



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at
Barnstaple, sitting at Green King-
Cedars Bickington Road
Sticklepath Barnstaple Devon EX31
2HE on 28 August 2019**

Tribunal reference : **CHI/18UK/LIS/2019/0015**

Court claim number : **D20YM512**

Property : **38 Lenwood Country Club,
Northam, Bideford, Devon EX39
3PN**

Applicant/Claimant : **Chancery Lane Investments
Limited**

Representative : **Mr Paul Simon in house solicitor**

Respondent/Defendant : **Mr Peter Shortridge**

Representative :

Tribunal members : **Judge Tildesley OBE
Mr M Woodrow MRICS**

In the county court : **Judge Tildesley OBE sitting as a
Judge of the County Court
exercising the jurisdiction of a
District Judge**

Date of decision : **23 October 2019**

DECISION

1. This decision will act as both the reasons for the Tribunal decision and the reasoned judgment of the County Court.

Summary of the decisions made by the FTT

2. The following sums are payable by Mr Shortridge to Chancery Lane Investments
 - i. Service charge on account in the sum of £500 for the year ended 30 September 2017 (demand issued on 30 September 2016).
 - ii. Insurance charge in the sum of £100 each in respect of the demands on 30 September 2016 and 25 January 2017.
 - iii. Mr Shortridge is not liable to pay the service charges demanded on 1.10.2010 £216.13 (balancing payment); 1.10.2010: £860.60; 1.10.2011: £940.44, 1.10.2012 £379.67; 1.10.13: £661.97; 1.10.14 £629.82; 1.10.15: £405.55; 30.9.17 £1,510.84 and 30.9.18: £1,382.98 for the reasons given in the substantive decision.
 - iv. Mr Shortridge is not liable to pay the insurance charges demanded on 1.10.2008: £145.69; 1.10.09: £164.17; 1.10.2010: £158.50; 1.10.2011: £85.66; 1.10.2012 £128.27; 1.10.13: £186.22; 26.7.14: £166.96; 25.7.2015: £127.36; and 25.1.18: £161.93. for the reasons given in the substantive decision.
 - v. Mr Shortridge is not liable to pay the administration charge of £30 demanded on 12 July 2018 for the reasons given in the substantive decision.

Summary of the decisions made by the County Court

3. The Court confirms the decision of the Tribunal that Mr Shortridge is liable to pay the sum of £700 in respect of unpaid service charge, insurance and administration charge.
4. The Court finds that Mr Shortridge is not liable to pay Chancery Lane Investments Limited the rents claimed of £517 (1.10.09); £712.95 (1.10.10); £737.65 (1.10.11); £760.89 (1.10.12); £791.69 (1.10.13); £804.57 (30.9.14); £812.74 (30.9.15); £827.77 (30.9.2016), £852.60 (30.9.2017) and £872.21 (30.09.2018) for the reasons given in the substantive decision.
5. The Court orders Mr Shortridge to pay to Chancery Lane Investments:
 - (i) Service charge; Insurance and Administration Charge of £700
 - (ii) Interest at 10 per cent of £141.10.
 - (iii) Costs of £875

Background

6. The Applicant landlord issued proceedings against the Respondent in the County Court Money Claims Centre under claim number D20YM512 and served on 3 August 2017. The Respondent filed a Defence and the Claim was allocated to the Fast Track and initially listed for Trial on 10 May 2018. The parties reached an agreement at a Court initiated mediation on 20 February 2018. The Claim was stayed. The Respondent failed to comply with the terms of the settlement agreement and so the stay was lifted on 11 September 2018. A directions hearing before District Judge Griffiths was held on 21 November 2018. The Applicant did not wish to enforce the schedule to the Tomlin Order and instead sought a trial of the original claim. Permission was given to the Applicant to amend particulars of claim and to the Respondent to amend his defence. On 30 January 2019 District Judge Griffiths transferred the proceedings to the First-tier Tribunal to resolve all matters falling within the jurisdiction of the Tribunal. District Judge Griffiths also allocated to a Judge of the First-tier Tribunal (Residential Property Chamber) sitting as a District Judge to resolve any aspects of the claim outside the jurisdiction of the Tribunal.
7. The Tribunal issued directions on 6 March 2019 and 12 April 2019. The Tribunal Judge allocated the Claim to the Fast Track, and also required the Respondent to file an application under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A to Schedule 11 of the 2002 Act.
8. The matter came to hearing on 28 August 2019. Mr Paul Simon, in house solicitor, attended for the Applicant. Mr Shortridge attended in person and was accompanied by Mr Roy Stephens of 40 Lenwood Country Club.
9. Mr Simon supplied a witness statement dated 21 August 2019 in which he explained that he had been asked to attend to give evidence in place of the Applicant's director, Mr Laurence Freilich, who was unable to attend the hearing due to family commitments. Mr Simon said that his witness statement did not seek to provide any new evidence, it simply sought to substitute the identity of the Applicant's witness. Mr Simon pointed out that Mr Freilich's statement was derived from the Applicant's records, and as Mr Simon was the in-house solicitor he was more than capable of speaking to those records and answering any questions that the Respondent or the Tribunal may have. The Tribunal admitted Mr Simon's witness statement, and the bundle of documents comprising two volumes. References to the documents in the decision are [A/B no.].

10. Mr Shortridge supplied a copy of his defence, and amended particulars set out in letters dated 1 November 2018 and 10 December 2018 together with various exhibits which were included in volume A of the document bundle. The exhibits included defence and counter claim of Kevin Jon Whitaker and Izumi Whitaker of 45 Lenwood Country Club (claim Number C3QZ37FO) together with their position and witness statements; and the statements of Allen & Daphne Wilson, former leaseholders, Roger Wearne of 47 Lenwood Country Club, David Baldwin of 19A Lenwood Country Club, Roger Harvey of 46 Lenwood Country Club, and Roy Stephens.
11. The Tribunal had before it the decision in David Baldwin and Chancery Lane Investments Limited (CHI/18UK/LSC/2018/0043) which was released on 18 October 2018 and related to 19A Lenwood Country Club. The Tribunal determined the service charge in respect of that property for the year ended 30 September 2017 and the on account charge for the year ended 30 September 2018. Mr Simon accepted that the Tribunal should have regard to this decision (referred to as the “Baldwin decision”) when making its determination in this case. Mr Simon after the hearing produced a revised Claim which he said took account of the Baldwin decision.
12. On 28 August 2019 the Tribunal sat first to deal with those matters that fell within its jurisdiction and reserved its decision. After a short adjournment Judge Tildesley returned to sit on his own in his capacity of Judge of the County Court to hear the remaining aspects of the Claim. Judge Tildesley reserved judgment.

