (5/2/11 - 30/11/11) after the line for agreed finance charge in the 27 March 2014 Respondent's statement of account.

- The statement of account compiled by the Tribunal disregards the entries for ground rent. The Tribunal has no jurisdiction in this area.
- The statement of account does not include potential interest charges for late payment.
- The statement of account incorporates the decisions of this Tribunal.

82. The statement of account is set out below which shows that the Applicant has a balance of **£10,116,22** to pay in respect of outstanding service charges and administration charges. The balance includes an amount of £1,219.20 for re-fencing for which there is £350 in the reserve fund.

Date	Transaction	Amount (£)	Balance (£)
18.1.2011			8,349.61
12.5.2011	Agreed Finance charge	457.00	8,806.61
12.5.2011	Payment by Swift Advances	- 9,313.71	-507.10
OPENING BALANCE			-507.10
5.2.2011	Reserve Fund 5/2/11 to 30/11/12	1,490.14	983.04
13.7.2011	Payment	-2,241.03	-1,257.99
15.8.2011	Copy documents	2.50	-1255.49
19.8.2011	Payment	-25.00	-1280.49
25.11.2012	Service charge estimate 1/12/12 to 30/11/13	1,643.31	362.82
		Takes account of the credit note for £1,523.75 (30.11.2013)	

		entry)	
25.11..2012	Reserve fund 1/12/12 to 30/11/13	1,207.00	1,569.82
25.11.2012	Service charge 5/2/11 to 30/11/12	667.53	2,237.35
30.11.12	Service charge 1/12/11 to 30/11/12	1,758.49	3,995.84
30.11.12	Reserve fund 1/12/11 to 30/11/12	177.21	4,173.05
22.1.13	Legal Costs	360.00	4,533.05
8.2.13	Legal Costs	500.00	5,033.05
26.4.13	Legal Costs	500.00	5,533.05
12.6.13	Legal Costs	1,067.00	6,600.05
23.11.13	Reserve fund 2014	610.39	7,210.44
23.11.13	Service charge 2014	2,905.78	10,116,22

83. There remains two section 20C applications one relating to these proceedings and the other to those that took place on 14 January 2014. The Tribunal finds that the lease does not permit the Respondent to recover the costs of Tribunal proceedings through the service charge⁴. In those circumstances a section 20C order serves no useful purpose. If the Tribunal is wrong in its construction of the lease, it would have been just and equitable to make Section 20C orders because of the outcomes of both proceedings.

⁴ See paragraphs 49-51

84. Mr and Mrs Thompson requested an order for the costs they incurred in connection with cancellation of the oral hearing on 18 June 2014. The Tribunal operates a no costs jurisdiction. Its power to award costs is limited to where a party has acted unreasonably in bringing the proceedings. The threshold of unreasonableness is a high one. The Tribunal is satisfied that the Applicant did not cross the unreasonable threshold in bringing the application, and therefore, makes no order for costs.
85. The Tribunal notes that this is the seventh set of proceedings involving the same parties and the same property in a space of six years. The Tribunal recognises the validity of each party's stance. Mr and Mrs Thompson are managing the property sensibly and protecting their investment as well as that of Mrs Willens. Mr and Mrs Thompson are increasingly frustrated by the failure of Mrs Willens to pay the charges on time. Mrs Willens, on the other hand, is ready to pay the charges provided they have some regard to her ability to afford them and the charges are transparent. The Tribunal suggests that the parties stand in each other shoes to find a way forward. A good start would be for the Respondent to use the services of an accountant to provide an independent audit of the service charge account and to assess the demands, and for Mrs Willens to make prompt payment of the charges demanded.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,

- (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).

SCHEDULE 1

Reserve Fund for 301High Street Sheerness	2008	2009	2010	2011	2012	2013	2014	Total	Revised Est	
External decoration and Repair	£ 5,000.00	£ 2,333.00	£ 1,333.00	£ 1,333.00		£ 1,500.00	£ 1,500.00	£ 7,999.00	£ 4,500.00	
Internal decoration and repair	£ 2,000.00	£ 400.00	£ 400.00	£ 400.00	£ 400.00	£ 400.00		£ 2,000.00		
Roof	£ 10,000.00		£ 3,334.00	£ 3,334.00	£ 3,334.00		£ 1,515.00	£ 11,517.00	£ 1,515.00	
Fencing & Walls	£ 500.00	£ 50.00	£ 50.00	£ 50.00	£ 50.00	£ 50.00	£ 50.00	£ 350.00		
Insurance Excess	£ 250.00	£ 250.00						£ 250.00		
		£ 3,033.00	£ 5,117.00	£ 5,117.00	£ 3,784.00	£ 450.00	£ 3,065.00	£ 1,550.00	£ 22,116.00	£ 6,015.00
Applicant's contribution		£ 1,194.40	£ 2,015.07	£ 2,015.07	£ 1,490.14	£ 177.21	£ 1,207.00	£ 610.39	£ 8,709.28	
Expenditure				Ext Dec	£ 4,366.00					
				Roof	£ 5,015.00					
					£ 9,381.00			£ 9,381.00		
								Reserve Remaining	£ 12,735.00	
								Outstanding Liabilities		
								Roof	£ 6,500.00	
								Internal decoration	£ 2,000.00	
								Fencing	£ 150.00	
								External Dec	£ 4,500.00	
									£ 13,150.00	

