



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

**IN THE COUNTY COURT at
Wandsworth, sitting at 10 Alfred
Place, London WC1E 7LR**

Tribunal reference : LON/00BA/LSC/2019/0366

Court claim number : FoAY907N

Property : Flat 4, 16 Arterberry Road, London,
SW20 8AJ

Applicant/Claimant : Paul Anthony Cleaver, Tribunal
Appointed Manager

Representative : In Person

Respondent/Defendant : Mrs Marbeth ~~Gorden~~Gordon

Representative : In Person

Tribunal members : (1) Judge Amran Vance
(2) Mr S Mason, BSc FRICS
(3) Mr L Packer

In the county court : Judge Vance

Date of Hearing : 16 March 2020

Date of decision : 9 April 2020

DECISION

Addendum added 15 June 2021
Errors regarding the spelling of Ms Gordon's surname corrected
on 15 June 2021 under Rule 50 of the Tribunal Procedure (First-
tier Tribunal) (Property Chamber) Rules

NB: Documents in bold and in square brackets below refer to pages in the hearing bundle provided by the applicant.

Summary of the decisions made by the Tribunal

1. We determine that the following sums are payable by Mrs ~~Gorden~~Gordon to Mr Cleaver, by way of service charge, for the **2017/18 Service Charge Year**, broken down as specified in the table below. Credit must be given to Mrs ~~Gorden~~Gordon for payments made in respect of the budgeted costs, when identifying her liability in respect of the actual costs for this year:
 - (a) **£9,260.50** in respect of the budgeted sum for that year, being her 25% apportioned contribution of the total sum of £37,042.00; and
 - (b) **£9,222.24** in respect of the actual costs incurred in that year, being her 25% apportioned contribution of the total sum of £36,888.95, including the cost of major works.

Item	Budgeted Amount	Budgeted Amount Payable - FTT Determination	Actual Amount	Actual Amount Payable -FTT Determination
General Repairs & Maintenance	£3,500.00	£3,500.00	£4,435.20	£4,435.20
Gutter Cleaning	£1,200.00	£1,200.00	£0.00	£0.00
General Cleaning	£2,000.00	£2,000.00	£95.00	£95.00
Refuse & Bin Costs	£300.00	£300.00	£0.00	£0.00
Garden Grounds & Maintenance	£1,872.00	£1,872.00	£225.00	£225.00
Electricity	£220.00	£220.00	£201.43	£201.43
Accountancy Fees	£650.00	£650.00	£650.00	£650.00
Health & Safety	£1,200.00	£1,200.00	£1,029.14	£1,029.14
Buildings Insurance Premium	£4,000.00	£4,000.00	£3,256.10	£3,256.10
Contingency	£0.00	£0.00	£2,850.00	£2,695.00
Reserve Fund	£20,000.00	£20,000.00	£19,052.08	£19,052.08
Management Services	£2,100.00	£2,100.00	£2,100.00	£2,100.00
Major Works	£0.00	£0.00	£3,150.00	£3,150.00
Totals	£37,042.00	£37,042.00	£37,043.95	£36,888.95

2. We determine that the following sums are payable by Mrs ~~Gorden~~Gordon to Mr Cleaver, by way of service charge, for the **2018/19 Service Charge Year**, broken down as specified in the table below. Again, credit must be given to Mrs ~~Gorden~~Gordon for payments made in respect of the budgeted costs, when identifying her liability in respect of the actual costs for this year:
- (a) **£4,183** in respect of the budgeted sum for that year, being her 25% apportioned contribution of the total sum of £16,732.00; and
- (b) **£5,135.50** in respect of the actual costs incurred in that year, being her 25% apportioned contribution of the total sum of £20,542.00.

Item	Budgeted Amount	Budgeted Amount Payable - FTT Determination	Actual Amount	Actual Amount Payable - FTT Determination
General Repairs & Maintenance	£3,000.00	£3,000.00	£6,024.70	£6,024.70
Plumbing Heating & Drain Maintenance	£1,200.00	£1,200.00	£1,764.60	£1,764.60
General Cleaning	£2,100.00	£2,100.00	£390.00	£390.00
Garden Grounds & Maintenance	£1,872.00	£1,872.00	£3,876.00	£3,876.00
Electricity	£220.00	£220.00	£315.18	£315.18
Accountancy Fees	£650.00	£650.00	£650.00	£650.00
Land Registry	£50.00	£50.00	£0.00	£0.00
Health & Safety	£540.00	£540.00	£240.00	£0.00
Buildings Insurance Premium	£5,000.00	£5,000.00	£5,079.52	£5,079.52
Contingency	£0.00	£0.00	£342.00	£342.00
Management Services	£2,250.00	£2,100.00	£2,250.00	£2,100.00
Totals	£16,882.00	£16,732.00	£20,932.00	£20,542.00

3. Credit also needs to be given to Mrs ~~Gorden~~Gordon in respect of the two payments made to Mr Cleaver in the total sum of £2,288.88 (on 18 May 2017 and 10 July 2017).

4. The sum of £16,591.51, claimed by Mr Cleaver for the period 1 June 2004 to 31 March 2017, prior to his appointment as manager, is not payable by Mrs ~~Gorden~~Gordon to him.

Background

1. In a decision dated 13 March 2017, in application LON/00BA/LAM/2016/0015, the applicant, Mr Cleaver, of Urang Property Management Limited (“Urang”), was appointed by the tribunal as the manager of 16 Arterberry Road, Wimbledon, London, SW20 8AJ (“the Building”) under the provisions of s.24 of the Landlord and Tenant Act 1987. His appointment commenced on 13 March 2017 and was for a three-year term. A separate application to extend his appointment has been made (LON/BA/LVM/2019/0019) and his appointment has been extended by the tribunal until final determination of that application.
2. The Building is a converted Victorian detached house, built circa 1890, containing five flats. Mrs ~~Gorden~~Gordon is the long leaseholder of Flat 4, a 2-bedroom flat on the first floor of the Building (“the Flat”). She has the benefit of the remaining term of a lease dated 24 March 1961, entered into between (1) Thurloe Developments Limited and (2) Dennis Ball (“the Lease”). She was registered as the leasehold owner on 3 January 1995 [92]. The freeholder is Mrs Cynthia Diana Rowley. Prior to Mr Cleaver’s appointment the Building was managed by Salter Rex, property agents, on behalf of Mrs Rowley. At the hearing of this application Mrs ~~Gorden~~Gordon stated that she believed Salter Rex’s appointment pre-dated her purchase of the Flat.
3. In its decision of 13 March 2017, the tribunal (“the 2017 tribunal”) recorded at paragraph 9, amongst other matters, that:
 - (a) there appeared to be a complete absence of any management of the by the landlord’s then agents, Salter Rex, in circumstances where proper management was urgently required;
 - (b) the condition of the Building was poor, with evidence of significant cracking to the front elevation, as well as water ingress, causing significant damp and damage to the structure of the building and other disrepair;
 - (c) there is confusion between the terms of the leases held by the long leaseholders in the Building. Mrs ~~Gorden~~Gordon appeared to have an older form of lease compared to the other leaseholders. The leases gave leaseholders the option of delegating their repairing obligations to a firm of managing agents, whose terms of appointment are to be determined by a majority view of the covenanting leaseholders. However, the tribunal was told that nobody was sure if Salter Rex were ever

validly appointed, and that this was why it stopped doing anything in 2013; and

(d) at paragraph 10, the tribunal determined that given the multitude of apparently intractable problems bedeviling the Building, including serious disrepair, badly drafted leases, unworkable voting procedures, ineffective management, and issues relating to insurance, as well as other factors, that it was just and convenient to appoint Mr Cleaver as the manager of the Building.

4. On about 18 February 2019, Mr Cleaver issued a claim against Mrs ~~Gorden~~Gordon in the County Court Business Centre (Claim Number FoAY907N) (“the County Court Claim”) in which he claimed the sum of £42,354.12 for arrears of service charge and ground rent, together with interest and contractual costs (said at that point to amount to £5,697.88).