The Dispute

13. The dispute concerned the Respondent’s liability to pay the Applicant ground rent, insurance charges and service charges under the terms of a lease dated 27 January 2003 made between Michael Ward Prust and Averil Jennifer Prust of the one part and Peter Shortridge of the other part for a term of 999 years commencing 30 September 1986 (“The lease”).
14. The Applicant holds the freehold of the property known as Lenwood Country Club, Northam, Devon Ex39 3PN and its title is registered under Title Number DN257213. The Applicant acquired the freehold on 23 February 2016.
15. Under the amended Particulars of Claim dated 2 December 2019 [A1-7] the Applicant claimed the sum of £17,482.71 plus interest until judgment or payment if sooner. The Applicant did not plead contractual costs.
16. The sum of £17,482.71 comprised:

- Service Charges from 1 October 2010 to 30 September 2018 in the sum of £8,130.50.
 - Insurance from 1 October 2008 to 25 January 2018 in the sum of £1,632.14.
 - Ground Rent from 1 October 2009 to 30 September 2018 in the sum of £7,690.07.
 - Arrears letters on 11 April 2016, 11 October 2016 and 12 July 2018 in the sum of £30 (£10 for each letter).
17. The Applicant's case was that the Respondent had a contractual liability under the lease to pay the sums due, the Respondent had not paid the rent and other charges, and therefore lost his entitlement to enjoy the rights and privileges available him under the lease. The Applicant asked for judgment in the principal sum pleaded plus his contractual obligations in respect of interest and costs.
18. The Respondent's defence was that he paid the amount demanded in ground rent over several years and had not received receipts for the amount paid. The Respondent accepted he had not paid service charges and insurance because the Applicant had not met its obligations under the lease including proof of payment of the insurance premium. The Respondent in his letters of 1 November 2018 and 10 December 2018 required the Applicant to produce proof in the form of accurate accounts and receipts, placed reliance on the findings in the "Baldwin decision", and asserted that he had insured his own property.

The Property

19. The property is a chalet bungalow within the grounds of Lenwood Country Club. A Mr Andrew Smith owned and managed the clubhouse and all the facilities which included a bar, restaurant, gym, squash courts, tennis courts and communal pleasure grounds. As a result of a family dispute in 2008, Mr Smith went out of business, and the Official Receiver took over the administration of the Estate. County Bideford Limited acquired the site in September 2008, which chose to build more chalets and neglect the maintenance of the site and its facilities. The club house remained closed throughout the ownership of County Bideford Limited. The Applicant acquired the freehold of the site in 2016.
20. The Tribunal decided not to inspect the property and the site because of the recent inspection by the Tribunal in the Baldwin decision. The Tribunal incorporates [6] to [20] of the decision as background information.

“6. The Site comprises the original Country Club building, swimming pool, (now derelict) and tennis courts all of which are located adjacent to the northern boundary. The clubhouse and swimming pool are boarded up. The Applicant’s statement confirmed that the clubhouse ceased to be used as a Country Club in 2007.

7. A development of 59 bungalows was built within the grounds to the south of the Country Club during the 1960’s. Apparently there are now 62 bungalows on the Site.

8. An adopted highway adjoins the eastern boundary of the Site, off which are two separate entrances providing vehicular and pedestrian access to the north east corner and the southernmost part of the Site.

9. The Site is wooded and contains several mature trees all of which are apparently protected.

10. Tribunal saw no evidence that any of the roads within the Site had benefited from recent maintenance. All the roads originally tarmac now contain intermittent ridges potholes and loose chippings.

11. The grassed areas within the Site, which are for the most part sloping, appeared on the day of the inspection well maintained and tidy. During the inspection a gardener was mowing the lawn in front of the Country Club building with a hand motor mower.

12. Various parking areas within the Site were occupied by a variety of vehicles some of which had been partly dismantled and were visibly not roadworthy.

13. Miss MacKenzie Counsel for the Applicant explained to the Tribunal that she was unfamiliar with the Site having never seen it before the inspection. Mr Baldwin agreed to point out to everyone the features which he considered relevant to the Application.

14. The Tribunal told him that its members wished to inspect the location of the electricity meter. It was established that this is probably located within substation buildings on the southern part of the Site beside the road leading to the lower entrance, but these buildings were locked. The bungalow closest to the substation has recently been damaged by a fallen tree and remains in disrepair.

15. The Tribunal walked along the roads serving all the bungalows, first ascending the steep road between bungalows located on the western side of the Site. Mr Baldwin pointed out some external lights, all of the same type and design, fixed to the outside of random bungalows; several lights were lit but the majority were not. Mr Baldwin stated these were wired to the Landlord’s electricity supply but it was not possible to assess this from inspection. Some lights are located on the back of the bungalows presumably intended to light the paving stone footpaths between bungalows. Parking spaces in front of the Country Club building were occupied by a boat, some cars and a pile of logs. The Tribunal were told by

Miss MacKenzie that she was instructed that the Country Club is currently leased to a third party.

16. On that part of the Site adjacent to the swimming pool, just below the refuse area, water was leaking from an indeterminate source and pooling in front of a long building used as a landlord store. Bags of sand or cement were stacked in front of that building.

17. The refuse area is a brick built shed with an open wired roof. The door was bolted from the outside. Rubbish was stored inside. Mr Baldwin said that rats had been seen in it but none were seen by the Tribunal.

18. Mr Baldwin said that most of the bungalows did not include any external areas so the majority of the grounds within the Site are communal areas and maintained by the Freeholder.

19. The Site appeared to have been neglected for some time. As well as abandoned vehicles, obsolete furniture and some rubbish was visible outside or adjacent to several bungalows.

20. The sewage pump is located beside the lower (southern) entrance and adjacent to the road. Some of the tribunal members had seen utility employees examining it on their arrival at the Site. Mr Baldwin confirmed that there had been a recent blockage so assumed that that was the reason for the inspection. All that could be seen by the Tribunal members were the drain covers and a green box adjacent to the drain.”

The Lease

21. The relevant provisions of the lease are set out are in the following paragraphs.
22. By the Lease (inter alia) and in consideration for the premium therein stated to be paid the Lessee is to hold the Property paying during the Term the clear rent at the rent of four hundred and ninety-five pounds (£495) per annum and in every year thereafter the greater of the said sum by way of rent of four hundred and ninety five pounds and that sum multiplied by the Index of Retail Prices maintained at HM Government on the thirty first day of July immediately preceding the end of such period of one year and divided by the amount of the said Index on the thirty first day of July one thousand nine hundred and ninety seven such figure being 157.5 to be paid in advance on the thirtieth day of September clear of all deductions whatsoever the first of such payments in respect of the period from the commencement of the term herein granted to the thirtieth day of September next to be made on the execution thereof and **Secondly** in each year by way of further and additional rent on demand such sum as the Lessors may from time to time pay for the insurance of the Demised Premises in accordance with their covenant hereinafter contained and **Thirdly** by way of further and additional rent a service charge in consideration of the Lessors' covenants hereinafter contained payable in advance on the

30th day of September in each year such charge being the greater of either

- (i) the sum of £273.50 per annum or if greater the sum of £273.5 multiplied by the index of retail prices maintained by HM Government on the 31st day of July immediately preceding the end of such period of one year and divided by the amount of the said Index on the 31st day of July 1997 such figure by 157.5 or
- (ii) A sum which shall be one fifty ninth of the sum calculated in accordance with the Fourth Schedule hereto and payable in accordance therewith.