SCHEDULE 2

DISPUTED SERVICE CHARGES S/C YEAR 5 February 2011 to 30 November 2011

Case Reference: CHI/29UM/LSC/2013/0115

Premises: Flat B 301 High Street Sheerness ME12 1UT

ITEM	COST (TENANT'S CONTRIBUTION IN BRACKETS)	TENANT'S COMMENTS	LANDLORD'S COMMENTS	TRIBUNAL'S COMMENTS
Reserve fund	£3,784.00 (£1,490.14)	No challenge to the reasonableness of the amount		Demand at page 17 of Landlord's Bundle
Service charge	£1,695.04 (£667.53)			Demand for part period 5.2.11 -30.11.11 at page 16 of the Landlord's bundle. Summary of tenant's rights and obligations enclosed. Tax point 25.11.12.
Items making up the service charge	Insurance (£374.11) Structural Report (£192.09) Maintenance (£27.57) Office supplies (£73.76)	No challenge to the reasonableness of the individual amounts	Items set out in the Landlord's list of disbursements (A39 of the bundle)	Original service charge issued for £2,651.85 (see A55 of the Applicant's bundle). The revised service charge on 25.11.12 took out those items in connection with the Tribunal hearing on 1 February 2012. Tribunal satisfied charges authorised by the lease. The Applicant did not challenge the reasonableness of the charges. Her challenges

				related to the record of payments made, and whether the demand had been properly authorised. The Tribunal decided that the authorisation of the demands by Mr Thompson met the requirements of the lease (see paragraphs 64-66 of decision). The Tribunal has requested the Respondent to provide an updated statement of account. The Tribunal, therefore, determines that the amount payable is £667.53 for the service charge element
Payment		Tenant paid £2,241.03 on 2 July 2011 (A25)		
Determination				Charge Payable by Tenant = £2,157.67 Comprised £1,490.14 (reserve) & £667.53 services

SCHEDULE 3

DISPUTED SERVICE CHARGES S/C YEAR ENDED 1 December 2011 – 30 November 2012

Case Reference: CHI/29UM/LSC/2013/0115

Premises: Flat B 301 High Street Sheerness ME12 1UT

ITEM	COST TENANT'S CONTRIBUTION IN BRACKETS	TENANT'S COMMENTS	LANDLORD'S COMMENTS	TRIBUNAL'S DETERMINATION (AMOUNTS DETERMINED IN BOLD)
Reserve Fund	£450 (£177.21)	No challenge		Invoice 295, 30.11.12. No copy appears in the bundle but does appear on S/C statement. No issue taken by the Tribunal. Determine £177.21
Service Charge	£16,414.41 (£6464.00)	Disputes Individual Elements	Service charge demand for £2,765.83 because £3,694.24 paid from reserve	Demand (inv 294) page 12 of Landlord's bundle. Summary of tenant's rights enclosed dated 30.11.12
4.2.12 Postage	£95 (£37.41)	No challenge	Estimate (R's bundle 18)	£37.41 agreed
5.2.12 Insurance	£1075.76 (£423.63)	No challenge	Renewal notice (R's bundle 19)	£423.63 Agreed
14.2.12 Maintenance	£360 (£141.77)	Challenge because previous Tribunal imposed a maximum of £500	Invoice Commercial Electrical Services (R's bundle 19) for various jobs in the common areas and garden	Authorised by the lease. No substantive challenge by tenant to the standard of works and the reasonableness of the costs. Determine £141.77
18.3.12 Software	£77.01 (£30.33)	Disputed previous Tribunal disallowed	Invoice (R's bundle) for Quickbook addressed to	Disallowed by Tribunal. Not satisfied that the cost