5. Mrs ~~Gorden~~Gordon filed a defence, but no counterclaim, to the County Court Claim. In her defence, she raised the following issues:

(e) despite her requests, she had not received an explanation from Salter Rex, or from Urang, as to how service charges demanded had been calculated;

(f) disrepair was affecting her flat, which a judge in Kingston County Court had said, in 2004/5, should be remedied, but which had not been addressed;

(g) damage to her flat had been caused by ‘changes’ to the flat below;

(h) an inappropriate apportionment of service charge liability had occurred following changes made at the Building.

6. The claim was transferred to the County Court at Wandsworth, and then to this tribunal, by order of District Judge Parker, dated 12 September 2019. Following this transfer, the tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable by Mrs ~~Gorden~~Gordon.

7. An oral case management hearing (“CMH”) took place at the tribunal on 24 October 2019, before Judge Vance. Mrs ~~Gorden~~Gordon attended that hearing, as did Mr Joe Roberts, a property manager at Urang, engaged by Mr Cleaver.

8. At the CMH, Mr Roberts stated that:

- (a) the sum of £42,354.12 claimed in the County Court claim included the sum of £16,591.51 for the period prior to Mr Cleaver's appointment as manager. Salter Rex had provided Urang with a Statement of Account covering a period 1 June 2004 to 2 March 2017, that showed no payments at all being made by Mrs ~~Gorden~~Gordon towards service charges for the whole of that 13-year period. The remainder of the sum claimed in the County Court Claim concerned the period after Mr Cleaver's appointment, including costs incurred in respect of major works to the exterior of the Building ("the Major Works");
- (b) Salter Rex had not, however, provided Urang with service charge accounts covering the period prior to Mr Cleaver's appointment, nor invoices, or copies of service charge demands sent to Mrs ~~Gorden~~Gordon. He acknowledged, that this may give rise to potential problems in proving Mrs ~~Gorden~~Gordon's liability to pay service charge arrears prior to Mr Cleaver's appointment, including potential limitation issues, but Mr Cleaver considered he had a responsibility to all leaseholders to try to recover these arrears;
- (c) the last time major works had been carried out at the Building was in about 1996/7, and the poor condition of the Building led to Mr Cleaver carrying out a statutory consultation under s.20 Landlord and Tenant Act 1985, prior to commencing Major Works about two months before the CMH.

9. Mrs ~~Gorden~~Gordon's position at the CMH was:

- (a) she accepted that it was possible that she had paid nothing towards service charges for the 13-year period prior to Mr Cleaver's appointment, but argued that that this was because Salter Rex had not provided her with copies of the service charge demands, nor a breakdown of the costs claimed;
- (b) there had previously been County Court claims against her seeking arrears of service charges;
- (c) following Mr Cleaver's appointment, she made two payments of £2,288.88 (on 18 May 2017 and 10 July 2017) but that she has since withheld payment because of lack of repairs to her Flat. She said that her Flat suffers from water penetration due to the deteriorating condition of the external wall and cracks in the ceilings in her Flat.

10. Mr Roberts confirmed that the amount claimed in the County Court Claim for the service years ending 31 March 2018, and 31 March 2019,

were estimated (budgeted sums) but that final accounts for those years are now available. Both parties agreed to the tribunal determining Mrs ~~Gorden~~Gordon's liability not only for the estimated costs for those two years, but also her liability in respect of the actual costs incurred.

11. At the CMH, the parties were notified that as the County Court has transferred the whole of this claim to the tribunal, the judge who was to eventually hear the case would deal with all the issues in the claim, including ground rent, interest and contractual costs. The judge is empowered to do so as a result of amendments made to the County Courts Act 1984, by which judges of the First-tier Tribunal are now also judges of the County Court. This means that, in a suitable case, the judge can also sit separately as a District Judge of the County Court, and can decide issues that would otherwise have to be separately decided in the County Court; and this might result in savings in time, costs and resources. The parties agreed for this matter to be dealt with in this way.
12. At the CMH, Judge Vance informed Mrs ~~Gorden~~Gordon that she should seek to obtain legal advice concerning this claim as it gives rise to quite complex legal issues and because the sum in issue is large. She was directed to the tribunal's reception desk to obtain details of legal advice agencies that might be able to provide her with free legal advice.
13. Directions were issued on 24 October 2019, which identified the issues requiring determination by the **tribunal** as:
 - (a) Mrs ~~Gorden~~Gordon's liability to pay towards service charges for the service charge years 2003/4 to 2018/19 inclusive (for the years 2017/18 and 2018/19, the tribunal will determine her liability to pay both the estimated costs and the actual costs payable by her);
 - (b) whether, for the years in dispute, service charges have been properly demanded from Mrs ~~Gorden~~Gordon and whether the limitation provisions of section 20B of the 1985 Act apply in respect of any of the costs claimed;
 - (c) whether any of the costs claimed have already been the subject of a determination by the county court that would deprive this tribunal of jurisdiction;
 - (d) whether the sums said to be demanded from Mrs ~~Gorden~~Gordon have been apportioned in accordance with the provisions of her lease, and if that apportionment is reasonable;

- (e) whether sums demanded from her towards a reserve fund are payable by her, including whether they are reasonable in amount;
 - (f) whether Mr Cleaver has complied with the consultation requirement under section 20 of the 1985 Act in respect of the Major Works;
 - (g) whether the sum demanded from her towards the estimated costs of the Major Works is payable by her, including whether the apportionment of that sum is reasonable;
 - (h) whether Mrs GordenGordon has a defence of set off to the s.27A application, for breach of covenant of the freeholder's repairing obligations; and
 - (i) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made in Mrs GordenGordon's favour.
14. The issues requiring determination by the judge, sitting as a County Court judge, were identified as Mrs GordenGordon's liability to pay:
- (a) ground rent;
 - (b) interest; and
 - (c) contractual legal costs; and
 - (d) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made in Mrs GordenGordon's favour.
15. The directions of 24 October 2019 required Mrs GordenGordon to set out her case in the form of a Scott Schedule, to be accompanied by any alternative quotes or documents relied upon, and a statement containing any legal submissions relied upon. Mr Cleaver was then to respond, and Mrs GordenGordon was permitted to send a reply by 14 February 2020, including any witness statements relied upon.
16. Although Mrs GordenGordon set out her initial case in a Scott Schedule [52-63], her representations only covered the 2017/18 and 2018/19 service charge years. She did not refer to the sums claimed for the years 2003/4 to 2016/17, and nor did she make any representations regarding: the limitation provisions of section 20B of the 1985 Act; whether Mr Cleaver had complied with the consultation requirement under section

20 of the 1985 Act in respect of the Major Works; or whether she has a defence of set off to the s.27A application.

17. Nor did she serve a reply, despite Judge Vance extending the deadline for her to do so to 6 March 2020. Her explanation for this was that she had been unable to do so as, despite her efforts, she had been unable to obtain legal advice concerning the application.
18. Mr Cleaver has included copies of service charge demands sent to Mrs ~~Gorden~~Gordon in the hearing Bundle [242-257]. As Mrs ~~Gorden~~Gordon has not contended otherwise, we proceed on the basis that these costs were properly demanded from her. She also confirmed at the hearing of the application that she was not contending that the s.20 consultation in respect of the Major Works was defective. Although she had concerns about s.20 consultation notices issued by Mr Cleaver in respect of Intercom Works [357-358], those works are not included in the costs under consideration in this application. We address the question of set-off, and the question of apportionment, below.

The hearing

19. At the hearing of the application on 16 March 2020, the applicant was represented by Mr Roberts. We were informed that Mr Cleaver was unable to attend as he was self-isolating as a result of the Covid-19 pandemic. Also present on behalf of the applicant was Mr Daniel Wand of counsel, but he was briefed to attend in relation to the question of costs only. Mrs ~~Gorden~~Gordon appeared in person. Mr Alistair Stewart, the leaseholder of Flat 2 was present as an observer. Mrs ~~Gorden~~Gordon's objection to his presence on the basis that he was not a party to the claim was rejected by the tribunal, and by Judge Vance, because this was a public hearing and there was no reason to depart from the usual principle of open justice that entitled members of the public to be present.
20. Neither party requested an inspection of the Building; nor did the tribunal or Judge Vance consider that one was necessary, or that one would have been proportionate to the issues in dispute.