23. By clause 3 the Lessee covenanted with the Lessor in the Lease (inter alia):

(1) To pay the reserved rents on the days and in the manner aforesaid;

(14) To pay all costs charges and expenses which may be incurred by the Lessors or their agents in connection with the recovery of arrears of rent or insurance premium from the Lessee (and for the avoidance of doubt in the event of any payment being overdue by more than fourteen days obligating the Lessors (or their Agent) to send a reminder the cost of the reminder (and any subsequent reminders shall be £10 payable as additional rent;

(17) If the payment of rent or any other sum due from the Lessee to the Lessors under the provisions of this Lease is more than fourteen days overdue then without prejudice to any other right or remedy of the Lessors the Lessee shall pay interest at 10% on such payment from its due date until actual payment and in making any payment hereunder the Lessee shall not be entitled to make any deduction or set off; and

(19) In the event of the Lessors incurring any costs in accordance with their obligations under clause 5 (ii) (b) to contribute upon demand one fifty ninth of the cost thereof.

24. The Lessors covenant (by clauses 5 (2) and (3)) with the Lessee in the Lease to keep the said Estate (excluding the areas hatched yellow and the Demised Premises and the Bungalows on the Estate) and every part thereof and the roads and footpaths and the said services therein in good condition and repair and the grass properly trimmed and to keep the sewers and the sewage plant serving the Estate in good working order and to provide a refuse collection point for one normal size general purpose refuse bag per week from the Premises.

25. The Lessors covenant (by clause 5 (4)) with the Lessee in the Lease (inter alia) to insure and keep insured the Demised Premises against loss or damage by fire and such other risks (if any) as the Lessors shall from time to time think fit in some insurance office of repute for the

rebuilding value thereof and whenever required (but not more frequently than once every twelve months) produce to the Lessees the policies of such insurance and the receipt for the last premium for the same and will in the event of the demised premises being destroyed by fire or other insured risks as soon as reasonably practicable lay out the insurance money received in the repair rebuilding or reinstatement of the said demised premises.

26. Further by clause 6 (vii) of the Lease it was agreed that if at any time during the term hereby granted Value Added Tax or a similar tax is by law required or may properly be added to any payment by the Lessee hereunder (including any payment of rent) the terms of this Lease shall be deemed to include the obligation on the Lessee to pay such Value Added Tax or similar tax with each payment to which it relates.

27. By the Fourth Schedule of the Lease:

- 1 The Lessors shall from time to time determine and give notice to the Lessee of the amount of the service charge and this sum shall be payable as the service charge on the succeeding payment date being the 30th day of September in each year in respect of the year commencing the 30th day of September.
- 2 The Lessors Accountants as soon as practicable after the 30th day of September in each year shall certify the amount of the service charge and if such charge shall be greater than the sum paid in advance in any year of the Term by the Lessee as previously provided the balance of the said sum shall be a debt due and owing to the Lessors and payable with the service charge for the ensuing year and conversely if such charge shall be less than the sum so paid the balance shall be held to the credit of the Lessee and shall be 'taken into account in determining the service charge for the ensuing year.
- 3 The said certificate shall contain a summary of the Lessors expenses which shall constitute the following:
 - (a) The cost of complying with the Lessors covenants contained in clause 5 (2) and clause 5 (3) of the Lease (in respect of which the Lessor shall be entitled if appropriate to charge for their own time at a reasonable rate) (but excluding always the cost of 5 (2) (b) (the same being chargeable separately).
 - (b) The cost of cleaning and where necessary lighting the areas used in common by the Lessee and other Lessees and the Lessors.
 - (c) The cost of gardening and landscaping the estate.

- (d) The cost of providing and maintaining any service or amenities that may be requested in writing by a majority of the Lessees of the bungalows comprised on the estate and which may be provided by the Lessors at such request.
 - (e) The fees of the Lessors Accountants.
 - (f) The cost of management which shall not exceed the management allowance permitted from time to time by the Department of the Environment and which in any event shall not exceed 5 % of the cost of the service otherwise provided.
28. The Tribunal observes that the service charges and insurance are recoverable as rent. Under the lease there are alternative mechanisms for recovering service charges. The Applicant chose method (ii) *“A sum which shall be one fifty ninth of the sum calculated in accordance with the Fourth Schedule hereto and payable in accordance therewith”*. Mr Simon accepted that this constituted a variable service charge and that the Tribunal had jurisdiction to determine the dispute on service charges.

The Tribunal’s Determination

29. The questions of the payability and reasonableness of the service charge, insurance rent, and administration charges for the arrears letter fall within the Tribunal’s jurisdiction.

Service Charges

30. The Applicant claimed the following amounts in respect of service charges 1.10.2010 £216.13 (balancing payment); 1.10.2010: £860.60; 1.10.2011: £940.44; 1.10.2012 £379.67; 1.10.13: £661.97; 1.10.14 £629.82; 1.10.15: £405.55; 30.9.16: £1,142.50; 30.9.17 £1,510.84 and 30.9.18: £1,382.98.
31. All the service charges claimed were for payments on account except for the balancing payment of £216.13 (1.10.2010).
32. The claim for the service charges due was issued in August 2017. The sums due on 1 October 2010 were over six years old at the date of the claim.
33. The Applicant adduced no evidence of the demands for service charges together with the Summary of Tenant’s Rights and Obligations made by the previous landlord in respect of the period of 1 October 2010 to 1 October 2015.
34. The Applicant produced no records of the accounts, no supporting documentation, and no certificates of account for each service charge year in respect of the period 1 October 2010 to 1 October 2015.
35. The Applicant relied on two documents in the bundle of 437 pages to prove its case in respect of the service charges for 1 October 2010 to 1 October 2015. They were a copy of a “Tenant Account” in the name of the Respondent which gave basic details of each charge [B330] and the

demand for service charges issued by the Applicant on 16 February 2016. Mr Simon submitted that the “Tenant Account” had been supplied by the previous landlord. There was no witness evidence to substantiate this. The document itself gave no indication of its origin save for a date of 22 May 2019 in the top right hand corner which suggested that it was the Applicant’s document and not one prepared by the previous freeholder.