			John Thompson Featurekeys	was incurred in connection with the services for the subject property
28.3.12 postage	£36.37 (£14.44)	Agreed	Postage costs (R bundle) for £40.75	Despite no reconciliation with the note. Amount of £14.44 agreed
31.3.12 Bank charges	£40 (£15.75)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
10.4.12 Fire Risk Assessment	£276 (£108.69)	Disputed no report seen	Invoice (R bundle page23) indicated that attended site and provided a type 3 fire risk assessment report	Authorised by lease. Satisfied report necessary and costs reasonable. Determined £108.69
17.5.12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
21.5.12 Door	£885 (£348.51)	No comment	Window World of Kent invoice (R's bundle 24)	Door viewed on inspection. Authorised by lease. Cost reasonable. Determined £348.51
30.5.12 Emergency Inspection	£592.28 (£233.24)	Disputed the inspection was to do with possessions of the tenant of flat A in the common area	Did not dispute the tenant's account	The inspection was connected with the letting of flat A. Not authorised by the lease. Disallowed
11.6.12 Debt recovery	£160 (£63.01)	Not recoverable service charges not payable at the time	Colemans' invoice service charge letter before claim	Not satisfied solicitor's costs can be recovered as service charge. May be administration charge. Letters related to a service charge demand which a previous Tribunal had determined did not constitute a valid demand.

				No service charge payable. Tribunal decides charge not authorised by the lease, if not charge unreasonable for the reasons given above. Disallowed.
12.6.12 Postage	£30.35(£11.95)	Not disputed	R's bundle 27	£11.95 Agreed
19.6.12 Debt recovery costs	£600 (£236.28)	Not recoverable service charges not payable at the time	Colemans' invoice R's bundle 28	Not satisfied solicitors costs can be recovered as service charge. May be administration charge Letters relate to demand which previous Tribunal had determined did not constitute a valid demand. No service charge payable. Tribunal decides charge not authorised by the lease, if not charge unreasonable for the reasons given above Disallowed.
29.6.12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
10.7.12Block Wall in Loft between flat b and c	£480 (£189.03)	Disputed not been approved by building control	CES invoice build block wall to divide the lofts of flat b and c R's bundle 29	On inspection Tribunal satisfied that the brick wall was built in loft of flat C. Not convinced it is part of the building. Liability of flat C. Not authorised by the lease .Disallowed

12.7.12 Replacement Rear Gates	£360(£141.77)	Disputed work not to a reasonable standard	CES invoice R's bundle 30 To supply and fit new pedestrian gate and car parking area gates	New fence erected pedestrian gate now removed. Too remote now to form a view on the standard of the works. Tribunal considers costs reasonable, no dispute work actually done. Determined £141.77
13.7.12 Gardening & lighting	£258 (£101.60)	Challenge because previous Tribunal imposed a maximum of £500	CES invoice R bundle 31 £140 for gardening, £75 replace internal control to common area lights plus VAT	Authorised by the lease. Costs reasonable. Determined £101.60
14.7.12 External Decorations	£4,366(£1,719.33)	Agreed Paid from reserve	CES invoice R bundle 32	Agreed determined £1,719.33 paid from reserve
16.7 .12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
20.7.12 Liability insurance	£49.61 (£19.54)	Disputed Disallowed by previous Tribunal	Renewal invitation R bundle 33. £99.22 split between tow companies	Not authorised by the lease. Disallowed by Tribunal.
26.7. 12 Stationary	£52.28 (£20.59)	Agreed	Office Depot R's bundle 34	£20.59 agreed
31.7 .12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
31.7.12 Debt recovery	£345.60 (£136.10)	Not recoverable service charges not payable at the time	Colemans' invoice relates to legal proceedings before the Tribunal R's bundle 35	Not satisfied solicitors costs can be recovered as service charge. May be administration charge Charge not recoverable as

				service charge. Disallowed.
31.8.12 Debt recovery	£156 (£61.43)	Not recoverable service charges not payable at the time	Colemans' invoice relates to legal proceedings before the Tribunal R's bundle 36	Not satisfied solicitors costs can be recovered as service charge. May be administration charge Charge not recoverable as service charge. Disallowed.
31.8 .12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
30?.9 .12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
4.10 .12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
27.10.12 Stationary	£160.81 (£63.33)	Agreed		£63.33 agreed
5.11.12 Roof Replacement	£5,015 (£1974.91)	Agreed paid by reserve	Jordan's invoice R bundle 32. Roof replaced flat c only	£1974.91 paid from reserve fund
7.11.12 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
8.11.12 Structural Report	£838.40 (£330.16)	Disputed Not seen the report	Maclaren Invoice originally for £1,352.42. Cost later reduced to £838.40. Invoice for visits to the property and preparing a report for specification for tying Maple Street wall	Authorised by the lease. Costs Reasonable for professional report. Addressing a visible problem with the property structure. Not convinced the tenant is entitled to see