TRIBUNAL ISSUES

Decisions and reasons

Historic arrears prior to Mr Cleaver's appointment

21. The tribunal first considered the amount of £16,591.51 claimed by Mr Cleaver for the period 1 June 2004 to 31 March 2017.

22. Mr Robert's position was that paragraph (iii) of Service Charge section of the Schedule of Functions and Services in the Management Order empowered Mr Cleaver to "*instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent and/or the Manager*". Reference to "the Respondent" was, of course, a reference to Mrs Rowley, the freeholder. We were told that Mr Cleaver considered he was obliged, by virtue of this provision, to seek to recover pre-appointment arrears of ground rent and service charge from the respondent. The sum of £16,591.51 claimed was, said Mr Roberts, the opening balance recorded on Mrs GordenGordon's account, on handover to Mr Cleaver [297].
23. Mr Roberts drew our attention to a Statement of Account for Mrs GordenGordon [274], provided by Salter Rex, that shows arrears of ground rent and service charge rising from £3.75 on 28 September 2004 to £17,336.14 on 2 March 2017. Not a single payment from Mrs GordenGordon is recorded in that statement. In response to the directions issued at the CMH, Mrs GordenGordon provided the applicant with copies of service charge demands she had received from Salter Rex. No payments from her are recorded in balances shown in those demands.
24. As stated above, Mrs GordenGordon did not address the payability of these historic arrears in her Scott Schedule. Her position at the hearing was that she withheld payments to Salter Rex because she believed it had apportioned service charges incorrectly to her, and because she considered she was being charged for costs incurred prior to her purchase of her Flat.

Tribunal's Decision on historic arrears

25. We are satisfied, on the evidence before us, that Mrs GordenGordon did not pay any sums of ground rent or service charge to Salter Rex between 1 June 2004 to 31 March 2017. This is the stark indication on the Statement of Account provided and the lack of payments shown on the demands disclosed by Mrs GordenGordon following the CMH. Indeed, she herself accepted that she may not have made a payment during this period. Despite this, in our determination, Mr Cleaver is not entitled to recover the sum of £16,591.51 from Mrs GordenGordon for the reasons that now follow.
26. The copy of Mrs GordenGordon's Lease in the bundle [14] is, in part, illegible, but a copy of the lease for Flat 3 has been provided [105] which assists in reading the terms. The lease for Flat 3, whilst not identical, appears to be in substantially the same terms as Mrs GordenGordon's lease.
27. There service charge mechanism is not set out in the main body of the Lease. It is instead, set out in an Estate Deed of Covenant, located at

Schedule Four of the Lease. At clause 3(g) of the Lease, Mrs ~~Gorden~~Gordon covenants:

“To execute and comply in all respects with the provisions of the Estate Deed of Covenant and to keep the Lessor fully and effectually indemnified from and against all or any breach or non-performance of the same thereof”.

28. Clause 6 of the Lease contains a lessor’s covenant to insure the Building, and to maintain, repair and redecorate its main structure, gas and water pipes and other service media, and the common parts of the Building. However, clause 7 provides that once all the leaseholders in the Building have entered into the Estate Deed of Covenant the lessor’s covenants in Clause 6 are substituted by the mutual covenants given by the leaseholders in the Deed, with the lessor released from any further obligation under the former covenants. The applicant asserts, and Mrs ~~Gorden~~Gordon did not disagree, that all leaseholders entered into the Deed of Covenant prior to the service charge years included in the County Court claim.

29. Paragraph 1 of the Deed of Covenant contains a covenant by the Covenantee Parties (the leaseholders) to:

“observe and perform the covenants hereinafter appearing and to keep the Lessor fully and effectually indemnified from and against all or any breach non-performance or non-observance of the same and subject the joint and several liability hereof to contribute and pay in the proportion set out in the Fifth Schedule hereto such sums as are equal to the entirety of the costs outgoings and matters hereinafter contained and arising within fourteen days of the same being due and payable.....out of which fund so far as the same permits the costs and expenses as in this Deed provided shall be met PROVIDED ALWAYS that the Covenantee Parties shall be responsible in the proportions as aforesaid for the actual costs and expenses....”

30. The proportion that Mrs ~~Gorden~~Gordon must pay towards these costs (defined in the Estate Deed as the “Maintenance Charge”) is specified in the Fifth Schedule as being one quarter, in other words, 25%.

31. Paragraph 2 of the Deed of Covenant contains a covenant by the leaseholders *“with each other and as a separate covenant with the Lessor that they will at their own expense...”* maintain, repair and renew the structure of the Building, insure it, and maintain, redecorate etc. the common parts of the Building, the front lawns and front flowerbeds, hedges, shrubs trees and gardens adjoining the front of the Building and the front footpaths, drives and standings.

32. Paragraph 3 allows the Covenantee Parties to delegate their obligations under the Deed to a firm of managing agents, *“whose management fees are shall be met and the appointment and terms of appointment of whom shall be determined by the majority view of the Covenantee Parties (but in the event of there being no majority decision the Lessor shall have a casting vote).....”*.
33. In summary therefore, once all leaseholders entered into the Deed of Covenant, they, as the Covenantee Parties, became obliged to maintain, repair etc. the Building, and its common parts, in place of Mrs Rowley. They also agreed to contribute towards the costs of doing so in the proportions set out in the Fifth Schedule to the Lease, and to indemnify Mrs Rowley in respect of any non-performance of those obligations. The leaseholders have the option of appointing a managing agent to carry out their obligations, but such appointment requires a majority of them to agree to the appointment, with, in the event of deadlock, Mrs Rowley having the casting vote.
34. There is no evidence at all before us to indicate that Salter Rex was appointed by the leaseholders to manage the Building and to carry out the leaseholders’ obligations under the Lease and Deed of Covenant. On the contrary, the evidence before the 2017 tribunal, led it to indicate that there was considerable doubt as to whether Salter Rex were properly appointed. If that is correct, then Salter Rex had no authority to demand service charges from Mrs ~~Gorden~~Gordon.
35. At paragraph 9 of its decision, the 2017 tribunal described how four leaseholders, but not Mrs ~~Gorden~~Gordon, had entered into a new Estate Deed of Covenant, in substantially the same terms as the previous Deed, when extending their leases under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993. The tribunal then said as follows:

“We were told that Salter Rex, the current managing agents, were ostensibly appointed by a majority of lessees, but no one is sure, including Salter Rex, that they have ever been validly appointed. It was largely for this reason, we were told, that they stopped doing anything in 2013. When, in or about March 2016, a majority of lessees did indicate that they wished to appoint new agents, Salter Rex replied as follows: “Mrs Rowley is the client and you will need to seek her agreement to this. The procedure once a termination is agreed, will be for us to prepare a closing account and any deficit in the account, including our management fees paid before all documents can be handed over.”

36. In our determination, Mr Cleaver is not entitled to an order in respect of the historic arrears for the following reasons:

- (a) although paragraph (iii) of the Management Order empowers him to collect service charges due to Mrs Rowley prior to his appointment, it appears that, at all relevant times, it was the leaseholders who were obliged to comply with the repairing, maintenance, insuring and other obligations set out in clause 2 of the Deed of Covenant, and not Mrs Rowley. The cost of doing so was at the leaseholders “own cost and expense” and the costs incurred were not incurred by, or on behalf of the landlord, and therefore do not fall within the definition of ‘relevant costs’ in section 18(2) Landlord and Tenant Act 1985; and
- (b) the available evidence does not establish that Salter Rex was authorised by a majority of leaseholders to manage the Building and collect in service charges. In addition, even if it was properly instructed, the costs incurred fall outside the remit of the Management Order, which only provides for Mr Cleaver to recover service charges and monies payable to him, or to Mrs Rowley, not to Mrs GordenGordon’s co-leaseholders.