36. The demand for the service charge of £1,142.50 on account for the year 1 October 2016 to 30 September 2017 in the form of an application for payment was at [B350]. There was no Summary of Tenant’s Rights and Obligations [Service Charges] attached to that demand. The Applicant exhibited a Summary dated 31 August 2017 at [B370].
37. The Applicant produced a service charge statement for the year ended 30 September 2016 which was certified by L.B. Ladenheim FCA CPA Chartered & Certified Public Accountant dated 31 March 2017 [B3-4]. The certificate was in the sum of £37,061.90. This sum included a charge for insurance and a management fee of £8,250. The actual cost of services excluding insurance and insurance claim recoveries was £25,986.59. The management fee in accordance with the lease is calculated at 5 per cent of the cost of services which equated to £1,299.33. The actual service charge excluding insurance and with the adjusted management charge totalled £27,285.92. The Respondent’s contribution at one fifty ninth is £462.47. The Applicant substantiated the service charge expenditure for the year ended 30 September 2016 with invoices and an extract from the nominal ledger [B80]. The Applicant supplied no budget to support the on account charge of £1,142.50.
38. The demand for the service charge of £1,510.84 on account for the year 1 October 2017 to 30 September 2018 was issued on 31 August 2017 [B372]. The Summary of Tenant’s Rights and Obligations [Service Charges] dated 31 August 2017 was exhibited at [B370].
39. The Applicant produced a service charge statement for the year ended 30 September 2017 which was certified by L.B. Ladenheim FCA CPA Chartered & Certified Public Accountant dated 12 February 2018 [B84-85]. The certificate was in the sum of £66,967.10. This sum included a charge for insurance and a management fee of £16,500. The actual cost of services excluding insurance and allowing for the credit for electricity was £36,439.87. The management fee in accordance with the lease is calculated at 5 per cent of the cost of services which equated to £1,821.99. The actual service charge excluding insurance and with the adjusted management charge totalled £38,261.86. The Respondent’s contribution at one fifty ninth is £648.51. The Applicant substantiated the service charge expenditure for the year ended 30 September 2017 with invoices and an extract from the nominal ledger [B174]. The Applicant supplied no budget to support the on account charge of £1,510.84.
40. The demand for the service charge of £1,382.93 on account for the year 1 October 2018 to 30 September 2019 was issued on 29 September

2018 but not exhibited in the documents bundle. The Applicant relied on the demand dated 31 August 2018 which showed that the landlord was Ground Rent Trading Limited not the Applicant. The Summary of Tenant's Rights and Obligations [Service Charges] dated 31 August 2018 was exhibited at [B417].

41. The Applicant produced a service charge statement for the year ended 30 September 2018 which was certified by L.B. Ladenheim FCA CPA Chartered & Certified Public Accountant dated 7 May 2019 [B177-178]. The certificate was in the sum of £64,977.70. This sum included a charge for insurance and a management fee of £16,500. The sum also included £442.50 for bank charges incurred by the managing agent, Moreland Estates. The actual cost of services excluding insurance was £37,828.67. The management fee in accordance with the lease is calculated at 5 per cent of the cost of services which equated to £1,891.43. The actual service charge excluding insurance and with the adjusted management charge totalled £39,720.10. The Respondent's contribution at one fifty ninth is £673.22. The Applicant substantiated the service charge expenditure for the year ended 30 September 2018 with invoices and an extract from the nominal ledger [B327]. The Applicant supplied no budget to support the on account charge of £1,382.93

The Baldwin Decision

42. Mr Simons accepted that the Tribunal should have regard to the Baldwin decision. Mr Freilich in his witness statement dated 24 May 2019:

“The Tribunal made a number of reductions to the sums sought for those years. Where there is overlap, the Claimant accepts that similar reductions should be made to the Defendant's statement of account to reflect the Tribunal's earlier decision for the applicable years (i.e years ending 2017 & 2018)”.

43. Mr Simons during the hearing made various amendments to the sums claimed to reflect the Tribunal decision in Baldwin.
44. The Baldwin Tribunal determined that the actual service charge for the year ended 30 September 2017 (excluding insurance) was £30,856.69 which produced a contribution of 1/59th of £522.99. In arriving at the figure, the Tribunal disallowed the sums expended for Health and Safety¹, and gas, and substantially reduced the sums for refuse disposal,

¹ The reason is at [43]: “The Tribunal does not accept it is reasonable to include either of these amounts as part of the service charge. No copy of the Management Agreement between the Landlord and its managing agent has been disclosed. The RICS Residential Service Charge Management Code requires that there is a management agreement. Miss MacKenzie confirmed that the Managing Agent is aware of its obligation to comply with the Code. It would be usual for the provision of a “Responsible Person” to be provided by the Management Agent and the charge included in its Management Fee. It is not reasonable for a separate charge to be made in addition to the management fee and therefore the £400 is neither reasonable nor recoverable”.

cleaning, gardening and repairs and maintenance. The reasons given for the reductions were that the charges covered the whole site, parts of which were not communal areas and therefore some of the costs were not recoverable through the service charge, and in respect of repairs and maintenance the substantial majority of the charges were not transparent².

45. The Baldwin Tribunal decision determined that the service charge on account for the year ended 30 September 2018 (excluding insurance) was £33,705.56 which produced a contribution of 1/59th of £571.28. In arriving at the figure, the Tribunal made the same deductions and adjustments as it did for the actual for the year ended 30 September 2017.
46. The Tribunal observes that it is concerned with service charges on account whereas the “Baldwin Tribunal” determined the actual for the year ended 30 September 2017.
47. The Tribunal noted that the “Baldwin” Tribunal recorded that Ground Rent Trading Limited was registered as proprietor of the freehold title on the 18 September 2017³.

The Tribunal’s determination on Service Charges

48. The Tribunal has broken down its determination into three sections.

The Charges for 1 October 2010 – 1 October 2015

49. At the beginning of the hearing the Tribunal pointed out to Mr Simon that it could not find any demands, service charge accounts and invoices for this period. The Tribunal also raised with Mr Simon the issue of the statutory limitation of six years on action for debt in respect of unpaid rents⁴.
50. Mr Simon submitted that the six year limitation ran from the date of the last payment of rent, and that in this case the payments of rent made by TMB, the Respondent’s mortgagor on 19 August 2013 [A45] had been allocated to earlier years than 2010.
51. In order for Mr Simon to rely on a part payment for restarting the clock for the statutory limitation period Mr Simon is required to establish on behalf of the Applicant that the landlord had demanded payment of the service charge and the tenant had paid some of the service charges demanded which amounted to an acknowledgement of the debt.

² See [47] and [53] of the Tribunal decision in Baldwin.

³ The Applicant did not produce copies of the Registered Title for these proceedings.

⁴ The service charge under the terms of lease was payable as rent.