				the report. Determined £330.16
27.11.12 Postage	£14.64 (£5.77)	Agreed	R's bundle 40	£14.64 Agreed
Determination				Amount payable £5629.94 comprising £1,758.49 Service charges (demand invoice 294 £2,765.83 reduced to £1,758.49) £177.21 paid into reserve (demand 295 agreed) £3,694.24 of the charge which was for major works has already been paid from the reserve fund

SCHEDULE 4

DISPUTED SERVICE CHARGES S/C YEAR ENDED 1 December 2012 – 30 November 2013

Case Reference: CHI/29UM/LSC/2013/0115

Premises: Flat B 301 High Street Sheerness ME12 1UT

ITEM	COST TENANT'S CONTRIBUTION IN BRACKETS	TENANT'S COMMENTS	LANDLORD'S COMMENTS	TRIBUNAL'S DETERMINATION (AMOUNTS DETERMINED IN BOLD)
Reserve Fund	£3,065 (£1,207)	No challenge to the amount. Contends there is no valid demand		Invoice 292, 25.11.12. Invoice in the bundle summary of tenant's rights and obligations enclosed. Satisfied demand is valid. Determine £1,207.00
Service Charge	£4,477.8 (£1,763.35) Based on Mr Thompson's statement at para. 48 £7,5428 – £3,065 = £4,477.8	Argues no valid demand. Lacks transparency Also disputes individual elements of the service charge	Demand for estimated service charges (Invoice 291) in the sum of £3,299.87. Refund of service charge balance £1,523.75 (credit number 419) = £1776.12 demanded. Actual expenditure £1,579.17 (see disbursements £4,006.17 - £2,427 (admin charges) plus 39.38% of accountancy provision £196.9 = £1776.07.	The amount to be considered is £1,776.07 . Tribunal satisfied demand valid. Lease requires demand for estimated service charge. The invoice 291 constitutes a valid demand. Notice cited sections 47 & 48 of the 1987 Act, gives the landlord's address. Encloses summary of tenant's rights. Lease requires no specific demand for balancing charge. Landlord has given credit note for balance and

				given details of the expenditure. Discrepancy 5 pence.
1.12.12 Bank charges	£10(£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
31.1.13 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
4.2.13 Building Insurance	£1,127.08 (£443.84)	Disputed not landlord's invoice	Renewal invitation (R's bundle 15)	Tribunal satisfied that the amount relates to the property. Determined £443.84
5.2.13 replacement lamps	£90 (£35.44)	Costs exorbitant	CES invoice R's bundle 14 Lamps and starters in front hall and upstairs landing light	No evidence of alternative costs. Tribunal considers costs including labour plus VAT reasonable Determined £35.44
Re-plastering Common Areas	£492 (£193.75)	Cause of damp still not addressed	CES invoice R's bundle 13. Dealing with damp issue in common area by rear door	Still evidence of damp around rear door. Unsure whether the damp is a result of a new problem. On balance, costs reasonable Determined £193.75
Structural Report	£514.02 (£202.42)	Disputed content unknown	The balance of the invoice for the report in 2012.	Authorised by the lease. Costs reasonable for a professional report. Addressing a visible problem with the property structure. Not convinced the Applicant is entitled to see the report. Determined £202.42

28.2.13 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
19.3.13 Bank charges	£6.29 (£2.48)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
19.3.13 Bank charges	£10 (£3.94)	Disputed, no explanation for how the bank charges incurred	No statement indicating the charges	Not authorised by the lease. No explanation from the landlord. Disallowed
20.3.13 Software	£36.38 (£14.33)	Disputed previous Tribunal disallowed	Invoice (R's bundle 11) for Anti-virus software and laser jet printer?addressed to John Thompson Featurekeys	Disallowed by Tribunal. Not satisfied that the cost was incurred in connection with the services for the subject property
4.4.13 Software	£62.97 (£24.80)	Disputed previous Tribunal disallowed	Invoice (R's bundle10) for Quickbook addressed to John Thompson Featurekeys	Disallowed by Tribunal. Not satisfied that the cost was incurred in connection with the services for the subject property
12.4. 13 Fire Safety works	£384 (£151.22)	Disagrees with £150 for the smoke alarm in roof area of flat C	CES invoice (R's bundle9) Installation of various signs, interlinked break glass and key box by front door, testing systems, fire alarm in loft space	Tribunal satisfied the Applicant derived a benefit from the installation of the fire alarm in Flat C because the alarm is interlinked, and should be seen as one system for the whole property. Different circumstances from the block wall which was specific works to the loft area. Determined £151.22