37. The sum of £16,591.51 claimed by Mr Cleaver for the period 1 June 2004 to 31 March 2017 is therefore not payable by Mrs GordenGordon to him. It may well be that Mrs GordenGordon is liable to reimburse her co-leaseholders for some or all such costs, but that is not a matter for us to determine in this application.

38. It is worth noting that Mrs Rowley’s lack of standing to pursue service charge arrears for costs incurred by Salter Rex was raised in previous county court proceedings. Documents provided by Mrs GordenGordon indicate that on 26 November 2007 her solicitors, Howard Kennedy, wrote to Hertford County Court [377] referring: to (a) a default judgment obtained by Mrs Rowley against Mrs GordenGordon on 13 September 2016, in Claim 6HF01577, in the sum of £4,888.44 [375]; and (b) Claim 7HF0074, in which Mrs Rowley was seeking an order for payment by Mrs GordenGordon of £4,625.06. The solicitors point out that the default judgment was improperly obtained because under the terms of the Lease, Mrs Rowley was not entitled to recover service charge from Mrs GordenGordon. Rather, any claim would have to be brought by the other leaseholders of the Building.

39. Following that letter, Mrs Rowley discontinued claim 7HF0074 on 27 June 2018 [390] and an application to set aside the default judgment [393] was stayed on 25 March 2009, for settlement negotiations to take place [397]. Given that the order sought in Claim 6HF01577 covered the period 29 September 2002 to 7 April 2006 [373] and that Claim 7HF0074 appears to have been issued on 22 May 2007 [377] some of the arrears of £16,591.51 claimed by Mr Cleaver were clearly the subject of this earlier litigation, with the ultimate outcome of Claim 7HF0074 uncertain from the documents before us. It is therefore possible that

issues of estoppel may arise that prevent Mrs Rowley from seeking to claim that some, or all, of that sum is payable by Ms GordenGordon, but that is not a question that we need to consider, given our above determination that the sum is not payable by Mrs GordenGordon to Mr Cleaver.

Apportionment

40. It is clear from Mrs GordenGordon's comments on her Scott Schedule that the question of apportionment was the main, or only, issue raised by her in respect of many of the heads of expenditure for the two relevant service charge years. As stated above, under the Deed of Covenant, her apportioned share is 25%. That same apportionment of 25% is specified at paragraph (ii) of the Service Charge section of the Schedule of Functions and Services in the Management Order.

41. In Ms GordenGordon's submission, her apportioned share should only be 20%. Her reasoning is not explained in her Scott Schedule, but it would appear to be that she considers it is unreasonable for her to have to pay 25%, given that there are five flats in the Building. However, for those years prior to Mr Cleaver's appointment she was contractually bound to pay 25% of the costs for which she was liable pursuant to the terms of her Lease, and the Deed of Covenant. After his appointment, the same percentage was specified in the Management Order, which is a binding determination as to her apportioned contribution. If Mrs GordenGordon considers the apportionment under the Management Order to be unfair, she is entitled to apply to the tribunal to seek a variation in the terms of the Order, but unless and until the Order is varied, that is the percentage that she is liable to pay.

2017/18 Service Charge Year

42. The service charge accounts for the 2017/18 year identify that the budgeted amount for that year was £37,042, including a reserve fund contribution of £20,000, with an actual spend of £33,893.95, plus £3,150 in respect of the Major Works [284]. Eleven heads of general expenditure are listed in the accounts, all of which were queried by Mrs GordenGordon in her Scott Schedule. However, during the course of the hearing, after receiving an explanation from Mr Roberts as how the costs were incurred, Mrs GordenGordon stated that she no longer wished to pursue a challenge to the following heads of expenditure: refuse and bin costs; electricity; accountancy fees; health and safety; buildings insurance premium; and management services.

43. She also agreed that the reserve set in the sum of £20,000 was appropriate. We concur, given that Major Works in the sum of approximately £100,000 have been identified as being required. However, once those works are complete, we would expect the reserve fund contributions demanded to reduce significantly.

44. That left the following costs in issue: (a) general repairs and maintenance; (b) gutter clearing; (c) general cleaning; (d) garden and grounds maintenance; (e) contingency costs; and (f) costs of major works.

General repairs and maintenance - budgeted sum £3,500, and actual cost, £4,435.20.

45. The only comment made by Mrs GordenGordon in her Scott Schedule in respect of this cost was “*I have no way of identifying items which contribute to this spend [sic] amount. It is impossible to comment further*”. Mr Cleaver has completed the Scott Schedule, with his comments in response, and states that Mrs GordenGordon has never asked for a breakdown of these costs, nor copies of the invoices in question. He goes on to list each invoice and describes the works undertaken, for example repairs to the intercom system and a callout to service the communal drains. Copies of the invoices were included in the hearing bundle [132-146].

46. We do not consider Mrs GordenGordon has raised a *prima facie* defence to the payability of these costs. She has asked for an explanation, and she has received it. We see no reason to question the sums identified in the invoices provided, and in the absence of any substantive challenge from Mrs GordenGordon, we determine that both the budgeted costs and the actual costs incurred are reasonable in amount and payable by her.

Gutter clearing - budgeted sum £1,200, and actual cost, nil.

47. Mr Roberts explained that when the budget was set, Mr Cleaver assumed a cost of £1,200 for gutter clearing based on his experience of managing properties of a similar size and build. In the event, however, no gutter clearing was required, and therefore the actual spend was nil. Mrs GordenGordon's only comment in her Scott Schedule was that she could not comment further until she knew why the budget was set.

48. In our determination, it was reasonable for Mr Cleaver to set a budget in this amount, based on his experience of managing similar properties. It is clear from the photographs in the condition report provided in the bundle [541] that the Building is of a substantial size, with significant amounts of guttering present.

General cleaning - budgeted sum £2,000, and actual cost, £95.

49. Mrs GordenGordon did not challenge the actual spend of £95, but queried the budgeted amount, which she considered excessive for a property of this size and nature.

50. It appears from the Lease plan for the Building [25] that there are corridors, a stairwell and a hallway in the communal parts. As mentioned above, the Building is of a substantial size, and in our determination, it was reasonable for Mr Cleaver, as an incoming manager, to set a budget in the amount of £2,000, which equates to approximately £9.60 per week to Mrs ~~Gorden~~Gordon.

Garden and grounds maintenance - budgeted sum £1,872, and actual cost, £225.

51. In her Scott Schedule, Mrs ~~Gorden~~Gordon states that there is no garden area to maintain as it was “appropriated by Flat 1 for car parking in contravention of the lease”. Mr Cleaver’s response is that there are sizable gardens at the front and rear of the Building for the use of all leaseholders, and that a professional gardener was employed to maintain these areas. He did not understand Mrs ~~Gorden~~Gordon’s reference to appropriation.

52. At the hearing Mr Roberts explained that whilst the rear garden areas are demised to the leaseholders of Flats 1 and 2, there are communal planted garden areas at the front of the Building and along its side, with bushes at the front and trees to maintain. The copy invoice provided [149] indicates that only one visit took place between March and August 2017. The sum billed was £150 for supply of plants and labour and £75 for removal of ivy from the wall, cleaning around the gas meter and the removal of cuttings.

53. It is evident from the lease plan [25] and the photographs in the condition report provided in the bundle [541] that there is a small garden area at the front of the Building, facing Arterberry Road with a pathway to the left hand side (facing) of the Building leading to a rear court area and garages. At the hearing Mrs ~~Gorden~~Gordon accepted that there were bushes at the front of the Building and plants and trees along the side pathway, but she considered this required minimal attention. However, the photographs and plan suggest that whilst not a large garden area, it is significant. In our assessment as an expert tribunal, maintaining the ivy and verges, as well weeding and, maintaining the trees and bushes, would require about four to five hours gardening time per fortnight.

54. In our determination, the budgeted sum was reasonable, given that Mr Cleaver was an incoming manager, and given the difficulties he states he experienced in obtaining accounting information for previous service charge years from Salter Rex. As to the invoice of £225, we consider the amount reasonable for the work carried out, especially given that this was the only maintenance carried out over an approximately five-month period.

Contingency costs - budgeted sum £nil, and actual cost, £2,850.