52. The service charges that were potentially caught by the six year limitation period were the balancing charge of 1 October 2010 and the charge on account of 1 October 2010. Mr Simon accepted that the Applicant had supplied no evidence of the demands by the previous landlord for these charges. Mr Simon contended that the payment made by the Respondent's mortgage company in August 2013 related to the Court Order of 2 October 2009 (Claim No. 9BT00493) [A46], which concerned service charges and rents preceding 2009.
53. The Tribunal considers that Mr Simon's submission regarding payment by the Applicant's mortgage company undermined his contention on restarting the statutory time limit of six years. In his view the payment had nothing to do with subsequent service charges, and at the highest constituted acknowledgement of the debt prior to the 2 October 2009.
54. The Tribunal is satisfied that the Applicant has failed to establish that the balancing charge of £216.13 and the charge on account of £860.60 were demanded on 1 October 2010. Further the Tribunal finds that the Applicant did not commence action in the Court until August 2017. **The Tribunal, therefore, determines that the Applicant is prevented from recovering the balancing charge of £216.13 and the charge on account of £860.60 dated 1 October 2010 because of the six year limitation period under the Limitation Act 1980.**
55. The Tribunal turns now to the evidence substantiating the charges for the whole period 1 October 2010 to 1 October 2015. The Tribunal finds that
- a) The Applicant adduced no evidence of the demands for service charges together with the Summary of Tenant's Rights and Obligations made by the previous landlord in respect of the period of 1 October 2010 to 1 October 2015.
 - b) The Applicant produced no records of the accounts, no supporting documentation, and no certificates of account for each service charge year in respect of the period 1 October 2010 to 1 October 2015.
 - c) The Applicant produced no breakdown of the charges to enable an assessment on whether the individual service charge elements were recoverable under the terms of the lease.
56. Mr Simon's response for the Applicant was that the Respondent had a contractual liability to pay service charges on account, and that the figures in the Claim were taken from the previous landlord's records. In regard of the latter he relied on the document at [B330]. Mr Simon said he had no reason to believe that the previous freeholder did not issue demands. Mr Simon referred to a final electricity bill in the name of County Bideford Limited dated 23 March 2016 [B8], and a credit note from Risk Alliance, Insurance Brokers Limited issued to County

Bideford Limited dated 1 February 2016 [B57] to demonstrate that the former landlord was providing services during the relevant period.

57. Mr Simon contended that the Respondent had only pleaded two issues in his defence, namely that he had paid the ground rent and insurance charges to 2015, and that the Respondent had refused to pay for service charges because no services were provided by the Applicant. According to Mr Simon, it was only necessary for the Applicant to provide evidence rebutting the Respondent's defence. The Tribunal observes that Mr Simon's later submissions that the Applicant was obliged to prove the Respondent's liability to pay and the reasonableness of the charges were at odds with his earlier contention that the Applicant only had to adduce evidence to refute the Respondent's defence.
58. The Tribunal is required to ask three questions when determining liability to pay service charges: (1) Are the charges recoverable under the lease? (2) Are the charges reasonable? (3) Have the other statutory limitations of recoverability of service charges been met (such as the 18 month limitation on service charges under section 20B of the 1985 Act, and the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987)?
59. The general rule regarding burden of proof in service charge disputes before the Tribunal is that it lies on the person who brings the application. Where the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard under section 19 of the 1985 Act *Schilling v Canary Riverside* [unreported 2005 LRX/26/2005].
60. In this case the burden was on the Applicant to prove that the charges were payable and that the costs were reasonable. The Applicant's sole piece of evidence in respect of the service charges for the period 1 October 2010 to 1 October 2015 was the document "Tenant Account" at [B330]. There was no evidence to substantiate the provenance of this document. The document itself gave no indication of its origin save for a date of 22 May 2019 in the top right hand corner which suggested that it was the Applicant's document and not the one prepared by the previous freeholder.
61. The Tribunal's findings above at [55] demonstrate that the Applicant has failed to discharge the burden of proof. Mr Simon's response to the total absence of evidence to substantiate the Applicant's case was that the Applicant had prepared its case on the basis of the Respondent's pleadings. The Tribunal does not understand Mr Simon's submission. The Respondent in his pleadings denied liability to pay the service charges and he required the Applicant to prove its case by supplying all accurate accounts and receipts of previous years for all services. In the Tribunal's view the Applicant has lamentably failed to do that.

62. **The Tribunal determines that the Respondent is not liable to pay the service charges of 1.10.2010 £216.13 (balancing payment); 1.10.2010: £860.60; 1.10.2011: £940.44, 1.10.2012 £379.67; 1.10.13: £661.97; 1.10.14 £629.82; and 1.10.15: £405.55. This determination in respect of the charges imposed on 1 October 2010 is in addition to the determination under the Limitation Act 1980.**

Charge for the 30 September 2016

63. The amount in question is an on account charge of £1,142.50 (30.9.2016) for the service charge year ended 30 September 2017.
64. The right to demand service charges in advance should be expressly provided for in the lease. Paragraph 1 of Schedule 4 to the lease gives the Applicant the authority to demand service charges on account on 30 September for the ensuing year.
65. The contractual position, however, is modified by section 19(2) of the 1985 Act which provides that
- “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”.
66. The effect of section 19(2) is to modify the contractual obligation so that no greater amount than is reasonable is payable before the relevant costs are incurred. The language of the subsection suggests that the statutory ceiling applies at the time the leaseholder’s liability arises. If, at that date, the on-account payment is greater than a reasonable sum, the leaseholder’s contractual obligation is to pay only the lesser reasonable sum⁵.
67. Under section 19(2) the Tribunal is not concerned with the reasonableness of the contractual obligation but only with the reasonableness of the proposed amount.
68. In the Upper Tribunal decision of *Charles Knapper and others v Martin Francis and Rebekah Francis* [2017] UKUT 3 LC Para 30. Martin Rodger QC Deputy Chamber President indicated:

“In principle it seems to me that the FTT was correct in disregarding matters which became known only after the appellants’ contractual liability arose. Those facts did not turn what had been a reasonable

⁵ UT Decision in *Charles Knapper and others v Martin Francis and Rebekah Francis* [2017] UKUT 3 LC Para 30.

sum into an unreasonable sum. The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked”.

69. The decision in “*Knapper*” established the principle that the question of the reasonableness of the proposed amount should be assessed against the circumstances known at the time of the demand. Martin Rodger QC, however, in the later decision of *Avon Ground Rents Limited v Mrs Rosemary Cowley and Others* [2018] UKUT 92(LC) emphasised that whether an amount is reasonable as a payment in advance is not generally to be determined by the application of rigid rules, but must be assessed in the light of the specific facts of the particular case. In this regard Martin Rodger QC at paragraph 51 referred to the Lands Tribunal decision in *Parker and Beckett v Parham* LRX/35/2002:

“It is not inconsistent with the Tribunal’s decision in *Knapper* for the likelihood of a particular event occurring during the period covered by an advance payment to be taken into account in determining the reasonableness of the amount of the payment. In *Parker* the Tribunal mentioned at several points that the certainty that works would be carried out, and thus the certainty of the anticipated costs, were matters which it was permissible to take into account in considering the reasonableness of the advance payment: “if the cost of the works is uncertain, so that there is a wide range of possible outcomes around the amount that the LVT has found to be reasonable, that could well be something that could affect the reasonableness of an advance payment” .