29.4. 13 Office supplies	£112.63 (£44.35)	Disputed: no invoice	Office depot invoice (R's bundle 6)	Authorised by lease. Tenant has previously agreed that such expenditure is reasonable Determined £44.35
30.6.13 Kent Maintenance	£120 (£47.26)	Agreed reasonable	Invoice (R's bundle 7)	Determined £47.26
1.7.13 Office supplies	£50.04 (£19.71)	Disputed: no invoice, items unknown	Office depot invoice (R's bundle 8)	Authorised by lease. Tenant has previously agreed that such expenditure was reasonable Determined £19.71
3.7.13 Directors & Officers Liability Insurance	£49.60 (£19.53)	Disputed not landlord's responsibility	Renewal Invitation (R's bundle 5) addressed to Futurekeys	Not authorised by the lease. Disallowed by Tribunal.
7.7.13 Correspondence charge	£120 (£47.26) Appears as £100 in the invoice to which VAT has to be added)	Disputed; not a lessee's responsibility	Attending correspondence received from Mrs Willens from Aggarwall Accountant Invoice (R's bundle 4)	Authorised by the lease as it deals with Mrs Willen's enquiries on the service charges Determined £120.00
17.11.13 Gardening	£372 (£146.49)	Dispute charge for gutter of 303. Garden charge of £260 unreasonable	CES Invoice (R's bundle 3)	Work done to next doors gutter of not authorised. Gardening charge is excessive when compared with charge by Kent maintenance. Allow £240 Determine £94.51
18.11.2013 Office supplies	£180 (£70.88)	Disputed: no invoice, items unknown	Office depot invoice (R's bundle 2a) for £175.40	Authorised by lease. Tenant has previously agreed that such expenditure was reasonable. Allow for

				39.38% of £175.40 Determined £69.07
29.11.2013 Postage	£63.07 (£24.84)	Disputed: no invoice, items unknown		Authorised by lease. Tenant has previously agreed that such expenditure was reasonable. Determined £24.84
29 .11.13 Tribunal Fee	£190 (£74.82)	Disputed subject to 20C application		Not authorised by the lease
Provision for Accountant	£500 (£196.90)			Authorised by the lease Determined £196.90
Determination				Amount payable £2,850.31 comprising £1,643.31 Service charges (Demand of £3,299.87 (invoice 291) reduced by credit of £1,523.75 to £1,776.12 and further reduced as a result of the decision to £1,643.31. £1,207.00 paid into reserve (invoice 292 agreed)

SCHEDULE 5

DISPUTED SERVICE CHARGE ESTIMATE FOR S/C YEAR 1 December 2013 to 30 November 2014

Case Reference: CHI/29UM/LSC/2013/0115

Premises: Flat B 301 High Street Sheerness ME12 1UT

ITEM	COST	TENANT'S COMMENTS	LANDLORD'S COMMENTS	TRIBUNAL'S DETERMINATION (AMOUNTS DETERMINED IN BOLD)
Reserve Fund	£1,550 (£610.39)	No challenge to the amount. Contends there is no valid demand		Invoice 416, 23.11.13. Name of landlord given together with an address. Summary of tenant's rights and obligations enclosed. Satisfied demand is valid. Determine £610.39
Service charge	£15,529.43 (£ 6,115.49)	Challenges validity of demands. Disputes the amounts as the landlord has provided no indication of how the amounts have been assessed	Demand issued on 23.11.13 (invoice 417)	Tribunal satisfied demand valid. Lease requires demand for estimated service charge. Name of landlord given together with an address. Summary of tenant's rights and obligations enclosed. The invoice 417 constitutes a valid demand.
Building Insurance	£1,183.43 (£466)	Disputed. Not in the landlord's name	Based on 5 percent increase on last year premium	Tribunal concerned with an amount no greater than is reasonable having regard to past expenditure. Reasonable. Determines