55. These actual costs break down as £216 for carpet cleaning, £330 for Land Registry costs, and £2,304 for surveyors' costs. Invoices for the surveyors' costs indicate that the costs concerned an external and structural survey in the sum of £1,440 [163] and preparation of a specification for external works amounting to £864 [164] At the hearing, Mrs ~~Gorden~~Gordon accepted these costs were payable by her.
56. Mr Cleaver's position is that the carpet in the communal areas of the Building was cleaned in December 2017, at a cost of £216. We do not agree with Mrs ~~Gorden~~Gordon's contention that it was unreasonable to do so in December as it would quickly result in the carpet becoming dirty again. The timing was not unreasonable. Mrs ~~Gorden~~Gordon made no substantive challenge to amount incurred and we determine the sum payable by her.
57. We were not provided with an invoice for the Land Registry fees, but Mr Cleaver's position was that in order to manage the Building he needed to obtain copies of the flat leases from the Land Registry. Mr Roberts explained at the hearing that the cost broke down as a £220 administration charge for a legal administrative assistant, and about £10 per flat for the actual charges. These had, he said, been requested from Salter Rex, but he did not believe they were provided.
58. Mrs ~~Gorden~~Gordon's only substantive challenge to the Land Registry fees was that if the work was necessary, she should only have to pay 20% of the cost. However, as noted above, she is liable to contribute 25% of the cost payable. We consider that obtaining a copy of the lease, register and title plan online should cost about £10 for each of the five flats, but that this should take no more than an hour of administrative time, at the property manager's rate of £125 per hour allowed by paragraph (i) of the Fees Section of the Schedule to the Management Order. We therefore consider the amount payable by Mrs ~~Gorden~~Gordon is her apportioned share of £175, making the total sum payable under this head of expenditure £2,695.

Major works – Actual Cost, £3,150.

59. At paragraph 4.0 of the condition report obtained by Mr Cleaver from a building surveyor, Mr Theakstone, dated 16 May 2017 [541] Mr Theakstone recommends that major external works to the Building be carried out, preferably by no later than summer 2018, at an estimated cost of £100,000.
60. Mr Roberts explained that the costs concerned fees incurred by Mr Cleaver in preparation for such works, billed as per the provision in (ii) of the Fees section of the Schedule to the Management Order, that allows him to charge for matters such as the preparation of a specification of works, obtaining competitive tenders, serving required notices on leaseholders and the supervision, and administration of works. The sum

breaks down as £600 for sending section 20 consultation notices to leaseholders, £2,400 for dealing with the second stage of the consultation process including sending out notice of estimates to leaseholders [169] and dealing with the tendering process, and £100 addressing observations received from Mrs ~~Gorden~~Gordon [170].

61. Mrs ~~Gorden~~Gordon agreed that these major works were required and raised no substantive challenge to the payability of these costs other than to question the apportionment between the leaseholders.
62. In our determination, the costs were reasonably incurred in accordance with the provisions of the Management Order. Although, overall, the Order limits his fees to 10% of the cost of the works, we consider it appropriate for Mr Cleaver to bill for such work in stages, and that the amounts billed are not unreasonable for the work carried out. The sum is payable by Mrs ~~Gorden~~Gordon in her 25% apportioned share, as specified in the Management Order.

2018/19 Service Charge Year

63. The service charge accounts for the 2018/19 year identify that the budgeted amount for that year was £16,882, with an actual spend of £14,682 [297]. Again, all heads of expenditure listed in the accounts were queried by Mrs ~~Gorden~~Gordon in her Scott Schedule, but during the course of the hearing, and after receiving an explanation from Mr Roberts as how the costs were incurred, she stated that she no longer wished to pursue a challenge to the following heads of expenditure: electricity; accountancy fees; and management services (Mr Roberts agreeing to limit these to £2,100 as provided for in the Management Order, as opposed to the sum of £2,250 specified in the accounts).
64. That left the following costs in issue: (a) general repairs and maintenance; (b) plumbing, heating and drain maintenance; (c) general cleaning; (d) garden and grounds maintenance; (e) Land Registry charges; (f) health and safety; (g) buildings insurance premium; and contingency costs.

General repairs and maintenance - budgeted sum £3,000, and actual cost, £6,024.70

65. Again, the only comment made by Mrs ~~Gorden~~Gordon in her Scott Schedule in respect of this cost was “*I have no way of identifying items which contribute to this spend [sic] amount. It is impossible to comment further*”. Mr Cleaver, in his comments in response, lists each invoice and describes the works undertaken, for example repairs to the porch lighting. Copies of the invoices were included in the hearing bundle [171-188].

66. The first four of those invoices concerns the installation of an overhead door closer to the front door of the Building, and to Flats 2, 3 and 5 (at a cost of £168 per flat). An invoice for the same work appears at [177]. Mr Roberts assumed that these works were required following a fire risk assessment but could not explain why a closer was not fitted to the front door of Mrs ~~Gorden~~Gordon's Flat.

67. Mrs ~~Gorden~~Gordon suggested that these costs should be borne by the individual leaseholders. However, if she wanted to pursue that argument, she should have raised it before the hearing, so that Mr Cleaver had the opportunity to respond. In any event, the powers granted to Mr Cleaver in the Management Order regarding maintenance are extensive and include: dealing with routine repair and maintenance issues; instructing contractors to attend and rectify problems; dealing with all building maintenance relating to the services and structure of the Building; and works considered to be in the interest of good estate management. Under paragraph (iv) of the Service Charge provisions of the Management Order, he is entitled to place contracts for services and equipment supplied for the benefit of the Building and include them within the service charge budget.

68. In our determination, carrying out these works fall within the remit of Mr Cleaver's powers under the Order, and he is entitled to recover the costs incurred through the service charge. The costs incurred are, in our view, reasonable and payable by Mrs ~~Gorden~~Gordon. There seems to be no satisfactory explanation as to why Mrs ~~Gorden~~Gordon's flat was omitted from the door closure works and, if, as Mr Roberts suggested this was because of a fire risk assessment, the work should obviously be carried out to her Flat. Equally obviously, Mrs ~~Gorden~~Gordon should now pay the sum we determine to be payable by her by towards her service charge liability.

69. In the absence of any substantive challenge to the remaining costs under this head of expenditure, we consider the budgeted sum, and the actual costs, to be reasonably incurred and payable by Mrs ~~Gorden~~Gordon, in her apportioned share.

Plumbing, heating and drain maintenance - budgeted sum £1,200, and actual cost, £1,764.60.

70. The only challenge raised to this head of expenditure by Mrs ~~Gorden~~Gordon in her Scott Schedule was that "At least some, if not all, of this work was on drains Thames Water are responsible for, therefore there should be no charge". At the hearing she agreed that Thames Water were not responsible for maintenance of the drains in the grounds of the Building, but she believed that these ran into a shared drain located in the neighbouring property at 16A Arterberry Road. This contention is only relevant to one of the five invoices that make up these costs [189-193], namely an invoice from Drain Patrol(South) Ltd for £360 [191] which references a CCTV camera survey of the communal drainage

system serving numbers 16 and 16A, and the provision of a report, and recommendations for remedial work.

71. In our determination, the evidence does not support the contention that the costs of the CCTV survey were unreasonably incurred. There is no documentary evidence in the bundle from Thames Water to say that the drain in question is a public sewer, or that the problem investigated arose outside the property boundary of the Building. The invoice records that the investigation was needed to investigate the underground drainage system following blockages and flooding. Mrs GordenGordon acknowledged that there had been a flooding problem affecting the ground floor and basement flat in the Building, (Flat 2), and, on balance, the available evidence satisfies us that it was reasonable for the applicant to incur these costs of investigation.
72. There was no substantive challenge from Mrs GordenGordon to the costs evidenced in the remaining invoices which concerned investigations into leaks into the basement flat, works to a leaking downpipe, construction of a brick upstand around a gully to stop flooding, and the costs of a drainage maintenance contract. That contract, said Mr Roberts, covered the regular clearing of drains and not call outs for leaks and repairs. He believed it was taken out to address the recurring problem of blockages. In our determination these costs were all reasonably incurred and are payable by Mrs GordenGordon.
73. Although there appears to us to be some merit in Mrs GordenGordon's suggestion that the costs of building the brick upstand (£480.60) [190], which she said consisted of about eight bricks, were excessively high, this was not a point that she raised until the hearing. As such, the applicant has not had the opportunity to adduce evidence in response. It is a point she should have argued in a Reply, and it was too late to do so at the hearing. In any event, whilst high, the cost of £340 for labour, and £60.50 for materials, do not appear to us to be unreasonable.