70. The decision in *Wigmore Homes (UK) Limited v Spembly Works Residents Association Limited* [2018] UKUT 252 LC established that the onus must be on the landlord to establish the reasonableness of the estimate. This decision also said that the landlord’s knowledge of the level of actual expenditure over a period of time is a relevant factor in determining whether the on account charge is no greater amount than is reasonable.
71. The Tribunal has already noted that the Applicant adduced no witness statements or provided an explanation of approach to budgeting or service charges. Thus, there was no direct evidence from the Applicant as to how it arrived at the figures in its demands. Equally there were no budgets of expenditure nor any direct evidence of what factors the Applicant took into account when making the demand.
72. The Applicant’s only evidence against which the Tribunal could assess the reasonableness of the demands was the service charge statement for the year ended 30 September 2016. This supplied actuals for 2015 and 2016. The actual for 2015 was £36,927.45 (excluding insurance and including the adjustment for the management charge), which provided a contribution calculated at 1/59th of £615.21. The actual for 2016

excluding insurance but with the adjustment for management charges was £27,285.92 which provided a contribution calculated at 1/59th of £462.47. These figures do not take into account the Baldwin adjustments.

73. The Tribunal considers on the evidence that a contribution that is no more than reasonable for the account charge should be within £462.47 and £615.21. The figure of £1,142.50 demanded by the Applicant is not substantiated on the evidence and is unreasonable within the meaning of section 19(2) of the 1985 Act.
74. The Tribunal's finds that the 2015 actual included a one-off charge of professional fees and a significantly higher figure for repairs and maintenance than for the 2016 actual, which suggested that there were specific repair and maintenance items dealt with during 2015.
75. The Respondent's principal submission on service charges was that the services supplied were not to the required standard. This is not a relevant matter for the determination of on account charges.
76. The Tribunal doing the best it can on the evidence decides that a contribution of £500 is an amount that is no more than reasonable which produces a service charge on account of £29,500 for the year ended 30 September 2017.
77. **The Tribunal determines that the on account service charge for the year ended 30 September 2017 at £29,500, and that the Respondent is liable to pay a contribution of £500 in respect of the demand issued on 30 September 2016.**
78. The Tribunal notes that the "Baldwin" decision determined the actual for the year ended at 30 September 2017 was £30,856.32 with a contribution calculated at 1/59th of £522.99. The Respondent would be liable to a balancing charge of £22.99 if the Applicant had issued a valid demand.

Charge for the 30 September 2017 and 30 September 2018

79. The amounts in question are on account charges of £1,510.84 (30.9.2017) and £1,382.93 (30.9.2018) in respect of the service charge years ended 30 September 2018 and 30 September 2019.
80. The Tribunal adopts the reasoning in the preceding paragraphs for the charge for the 30 September 2016 in relation to the on account charges for 2017 and 2018.
81. The Tribunal notes the Applicant's admission of the "Baldwin" decision. The Tribunal, therefore, adopts the Baldwin determination of

the on account service charge of £33,705.56 with a contribution calculated at 1/59th of £571.28 for the demand on 30 September 2017 in respect of the year ended September 2018.

82. The Tribunal finds that the evidence available for the 30 September 2018 on account charge would have been the actual for 2017 which was £38,261.86 (contribution of £648.51) in accordance with the service charge statement after deduction of insurance and adjustment of the management charge [B177 & 178] or the “Baldwin” calculation £30,856.69 (contribution £522.99), and the previous year actuals for 2015 and 2016.
83. The Tribunal doing the best it can on the evidence decides that a contribution of £600 is an amount that is no more than reasonable for the on account charge for the 30 September 2018 which produces a service charge on account of £35,400.00 for the year ended 30 September 2019.
84. The Tribunal determines that the on account service charges of £33,705.56 and £35,400.00 for the years ended 30 September 2018 and 30 September 2019 together with the respective contributions of £571.28 and £600 are reasonable.
85. The Tribunal finds that
 - a) The Applicant ceased to be the freeholder on 18 September 2017.
 - b) The amount on account for the year ended 30 September 2017 was due on 1 October 2017. The amount is payable to Ground Rent Trading Limited not to the Applicant.
 - c) The demand for the service charge on account for the year 1.10.2018 to 30.9.2019 was issued on 29 September 2018 but not exhibited in the documents bundle. The Applicant relied on the demand dated 31 August 2018 which showed that the landlord was Ground Rent Trading Limited not the Applicant.
86. **The Tribunal determines that the Respondent is not liable to pay the on account contributions of £571.28 and £600.00 to the Applicant for the years ended 30 September 2018 and 30 September 2019 because the Applicant was not the Landlord at the time the sums became due.**

Insurance

87. The Applicant claimed the following amounts in respect of insurance charges 1.10.2008: £145.69; 1.10.09: £164.17; 1.10.2010: £158.50; 1.10.2011: £85.66; 1.10.2012 £128.27; 1.10.13: £186.22; 26.7.14: £166.96; 25.7.2015: £127.36; 30.9.16: £154.86; 25.1.2017 £152.52: and 25.1.18: £161.93.
88. Under the lease the Applicant is entitled to demand such sums as the Applicant may from time to time pay for the insurance of the demised premises in accordance with the lessor's covenant at clause 5(4). The covenant requires the lessor whenever required to but not more frequently than once in every twelve months to produce to the lessees the policies of such insurance and the receipt for the last premium. The demised premises is defined under the lease as that piece of parcel of the land with the bungalow thereon numbered 38.
89. The Respondent said that he had taken out his own insurance on his property because the Applicant had failed to respond to requests from leaseholders to produce receipts for payment of the premium and for copies of the insurance policy. The Respondent said that the Lenwood Country Club Owners Association recommended that the lessees should not pay the Applicant's insurance demands because of its concerns with the validity of the insurance. Mr Stephens in his statement dated 14 June 2016 exhibited at [A44] said that the Applicant had been extremely evasive when asked to produce any evidence that the insurance was valid. The Respondent stated that he had taken out insurance with Allianz Limited for which he was paying £10 a month.
90. The "Baldwin" decision recorded at [77] and [85]:

[77] The Tribunal has noted from the information in the Bundle that the Buildings Insurance premium is due on the 25 January when the policy is renewed. It has received no explanation as to how the Respondent calculates the contribution payable by the owners of the Bungalows. The policy schedules in the Bundle state that the insured premises are the Country Club and the bungalows. The policies include cover for loss of rent and other risks. The Landlord is only entitled to recover the cost of insuring the bungalows. The amount shown in the 2017 accounts is not correct because the ledger shows a refund of premium of £3,915 which was recorded in the 2016 as an expense in the 2017 accounts. The Applicant should receive a credit to his service charge account against the amount of £152.52 he paid in January 2017 towards the insurance premium. It is not possible for the Tribunal to calculate this sum.

[85] It would also be helpful if the apportionment of the Buildings Insurance premium is properly explained as it would demonstrate transparency on the part of the Respondent and avoid inadvertent double counting of charges. The Respondent also needs to demonstrate that it is charging the Lessee only for those insurance costs it is entitled to recover under the Lease.