				£466.00
Directors & Officers liability	£50 (£19.69)	Not provided for in the lease		Disallowed. Not authorised in lease
Lateral Restraint & Loft fee	£600 (£236.28)	No proposed work description		Reasonable having regard to previous years' expenditure Determine £236.28
Fee for fire insurance re-instatement	£600 (£236.28)	No proposed work description		Necessary to do on periodic basis. Has not been done recently. Reasonable Determine £236.28
Legal	£1,000 (£393.80)	No proposed work description		Without further detail question whether authorised by the lease Disallowed
Accountancy	£500 (£196.90)	No proposed work description		Considered necessary particularly if meets tenants concerns for independent audit. Determine £196.90
Fee for Fire & Health & Safety risk assessment	£400 (£157.52)	No proposed work description		Necessary at periodic intervals. No evidence of one being done recently. Tribunal considers £300 reasonable having regard to the size of building Determine £118.14
Common parts & gardening	£500 (£196.90)	Agreed if carried out to a reasonable standard and monthly		Agreed Determine £196.90
Light Bulb replacement	£100 (£39.38)	Excessive		Last year price £90 (£35.44). Reasonable

				Determine £39.38
Lateral Replacement	£5,500 (£2,165.90)	Premature consultation has not been completed		Tribunal considers it premature. Await consultation, after which the landlord can submit a supplementary demand
Damp remediation	£1,500 (£590.70)	Premature consultation has not started		Tribunal considers it premature. Await consultation, after which the landlord can submit a supplementary demand
Demolition & re-fencing of garden	£3,096 (£1,219.20)	Agreed certain work but so far no section 20 consultation		Work completed at the time of inspection. Assume consultation had taken place. Reasonable but tenant still entitled to challenge the reasonableness of the costs incurred once actual expenditure known Determine £1,219.20 reasonable
Management overheads	£500 (£196.90)	Disputed proposed expenditure not known		Reasonable based on previous expenditure for stationery, postage and office supplies. Determine £196.90
Determination				Amount payable £3,515.98 comprising £2,905.98 Service charges. (Demand of £ 6115.49

				invoice 417 reduced to £2,905.78). £610 paid into reserve (invoice 416 agreed)
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SCHEDULE 6

Administration Charges

Case Reference: CHI/29UM/LSC/2013/0115

Premises: Flat B 301 High Street Sheerness ME12 1UT

ITEM	COST	TENANT'S COMMENT	LANDLORD'S COMMENT	TRIBUNAL'S DETERMINATION
15.8.11 Tribunal fee 4.10.11 Disbursement re PTR 12.12.11 LVT hearing fee 19.1.12 Legal fee re Brady's solicitors 5.2.12 Disbursements	<p style="text-align: right;"> £200.00 £486.17 £150.00 £157.60 £516.34 Total £1,510.11 </p>	<p>Unreasonable. No application made for costs at the LVT hearing. Breach of covenants claim unsuccessful.</p>	<p>Authorised by the lease Clause 3.13. Argued that the Applicant had not paid her service charge. Does not appear to be claiming for the disbursements.</p>	<p>The costs related to the hearing on 1 February 2012. At that hearing the Respondent landlord withdrew two applications for breach of covenant. In respect of the third application the Tribunal found that the Applicant had not breached the covenant regarding structural alterations. The remaining application related to the service charge for the year ended February 2011. The Applicant paid £2,241.03 on 13 July 2011 which on the face of it discharged the service charge for the year in question.</p> <p>Tribunal not convinced that the expenditure incurred fell within clause 3.13 of the lease. No compelling evidence that the Respondent was contemplating forfeiture proceedings. In any event the Tribunal finds the charges unreasonable for the following reasons:</p> <p>Disbursements: The Tribunal understands that these relate to Mr and Mrs Thompson's accommodation and travel costs attending the two hearings from their home in France. Unreasonable because the Landlord was UK registered company.</p> <p>Tribunal Fees: The Respondent made no application for reimbursement of fees. If it had the Tribunal more than likely would have ordered no reimbursement because of the outcome of the proceedings which generally was in the Applicant's favour: Unreasonable.</p>

				<p>Legal costs of Brady's solicitors related to advice and disbursements of Land Registry fees. Respondent's sole justification for the charge the Applicant was in arrears with her service charge Tribunal not convinced that was the case: Unreasonable.</p> <p style="text-align: center;">No administration charge ordered</p>
<p>14.6.12 debt recovery 19.6.12 debt recovery 4.9.12 Legal fees 4.9.12 Legal fees</p>	<p>£160.00 £600.00 £345.60 £156.00 Total £1,121.60</p>	<p>Subsequent Tribunal determined s/c demands 2/12 and 2/13 invalid. Applicant argued she was not in arrears when the first letter of 3 May 2012 was issued</p>	<p>The landlord argued it had no choice but to engage a solicitor due to the repeated and deliberate attempts by the tenant to avoid service charge. R's letter (A28) indicated that it had agreed that the steps taken by the solicitor was part of an agreed strategy to bring forfeiture proceedings before the County Court. The Respondent, however, acknowledged that such proceedings had been put on</p>	<p>On 12 July 2012 the Applicant made application to determine the service charges for years ending February 2012 & 2013. On 17 October 2012 the Tribunal determined that the service charge demands had not been validly issued.</p> <p>The Tribunal is not satisfied that the charges were authorised by clause 3(13) in view of the Respondent's admission that forfeiture procedures were put on hold. The drafting of the particulars of claim was made after the Application on 12 July 2012.</p> <p>Charges in any event unreasonable because they related to service charges where the Tribunal found that no valid demand had been issued.</p> <p style="text-align: center;">No administration charge payable</p>