General cleaning- budgeted sum £2,100, and actual cost, £390

74. Mrs GordenGordon did not challenge the actual costs incurred of £390 for carpet cleaning but argued that the budget of £2,000 was unreasonably high. For the reasons stated above in respect of the 2017/18 year, we disagree. We determine the budgeted and actual costs to be payable by her in her apportioned share.

Garden and grounds maintenance- budgeted sum £1,872, and actual cost, £3,876.

75. Mrs GordenGordon argued that the amount of the actual costs incurred was excessive, given the much lower budgeted sum, and the lack of garden area. Mr Cleaver explained that the sum of £2,508 concerned

gardening services provided between August 2017 to June 2018, but which were not billed until the 2018/19 financial year.

76. As explained above, in our assessment of the available evidence, maintaining the garden areas would probably take about four to five hours per fortnight. The invoices provided show a spend of £684 per quarter which equates to approximately £105 per fortnight. Mr Roberts could not say how long the gardener spent on each visit, but if he spent four to five hours, this would equate to about between £21 to £26.25 per hour. We do not have the benefit of any alternative gardening quotes provided by Mrs ~~Gorden~~Gordon, and in the absence of such evidence, whilst at the higher range of what we might expect, we do not consider these rates to be unreasonable, bearing in mind that they include overheads and any VAT payable. We determine the sums to be payable by Mrs ~~Gorden~~Gordon.

Land Registry charges – budgeted sum, £50, and actual cost, nil.

77. Mr Roberts explained that this modest amount was budgeted for in case additional Land Registry charges were incurred, which did not turn out to be the case. We do not consider it unreasonable to do so, despite Mrs ~~Gorden~~Gordon's comment that she did not understand why it was required.

Health and safety – budgeted sum, £540, and actual cost, £240.

78. As with many of the other heads of expenditure in both service charge years in issue, the invoice for the £240 actual cost incurred, was billed by a company within the Urang Group, a company for which Mr Cleaver is the Property Management Director. The amount was billed by Urang Cleaning and Maintenance Limited and is stated as being for entry into a fire detection system maintenance contract.

79. Mr Roberts confirmed that the only fire detection system in operation are standard household smoke alarms, which are tested by a simple press of a button. We do not consider it reasonable to enter into a maintenance contract for the testing of such smoke alarms. This is a simple task that can be carried out by Mr Cleaver, or one of his associates, on their periodic inspections of the Building, and as part of their standard management fee. Replacement of batteries or alarms, if required, can be billed for as part of general maintenance of the Building. We determine that both the budgeted and actual costs incurred to be unreasonable and not payable by Mrs ~~Gorden~~Gordon.

Buildings insurance premium – budgeted sum, £5,000, and actual cost, £5,079.52

80. In her Scott Schedule, Mrs ~~Gorden~~Gordon argued that the substantial increase in premium from the 2017/18 premium of £3,526.10 was unreasonable.

81. Mr Roberts stated that the premium had been sourced by Landsdown Insurance Brokers [215] and that the substantial increase was likely to be due to several claims having been made in the previous year.

82. Mrs ~~Gorden~~Gordon informed us that she had obtained details of the claims history of the Building from Urang, but decided not to seek alternative quotes for buildings insurance, as she saw no point, given that the Management Order provides for Mr Cleaver to insure the building.

83. Although this is a considerable increase in premium it was secured by a broker that Mrs ~~Gorden~~Gordon agreed had been instructed in relation to the Building since about 2011 or 2012, and with insurance placed with the same insurer. In the absence of any alternative like for like insurance quotes from Mrs ~~Gorden~~Gordon, we have no evidence before us that lower premiums for similar cover could have been obtained elsewhere in the market. We do not consider the premium to be so obviously excessive, and there is no evidence that satisfies us that the cost was unreasonably incurred. We determine the amounts are payable by Mrs ~~Gorden~~Gordon.

Contingency costs – budgeted sum, £nil, and actual cost, £342

84. Mrs ~~Gorden~~Gordon did not pursue her challenge to bank charges of £30. However, she disputed liability to pay £312 in respect of solicitor's costs billed by Fairweather Law. The narrative to the solicitors' invoice [217] and covering letter [216] refers to the preparation of a draft letter before action to Mrs ~~Gorden~~Gordon in relation to service charge arrears that was not ultimately sent to her. Mrs ~~Gorden~~Gordon argued that incurring these costs was unreasonable, when no letter was, in fact, sent to her.

85. Mr Roberts argued that it was still reasonable to secure legal advice, even if a letter was ultimately not sent, and we agree. Paragraph (iii) of the Service Charge section of the Management Order allows Mr Cleaver to instruct solicitors to recover unpaid rents and service charges, which was clearly the purpose behind his instructions to Fairweather Law. Given, the very large amount of arrears owed by Mrs ~~Gorden~~Gordon, he was entitled to pursue such action. The narrative to the solicitors' bill indicates that the solicitor considered the terms of the lease, and the tribunal's decision appointing Mr Cleaver, and the advice subsequently provided, and the draft letter, would have been of assistance to Mr Cleaver prior to his issue of this County Court Claim in February 2019. The amount billed is reasonable, being one hour of the solicitor's time at an hourly rate of £250 plus VAT, and a £12 disbursement for Land

Registry fees. We determine that the sum is payable by Mrs ~~Gorden~~Gordon in her apportioned share.

Historic Neglect – Damage to Ms ~~Gorden~~Gordon's Flat4

86. Although Ms ~~Gorden~~Gordon reference disrepair and damage affecting her flat in her Defence to the County Court Claim, she did not expand on this in her Scott Schedule or in a statement of case. At the hearing she stated that she was unable to use her front room and middle box room because of large cracks in the walls. In response, Mr Roberts told us that a large crack to the front of the Building had been repaired during the course of the Major Works programme, but that further work is needed to remedy cracking to the rear and right hand side of the Building. These external works are, he said, to be completed prior to commencement of intended internal major works of repair and redecoration.

87. The presence of significant affecting the structure of the Building is evident from Mr Theakstone's report [541]. He confirms, at page 8 of his report, that a number of cracks are present to the walls and ceiling coving of Mrs ~~Gorden~~Gordon's Flat. It is clear from reading the decision of the 2017 tribunal that the poor condition of the Building, including the presence of significant cracking to the front elevation, and other disrepair, was major reason why it considered it appropriate to appoint Mr Cleaver to manage the Building.

88. However, the presence of this disrepair does not provide Mrs ~~Gorden~~Gordon with a set-off defence to this County Court claim. This is because prior to his appointment, responsibility for carrying out repairs lay with the leaseholders themselves, by virtue of the provisions of the Deed of Covenant. Mr Cleaver cannot be fixed with any liability for historic neglect prior to his appointment.

89. For the period after his appointment there is no evidence that he has unreasonably delayed in carrying out repairs to the Building. On the contrary, he has embarked upon an ongoing programme of Major Works, despite Mrs ~~Gorden~~Gordon's non-payment of the contribution payable by her towards the costs of those works.

Section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act

90. Separate directions concerning whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made in Mrs ~~Gorden~~Gordon's favour (in respect of the period after transfer of this claim by the County Court to the tribunal) will be issued by the tribunal and will be the subject of a separate determination, by the tribunal, on the papers.

91. At the hearing of this application, the tribunal indicated its intention to issue those directions at the same time as this decision. However, due to the current Covid-19 pandemic the London regional office is closed, and all current directions in existing cases have been suspended until after 29 May 2020. Directions will therefore be issued once the tribunal is able to do so.