91. The Tribunal asked Mr Simon a question about whether the Applicant had followed the advice of the Baldwin Tribunal about the transparency of the insurance charges to which no response was given. Later Mr Simon asserted that the issue was not whether the insurance was in place but that the amount demanded may require adjustment. Mr Simon offered no suggestion regarding the proposed adjustment.
92. The Applicant produced no evidence of the demands for insurance made by the previous freeholder.
93. The Applicant supplied no evidence to substantiate the premiums paid prior to 25 January 2016 and no evidence of the cover provided by the insurance.
94. The insurance charges for 30.9.16: £154.86; 25.1.2017: £152.52; and 25.1.18: £161.93 were demanded on 30.9.2016 [B351]; 12.1.2017 [B388], and 31.1.2018 [B392] respectively. The Summary of Tenants Rights and Obligations (Service charges) accompanying the demands were exhibited in volume B of the documents bundle for the demands of 12.1.2017 and 31.1. 2018. The demand of 31.1.2018 named the Applicant as the landlord which was incorrect as Ground Rent Trading Limited was registered as the proprietor of the freehold title on the 18 September 2017.
95. The service charge statement for the year ended 30 September 2016 [B3] recorded an actual of £6,740.91 for insurance and a refund of £3,915.60 in respect of the cancellation of the previous year's insurance [B57]. The Applicant effected a new policy of insurance for Lenwood Country Club from 25 January 2016 at a premium of £9,881.26 which was paid on the 21 April 2016 [B58-64]. The Applicant did not include the policy schedule for the risks covered by the insurance.
96. The service charge statement for the year ended 30 September 2017 [B84] recorded an actual of £14,027.23 for insurance. The nominal ledger at [B174] revealed that the £14,027.23 comprised £3,140.35 for the insurance year ended 24 January 2017, the refund of £3,915.60 (with a note "to make sure we get it") and £6,971.28 for the insurance year ended 24 January 2018. The invoice for the premium due of £10,218.95 for the year commencing on 25 January 2017 was exhibited at [B158]. The Applicant did not include the policy schedule for the risks covered by the insurance.
97. The service charge statement for the year ended 30 September 2018 recorded an actual of £10,649.03 for insurance. The nominal ledger recorded three entries which essentially comprised a series of adjustments to reflect that the period covered by the insurance 25 January 2018 to 24 January 2019 did not correspond with the accounting year ending 30 September [B328]. The invoice for the

premium due £10,849.39 for the year commencing 25 January 2018 was exhibited at [B218]. The Applicant exhibited details of the insurance policy at [B219-310]. The policy schedule issued on 2 January 2018 named the insured as Chancery Lane Investments Limited and Ground Rent Trading Limited, and the premises occupation as 62 holiday chalets plus club house. The sums insured were £11,135,209 for the buildings, £36,504 for contents and £292,500 for loss of rent. The breakdown of the premium was set out at [B221]: £9,166.81 (Property Damage events); £194.11 (Loss of Rent), £33.60 (Employers Liability), £1,308.87 (Property Owners liability) and £56 (Commercial Legal Expenses).

98. The Tribunal finds for the reasons given at [49] to [54] that the Applicant is prevented from recovering the charges for insurance of 1.10.2008: £145.69; 1.10.09: £164.17; and 1.10.2010: £158.50; because of the six year limitation period under the Limitation Act 1980.
99. The Tribunal finds that the Applicant adduced no evidence of the demands for insurance charges together with the Summary of Tenant's Rights and Obligations made by the previous landlord in respect of the period of 1 October 2008 to 25 July 2015.
100. The Tribunal finds that the Applicant supplied no evidence of the policies of insurance and the receipts for premiums in respect of the insurance charges for the period 1 October 2008 to 25 July 2015..
101. The Tribunal is satisfied that the Applicant has failed to discharge the burden of proof to show that the previous freeholder had taken out insurance for the demised premises and that costs had been incurred on providing such insurance. The Respondent raised these issues in his defence. The Tribunal, therefore, decides that the Respondent is not liable to pay the insurance charges demanded in the period 1 October 2008 to 25 July 2015.
102. The Tribunal finds that the Respondent is not liable to pay the charge of £161.93 demanded on 25 January 2018 to the Applicant because Ground Rent Trading Limited was registered as the proprietor of the freehold title on the 18 September 2017.
103. The Tribunal finds on the balance of probabilities that the charges for £154.86 and £152.52 demanded on 30 September 2016 and 25 January 2017 related to insurance which provided cover for the demised premises. The Tribunal has had regard to the policy for year commencing 25 January 2018 exhibited at [B218-330] and concluded that in all probability it represented the insurance conditions and terms for the two preceding years of 25 January 2016 and 25 January 2017. The Tribunal, however, is unable to determine how the Applicant has arrived at the figures of £154.86 and £152.52. The Tribunal also agrees with the Baldwin decision that it is likely that the charge paid by the lessees for insurance covers risks that are not authorised under the lease, such as the cover for the club house. Mr Simon conceded that the amount claimed for insurance may require adjustment. The Applicant was aware of the adjustment following the publication of the Baldwin decision. The Tribunal doing the best it can on the evidence decides

that a figure of £100 for each demand is reasonable. The Tribunal does not consider the other adjustment of a credit as suggested in the Baldwin decision is applicable in this case because the Respondent accepts that he had not paid the insurance charge demanded by the Applicant.

104. **The Tribunal determines that the Respondent is liable to pay charges of £100 for insurance in respect of each of the demands on 30 September 2016 and 25 January 2017.**

Administration Charges

105. The amount in dispute is £30 comprising of three separate sums of £10 for arrears letters sent on 11 April 2016, 11 October 2016 and 12 July 2018.
106. The letters were exhibited at [B346], [B352] and [B408]. The Tribunal notes that the letters of 11 April 2016 and 11 October 2016⁶ state that an administration charge of £12.50 for each letter has been added to the account. These amounts were not included in the statement of account. The amended claim specified £10 for each letter [A6]. The statement of account showed that the demand for £30 was sent on 12 July 2018 together with the Summary of Tenant's Rights and Obligations (Administration Charges) [B408-B410].
107. Clause 3(14) of the lease enables the Applicant to recover a charge of £10 as additional rent for the cost of a letter reminding a lessee to pay arrears of rent or insurance premium.
108. The Respondent made no representations on the charge for arrears letters.
109. The Tribunal is satisfied that the charge of £10 for each letter is authorised by the lease and that a charge of £10 is reasonable.
110. The Tribunal finds that the demand for the charge of £30 was made on 12 July 2018 when the Applicant had ceased to be the person entitled to payment of the charge.
111. **The Tribunal determines that the Respondent is not liable to pay the Applicant the sum of £30 as an administration charge because the Applicant was no longer the landlord on 12 July 2018.**

⁶ The letter exhibited at [B352] is dated 10 October 2016

The County Court

112. Judge Tildesley OBE sitting alone as a judge of the County Court exercising the jurisdiction of a district judge heard those matters that fall within the jurisdiction of the court.