			hold pending the hearing of the A's application.	
<p>22.1.13 legal fees 8.2.13 legal fees 26.4.13 legal fees 12.6.13 legal fees</p>	<p>£360 £500 £500 £1,067 Total £2,427</p>	<p>The Tenant argued that the charges were not payable. The demand for 26/4 did not state clearly the reason for issuing the demand for payment on account. The Tenant argued that the charges were not proportionate.</p>	<p>19.2. 13 letter of Landlord's solicitor clearly stated that the claim for unpaid service charges was being sent pursuant to the pre-action procedure in connection with the courts power to impose sanctions.</p>	<p>Letter of claim issued on 19 February 2013. At that time the Applicant was in significant arrears with her service charge (in excess of £7K). Letter explicit about the Respondent's intention to pursue proceedings before the court. Tribunal finds the fees were incurred in contemplation of proceedings before the Court.. The Tribunal satisfied the charges were authorised by clause 3(13).</p> <p>Tribunal finds that the charges were lawfully demanded. Considers there was sufficient information regarding the charge of £500 on 26 April 2013.</p> <p>The Applicant did not support her assertion that the charges were disproportionate with evidence of the amount of the charge she considered reasonable. The Tribunal considers the amount of charges reasonable on the face of the documents supplied. The Tribunal accepts the amount demanded was £45 less than that on the invoices. The discrepancy was to the Applicant's benefit. Administration charge in the sum of £2,427 payable by the Applicant.</p>



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

Case Reference : CHI/29UM/LSC/2013/0115 &
CHI/29UM/LAC/2013/0018

Property : Flat B 301 High Street
Sheerness
Kent
ME12 1UT

Applicant : Catherine Mary Willens

Respondent : Influential Consultants Limited

Representative : John F Thompson

Type of Application : Application for permission to appeal

Tribunal Member(s) : Judge Tildesley OBE
Mr C C Harbridge FRICS
Ms L Farrier

Date of Decision : 12 September 2014

DECISION

DECISION OF THE TRIBUNAL

1. The Applicant has requested permission to appeal the decision relating to Flat B 301 High Street, High Street, Sheerness, Kent ME12 1UT.
2. The decision was released 31 July 2014. The Tribunal having determined the following:
 - The sum of **£ 2,157.67** comprised of £1,490.14 (reserve) and £667.53 for services for 5 February 2011 to 30 November 2011 is payable by the Applicant.
 - The sum of **£ 5,629.94** comprised of £177.21 (reserve); £1,758.49 for services and £3,694.24 paid from the reserve fund for 1 December 2011 to 30 November 2012 is payable by the Applicant.
 - The sum of **£2,850.31** comprised of £1,207 (reserve) and £1,643.31 for services for 1 December 2012 to 30 November 2013 is payable by the Applicant.
 - The sum of **£3,515.98** comprised of £610 (reserve) and £2,905.98 for services for 1 December 2013 to 30 November 2014 is payable on account by the Applicant.
 - No administration charge is payable in respect of legal and Tribunal fees, and disbursements for the period 15 August 2011 to 5 February 2012.
 - No administration charge is payable in respect of legal and debt recovery fees for the period 14 June 2012 to 4 September 2012.
 - Administration charges totalling **£2,427.00** are payable in respect of legal fees for the period 22 January 2013 to 12 June 2013.
 - The Applicant has a balance of **£10,116.22** to pay in respect of outstanding service charges and administration charges. The balance includes an amount of £1,219.20 for re-fencing for which there is £350 in the reserve fund. The balance of **£10,116.22** takes no account of any potential interest charges for late payment.
 - There is no authority under the lease to recover costs in connection with Tribunal proceedings through the service charge. The Tribunal, therefore, makes no order under section 20C in respect of these proceedings and those on 9 January 2014. If the

Tribunal is wrong on the construction of the lease it would have made section 20C orders preventing the Respondent from recovering its costs in connection with these proceedings through the service charge.