COUNTY COURT ISSUES

Ground Rent

92. At the hearing, Mrs ~~Gorden~~Gordon admitted liability to pay the sum of £202.50 in respect of ground rent to Mr Cleaver, so no determination is required from Judge Vance on that issue.

Interest, claimant's claim for costs, and Mrs ~~Gorden~~Gordon's application for an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act

93. Again, given the closure of the London regional office, separate directions concerning the question of costs, including costs of proceedings under s.51 Senior Courts Act 1981, and contractual legal costs, and whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made in Mrs ~~Gorden~~Gordon's favour, will be issued once the tribunal is able to do so. These issues will be the subject of a separate determination by Judge Vance alone, on the papers.

94. The amount of interest payable by Mrs ~~Gorden~~Gordon to the claimant, if any, will also be the subject of that determination.

Name: Judge Amran Vance

Date: 9 April 2020

ANNEX – RIGHTS OF APPEAL

Appealing against the tribunal's decisions

- ~~1. A written application for permission must be made to the First tier Tribunal at the Regional office which has been dealing with the case.~~
- ~~2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.~~
- ~~3. 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.~~
- ~~4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.~~

Addendum

1. The tribunal's substantive decision above was issued on 9 April 2020. Notification of appeal rights was given at the end of that decision but has now been deleted above so as to avoid any confusion with the parties' rights to seek permission to appeal this addendum decision. Appeal rights in respect of this decision appear at the end of the addendum. No party sought permission to appeal the substantive decision.
2. The issue of directions in respect of the Claimant's claim for costs was delayed because of the outbreak of the Covid-19 pandemic and the temporary closure of the London office of the tribunal. They were issued on 20 July 2020 and specified that the following issues would be determined by Judge Vance sitting as a judge of the County Court:
 - (a) the Claimant's claim for interest;
 - (b) the Claimant's claim for costs, including costs of proceedings under s.51 Senior Courts Act 1981, and contractual legal costs; and
 - (c) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made in Mrs Gordon's favour.
3. When the 20 July 2020 directions were issued, I had regard to several emails received from Ms Gordon in June 2020 in which she had stated that her ability to comply with directions was inhibited by her lack of home computer equipment and the closure during the pandemic of her local library, which she uses to access Internet-enabled computer facilities. As Ms Gordon had stated that the library was due to reopen in September 2020, I directed that she was to provide her reasons for opposing the application by 25 September 2020. I directed that the application was to be determined using the tribunal's paper-case procedure, unless either party requested an oral hearing.
4. On 7 August 2020, Ms Gordon requested an oral hearing of the application and I directed the parties to provide dates to avoid for a hearing in November or December 2020. A hearing was then listed for 1 December 2020. In late October, I was then notified of a personal appointment that meant that I was unavailable to attend a hearing on 1 December. I directed that as Ms Gordon had failed to respond to the application that I proposed converting the hearing into a paper determination, unless either party objected. Both parties subsequently agreed to a paper determination.
5. On 3 December 2020, Ms Gordon emailed the tribunal explaining why she had not submitted a statement of case in response to the Claimant's application. On 8 December 2020, I informed the parties that I found

her explanation for her non-compliance to be unsatisfactory, but that given her status as an unrepresented litigant, and given the delay caused by the need to cancel the 1 December 2020 hearing, I would allow her one final opportunity to do so. I directed that she should provide a statement of case by 8 January 2021. Ms Gordon did not do so. She did, however, email the tribunal on 15 February 2021. The contents of her email are not relevant to this application except for her assertion that the claim for interest at the rate of 8% was exorbitant.

6. This entirety of this addendum decision is made by me sitting as a judge of the County Court under the tribunal's Deployment Project.

The Claimant's Claim for Costs

7. The Claimant points out that paragraph (iii) of Service Charge section of the Schedule of Functions and Services in the Management Order gives him the power to "instruct solicitors to recover any unpaid rents and service charges and any other monies" due to Mrs Rowley (the landlord), or to him. His position is that the costs he incurred in instructing solicitors are payable by Mrs Gordon, as contractual costs, by virtue of paragraph 1 of the Deed of Covenant, which contains the following covenant by the Covenantee Parties (the leaseholders):

"[to] observe and perform the covenants hereinafter appearing and to keep the Lessor fully and effectually indemnified from and against all or any breach non-performance or non-observance of the same and subject the joint and several liability hereof to contribute and pay in the proportion set out in the Fifth Schedule hereto such sums as are equal to the entirety of the costs outgoings and matters hereinafter contained and arising within fourteen days of the same being due and payable.....out of which fund so far as the same permits the costs and expenses as in this Deed provided shall be met PROVIDED ALWAYS that the Covenantee Parties shall be responsible in the proportions as aforesaid for the actual costs and expenses...."

8. In costs submissions prepared by Mr Ward, of counsel, it is said that this is an indemnifying provision which requires a defaulting leaseholder to pay costs incurred by the Landlord, or in this case by the FTT- appointed manager who acts on the landlord's behalf, in respect of Ms Gordon's breach of covenant, including failure to pay service charge and ground rent when demanded. Mr Ward points out that where there is a contractual entitlement to the payment of legal costs, a Claimant is not limited to recovering only fixed costs, or having its costs limited in any other way other than in accordance with CPR Part 44. Mr Cleaver seeks his costs on the indemnity basis of assessment.
9. He explains that in November 2018 he instructed Brady's solicitors to recover outstanding service charge arrears payable by Mrs Gordon.

Brady's corresponded with Mrs Gordon, and then issued these County Court proceedings. Brady's continued to advise Mr Cleaver, and conducted the claim on his behalf, up until transfer by the Court to the FTT, by order of District Judge Parker dated 12 September 2019. At that point, in order to minimise costs, Mr Cleaver conducted the tribunal stage of the litigation as a litigant in person, although he continued to receive legal advice from Brady solicitors, who also arranged for Counsel, Mr Daniel Wand, to attend the hearing before the tribunal on 16 March 2020, in order to make legal representations in respect of the claim for costs. Mr Cleaver's position is that the fact that Brady's took themselves off the Court record does not impact on his entitlement to seek payment of the costs incurred by Brady's after transfer of the proceedings to the tribunal.

10. If, contrary to the Claimant's primary submission, he has no contractual entitlement to recover the costs of these proceedings, he seeks costs under section 51(1) of the Senior Courts Act 1981, to be assessed in accordance with Part 44 of the Civil Procedure Rules. He submits that the Claimant succeeded, very substantially, on his claim and that there is no reason for departing from the general rule that costs should follow the event, meaning that he is entitled to an award of costs in his favour.

Contractual Entitlement to Costs

11. I do not agree that the Claimant is entitled to claim the legal costs he has incurred as contractual costs. I agree that paragraph 1 of the Deed of Covenant, entered into by the Covenanting Leaseholders, obliges Mrs Gordon to indemnify Mrs Rowley in respect of any failure by her to observe and perform the covenants set out in the Deed.
12. The scope of the indemnity is not particularly clear. It does not, for example, state that the landlord is indemnified against any loss or damage caused by a leaseholder's breach of covenant, as is common in leases. However, the covenant is to "fully and effectually" indemnify her, and I accept that it, arguably, extends to legal costs incurred by her in seeking to enforce the covenant given to her by the Covenanting Parties.
13. However, I do not consider that the Manager has the benefit of that indemnity. The Manager's powers derive from the Management Order and the Order does not assign the benefit of Mrs Rowley's indemnity to him. Nor does it state that the Manager is to have the benefit of any rights enjoyed by the landlord under the Lease. There is therefore no contractual entitlement to claim legal costs from Ms Gordon.

Costs under section 51(1) of the Senior Courts Act 1981,

14. Section 51(1) of the Senior Courts Act 1981 provides as follows:

“51. Costs in civil division of Court of Appeal, High Court and county courts

(1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in –

(a) the civil division of the Court of Appeal

(b) the High Court,

(c) the family court; and

(d) the county court,

shall be in the discretion of the court.”

15. CPR 44.2 provides that if the court decides to make an order for costs the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order.