Ground Rent

113. The Claimant claimed rent of £517 (1.10.09); £712.95 (1.10.10); £737.65 (1.10.11); £760.89 (1.10.12); £791.69 (1.10.13); £804.57 (30.9.14); £812.74 (30.9.15); £827.77 (30.9.2016), £852.60 (30.9.2017) and £872.21 (30.09.2018).
114. Under the lease the Defendant is liable to pay a ground rent of £495 multiplied by the RPI index and divided by 157.5 each year in advance on 30 September.
115. In order for the Claimant to be successful with its Claim for unpaid rent, it must establish that it is the person presently entitled to sue for the arrears, and that the Claim has to be brought before the expiry of the relevant limitation period. The Claimant must prove on the balance of probabilities that the rents have been properly demanded, and that the arrears are owing.
116. The Defendant said that he paid the rent up to and including 2015. The Defendant relied on the letter from TMB, the Defendant's mortgage company which confirmed that a cheque of £1,137.32 was sent to the solicitors for the former freeholders on 19 August 2013 in respect of ground rent and service charges owed by the Defendant [A45].
117. The Defendant also stated that he used to pay the rent in cash to a Mr Taylor who represented the former freeholder.
118. Mr Simon submitted that the payment from TMB related to a Court Order made on 2 October 2009 in the sum of £1,054.29 [A46] which related to arrears of ground rent and other charges prior to 2010. Mr Simon was sceptical about the Defendant's claim that he paid the rent in cash.
119. Mr Simon said that the arrears had been assigned to the Claimant when it acquired the freehold. Mr Simon adduced no evidence to substantiate his assertion.
120. The Court finds that the Claimant adduced no evidence that the rents from 1 October 2009 to 30 September 2015 had been demanded by the previous landlord, and no evidence of the accounts for the ground rent during that period.

121. The Court is satisfied that the Claimant had the evidential burden of proving the debt during the period of 1 October 2009 to 30 September 2015, particularly as the Defendant raised the defence that he paid the rent. The Claimant has failed to discharge the evidential burden in respect of the Claim for rents during this period.
122. The Court is also satisfied that the Claims for rent of £517 (1.10.09) and £712.95 (1.10.10) are caught by the Limitation period of six years. The Court adopts the reasoning of the Tribunal at [49-54].
123. **The Court for the reasons above dismisses the Claim for ground rent in respect of the following amounts and periods; £517 (1.10.09); £712.95 (1.10.10); £737.65 (1.10.11); £760.89 (1.10.12); £791.69 (1.10.13); £804.57 (30.9.14); £812.74 (30.9.15).**
124. The Court finds that the Claimant applied for payment of the rent of £827.27 due on 30 September 2016 on 19 September 2016 [B350] but the documents bundle did not include a notice under section 166 of the Commonhold and Leasehold Reform Act 2002 (2002 Act).
125. The Court finds that the Claimant issued a section 166 Notice for the payment of rent of £852.60 due on 30 September 2017 [B371] which named Chancery Lane Investments Limited as the landlord.
126. The Court finds that the section 166 Notice for the payment of rent of £872.21 due on 30 September 2018 named Ground Rent Trading limited as the landlord [B416].
127. **The Court decides that the Defendant is not liable to pay the ground rent of £827.27 due on 30 September 2016 until the Claimant serves a valid notice under section 166 of the 2002 Act.**
128. **The Court decides that the Defendant is not liable to pay the ground rents of £852.60 and £872.21 due on 30 September 2017 and 30 September 2018 respectively to the Claimant because Ground Rent Trading Limited is the person entitled to these payment because it acquired the freehold on 18 September 2017.**

Interest

129. Under Clause 14 (7) of the lease the Defendant is liable to pay interest at 10 per cent on any outstanding sums of money due under the lease from the date of the demand to the date of payment.
130. The Court has no discretion on the rate of interest because it is fixed by contract.
131. The Court orders interest of £123.68 on the amount of £600 (£500 service charge and £100 insurance) due on 30 September 2016 to date of judgment on 23 October 2019. The daily rate is 16 pence.

132. The Court orders interest of £17.42 on the amount of £100 due on 25 January 2017 to date of judgment on 23 October 2019. The daily rate is 3 pence.

Costs

133. Mr Simon on behalf of the Claimant applied for costs. The claim had been allocated to the Fast track which meant that costs are at large. Mr Simon had provided the Court with a N260 which sent out the details of the costs claimed in the sum of £14,303.72.
134. Mr Simon argued that costs should be on an indemnity basis because the obligation to pay costs was contractual.
135. The Court notes that the Claimant had not pleaded contractual costs in either its Claim or amended particulars.
136. The Court proceeded to deal with costs under the principles set out in CPR 44.2. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. The Claimant is the successful party in this case even though its amended claim has been substantially reduced.
137. The Court, however, considers in the circumstances of the case that there should be a departure from the general rule. The Court finds that this was a straightforward debt claim which was poorly prepared. As a result the Claimant was unable to prove a substantial part of its claim due to the lack of evidence. The Court also finds that the claim for service charges on account was exaggerated and that the Claimant pursued debts to which it was not entitled to because of the change of ownership of the freehold title.
138. The Court is obliged to weigh up the Claimant's conduct of its case against the fact that the Defendant went back on his agreement to settle the Claim in the sum of £5,350 following a Court mediation. The Defendant explained that he considered the agreement was unfair. The Court notes that the Defendant was not represented at the mediation.
139. The Court finds that the Defendant reneged on his agreement to settle but this must be viewed in the context that the Claimant in money terms has been successful in respect of only 4 per cent of its original claim. The Court decides that it should depart from the starting point that the Claimant is entitled to its costs, and make an Order that the Defendant pay 25 per cent of the Claimant's costs.
140. Turning now to the assessment of the costs as set out in N260. The Court finds the following facts.

141. This was a straightforward debt claim which did not require the services of Grade A solicitor. The Court considers that a Grade C fee earner could have competently conducted the case. The hourly rate for a Grade C solicitor in Devon is £146.
142. The Court allows the 9.8 hours for attendances which at the adjusted hourly rate works out at £ 1,430.80
143. The Court considers that the Claim did not require a skeleton argument and there is an element of duplication in the schedule of works done on documents. The court reduces this to 4.9 hours at a rate of £146 which equals £715.40.
144. The Court is satisfied that the 6 hours attendance at the hearing was excessive. The reason why the hearing took so long was a result of the poorly prepared case which involved adjustments of the Claim on the day. The Court decides that 4 hours is sufficient and that there should be 2 hours travelling time. The Claimant could have instructed a local agent. The Court determines an amount of £876 (6 hours x £146).
145. The Court does not consider the advice of Counsel was necessary in this case.
146. The Court assesses the costs at £3,022.80 The Court stands back and asks itself whether such an amount is proportionate to the issues at stake.
147. The Court determines an amount of £2,800 is proportionate to a straightforward debt claim. The Court adds to the costs the court fees of £648.35 plus an amount of £50 for travel and sustenance, which makes at total of £3,498.35.
148. **The Defendant is ordered to pay 25 per cent of the assessed costs which equals £875.**

Application for an Order Under Section 20C of the Landlord and Tenant Act 1985

149. The Court decided to make no order under section 20C of the 1985 Act because there is no power under the lease to recover legal costs through the service charge.

Appeals in respect of decisions made by the FTT

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).