- No order for costs in favour of the Respondent in respect of the travel and other costs incurred by Mr and Mrs Thompson.
3. The Decision itself consisted of 25 pages plus six schedules which total 21 pages.
 4. The application for permission to appeal was dated 29 August 2014. The application was apparently sent to the wrong Tribunal Office as it bears the London Rent Assessment Panel stamp dated 29 August 2014. The Chichester Tribunal office received the application on 1 September 2014.
 5. The Applicant accepts that the application was not received by the Tribunal by the required date of 27 August 2014 (within 28 days from the date of the decision 31 July 2014).
 6. The Applicant apologised for the inconvenience caused and cited her impaired mobility for the late delivery of the application.
 7. The Tribunal **refuses** the Applicant an extension of time in which to make her application. Although this may appear harsh in view of the short time delay after the deadline, the Tribunal nevertheless considers there are good reasons for refusing her application:
 - Time limits are imposed for a purpose and should be observed.
 - The Applicant is well acquainted with Tribunal procedures and aware of the importance of adhering to time limits. This is the seventh set of proceedings involving the same parties and the same property in the space of six years.
 - The Applicant's mobility difficulties are foreseeable, and she should have anticipated potential problems with meeting the deadline by making an application before the time-limit expired.
 - The continuation of the dispute is not in the interests of the parties.
 - The Respondent has a legitimate expectation of finality to the proceedings.
 8. Although the Tribunal has refused to extend the time limit, the Tribunal has gone on to consider the grounds put forward for permission to appeal. If the Tribunal had jurisdiction to entertain the application the Tribunal would not have reviewed its decision and

refused permission to appeal because its decision was based on the evidence before it and the Applicant had raised no legal arguments in support of the application for permission to appeal.

9. In accordance with Section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.
10. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by the Applicant in the application for permission to appeal, in the appendix attached.

APPENDIX TO THE DECISION REFUSING PERMISSION TO APPEAL

Specific comments on the grounds of appeal

Ground 1 (para. 46 of the decision): The reconstruction of the missing page is still disputed by the Respondent see direction 8 issued by Judge Norman on 13 November 2013

Ground 2 (para. 62 -65 of the decision): The Applicant is raising a new argument which was not before the Tribunal. The question posed by the Applicant in her statements of case was the independence of Mr Thompson not his appointment as manager & surveyor (see page 3 of 10 statement of case 2011- 2014; see page 5 of 9 statement of case dated 22 January 2014). The Tribunal answered the question posed by the Applicant. The Applicant is not challenging the Tribunal's answer but instead posing a new question.

The Tribunal is of the view that the Applicant is not entitled to rely on new argument as a ground of appeal. The Tribunal, however, would point out the terms of the lease do not use the word appointment. The lease requires the *sums to be assessed by the surveyor or agent for the time being of the landlord.*

Finally the Applicant requests the Tribunal's source of information about the qualification of Mr Thompson as a chartered surveyor. The Tribunal refers to first paragraph of page 2 of letter to the Applicant dated 14 December 2013. During the proceedings the Applicant did not challenge Mr Thompson's qualification as a Chartered Surveyor.

Ground 3 (para 73 – 78 of the decision): The Applicant has overlooked the letter of Kingsley Smith dated 19 February 2013 exhibited at A31 of the Applicant's bundle, which is the letter the Tribunal relied upon. The Applicant has identified no error of law in respect of the Tribunal's findings at paragraph 78 and schedule 6 that the legal costs incurred were caught by the wording of clause 3(13) of the lease.

The Applicant is also introducing new arguments at paragraphs 18,19 and 20 of her application which were not before the Tribunal (see pages 5 and 6 of her statement of case on administration charges dated 27 February 2014)

Ground 4 (para. 85 of the decision): this is not a material part of the decision. In paragraph 85 the Tribunal was urging the parties to resolve their differences and move on. The Tribunal encouraged the parties to stand in each other's shoes, and see it from the other's perspective. The Tribunal's reference to some regard to Mrs Willens' ability to afford the charges was an inference drawn from her solicitors' letter dated 11 December 2007 exhibited at A8 of the applicant's bundle. The Tribunal apologises if it has drawn the wrong inference and in so doing caused offence to the Applicant.

Ground 5: Schedule 3 (05/11/12 Jordan's Roof Replacement): the Applicant agreed this expenditure and is, therefore, prohibited from raising it as a ground of appeal by virtue of section 27(4)(a) of the 1985 Act.