16. In *John Romans Park Homes Ltd v Mr Hancock & Mrs Hancock* (02 Dec 19, unreported) Martin Rodger QC, Deputy Chamber President, Upper Tribunal (Lands Chamber), sitting as a judge of the County Court, considered whether costs incurred in the tribunal stages of proceedings, following the transfer of a claim by the county court to the FTT, are costs falling within the discretion of the county court under section 51(1) of the Senior Courts Act 1981.

17. He considered the relationship between section 51(1) and section 29 of the Tribunals, Courts and Enforcement Act 2007 which provides as follows:

“29 Costs or expenses

(1) The costs of and incidental to–

(a) all proceedings in the First-tier Tribunal, and

(b) all proceedings in the Upper Tribunal,

shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.”

18. He also considered the relevance of section 176A of the Commonhold and Leasehold Reform Act 2002, which provides as follows:

“176A. Transfer from court to First-tier Tribunal

(1) Where, in any proceedings before a court, there falls for determination a question which the First-tier Tribunal or the Upper Tribunal would have jurisdiction to determine under an enactment specified in subsection (2) on an appeal or application to the tribunal, the court—

(a) may by order transfer to the First-tier Tribunal so much of the proceedings as relate to the determination of that question;

(b) may then dispose of all or any remaining proceedings pending the determination of that question by the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal, as it thinks fit.

(2) The enactments specified for the purposes of subsection (1) are—

(a) this Act,

(b) the Leasehold Reform Act 1967,

(c) the Landlord and Tenant Act 1985,

(d) the Landlord and Tenant Act 1987,

(e) the Leasehold Reform, Housing and Urban Development Act 1993, and

(f) the Housing Act 1996.

(3) Where the First-tier Tribunal or the Upper Tribunal has determined the question, the court may give effect to the determination in an order of the court.

(4)

19. The Deputy Chamber President concluded [46] that as section 51(1) is expressed to be “subject to the provisions of this or any other enactment”, that where costs are incurred in proceedings in the First-Tier Tribunal, or the Upper Tribunal, “full power to determine by whom and to what extent the costs are to be paid” vests in those tribunals by section 29(2). In his judgment, to treat costs incurred at those stages as

falling within the discretion of the court under section 51(1) would be contrary to the express terms of section 29(2), and would ignore the direction that section 51(1) is subject to the provisions of any other enactment. Section 51(1) is therefore required to give way to section 29(1) of the 2007 Act, which gives the relevant tribunal full power to determine the costs of proceedings in that tribunal.

20. Mr Wand argues that *John Romans* was wrongly decided, and makes the following points:

(a) *John Romans* did not concern the recovery of service charges and legal costs pursuant to a lease. Rather, it concerned whether two caravans could be pitched on two sites under the Mobile Homes Act 1983 and a claim for possession. Mr Wand suggests that its application to leasehold disputes must be treated with utmost caution;

(b) the Deputy Chamber President's interpretation ignores the fact that the County Court's jurisdiction in relation to costs was expressly *not* transferred to the Tribunal by virtue of section 176A of the Commonhold and Leasehold Reform Act 2002, which provides for a court to have the power to transfer to the FTT so much of any proceedings before it as relate to a question which the FTT has jurisdiction to determine, including the determination of whether service charges are payable under the Landlord and Tenant Act 1985. In Mr Wand's submission, the wording in section 51 that the provision is subject to any other enactment cannot be used to subvert the specific intention of Parliament that the FTT should not have jurisdiction in relation to costs matters where a claim is transferred in part to it by the County Court. In his submission, section 29(1) of the 2007 Act applies to cases starting, heard and ending in the FTT; and

(c) if *John Romans* concerned the recovery of legal costs under a lease, it can have no application to a case such as the present case, where legal costs are claimed pursuant to a contractual provision in a lease, and which must be assessed on contract law principles.

21. In Mr Wand's submission the appropriate approach was that confirmed by the Upper Tribunal ("UT") in *Avon Ground Rents Ltd v Child* [2018] UKUT 204 (LC), in which the UT held [47] that the FTT has no power to extend its jurisdiction, or to arrogate to itself a jurisdiction to determine questions which the County Court had no power to transfer to the FTT for determination. Therefore, in the context of a transfer under s.176A of the 2002 Act, only questions which the FTT would have had the jurisdiction to determine under any of the enactments specified in s.176A(2) may properly be transferred from the County Court to the FTT. These did not, the UT concluded, include the determination of the costs of the proceedings in the County Court, since such costs fell to be determined under s.51 of the 1981 Act, which is not specified in

s.176A(2). The issue of costs under s.51 was not, therefore, within the jurisdiction of the FTT and fell to be determined by the County Court, with the costs of proceedings in the FTT coming within scope of section 51, as “costs of and incidental” to the proceedings in the County Court.

22. I do not agree with Mr Wand’s submissions, and respectfully agree with the conclusions reached by the Deputy President in *John Romans*. The fact that *John Romans* did not concern the recovery of service charges and legal costs pursuant to a lease is not, in my view, relevant. The Deputy President makes clear in the first paragraph of his decision that he was addressing the question of whether costs incurred in the tribunal stages of proceedings, following a transfer of a claim by the county court, are costs falling within the discretion of the county court under section 51(1). That question is clearly relevant to this assessment.
23. Section 176A of the 2002 Act empowers a court to transfer proceedings to the FTT in order for it to determine any question within its jurisdiction in respect of specified Acts. However, the question before me requires me to sit as a County Court judge, not a judge of the FTT, in order to determine, under section 51, the costs payable in respect of this claim.
24. In so doing, I agree with the Deputy President that because the discretion under section 51 is expressly subject to the provisions of “any other enactment”, the costs incurred in the tribunal phase of this claim constitute costs that fall within section 29 of the 2007 Act, and are prevented from being recoverable under section 51. As stated by the Deputy President, where costs are incurred in proceedings in the FTT, section 29(2) gives it “full power to determine by whom and to what extent the costs are to be paid”. They are not costs that fall within the discretion of the court under section 51(1), because they are expressly excluded by section 29(2).
25. I do not accept Mr Wand’s submission that such an interpretation subverts a specific intention of Parliament that the FTT should not have jurisdiction in relation to costs where a claim is transferred to it by the County Court. No such intention is evident in the wording of section 176A. The section provides for the transfer of proceedings from the court to the FTT, and is silent as to the question of the costs of such proceedings.
26. In agreement with the view of the Deputy President in *John Romans*, I do not consider that the costs of the tribunal phases of this claim are costs “incidental to proceedings in the county court”, The tribunal phase is governed by section 29 of the 2007 Act, and the court phase is governed by section 51 of the 1981 Act.
27. I recognise that the UT came to a different view on the impact of section 51(1) in *Avon Ground Rents*. However, neither that decision, nor the decision in *John Romans* are binding on me. With respect to the Judges

in *Avon Ground Rents*, my interpretation concurs with that of the Deputy President.

28. In my determination, therefore I have the ability to consider the Claimant's claim for section 51 costs in respect of the costs incurred in the County Court up to the point the claim was transferred to the FTT. In the subsequent tribunal phase of the claim such costs are excluded by virtue of section 29(2).

Award of Costs under section 51

29. The starting point for my discretion is CPR 44.2(2)(a), which states that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. On the facts of this case, I am satisfied that the Claimant was the successful party. As can be identified from the decisions in paragraphs 1 and 2 above, Ms Gordon only obtained very modest reductions to the sums demanded from her for the 2017/18 and 2018/19 service charge years. The sums that she was found liable to pay substantially exceed the sum of £16,591.51, claimed by Mr Cleaver for a period prior to his appointment as manager, which the tribunal found to not be payable by her.

30. CPR 44.2(2)(b) allows me the discretion to depart from the general rule that the unsuccessful party will be ordered to pay the costs of the successful party. I have had regard to all the circumstances of the case, and the specific factors identified in CPR 44.2(4)(a), namely the conduct of the parties and whether a party has succeeded on part of its case, even if that party has not been wholly successful. No offers to settle were made in this claim. I see no reason to depart from the general rule for the following reasons:

- (a) this was a claim brought against a tenant who, at the CMH on 24 October 2019, accepted that it was possible that she had paid nothing towards service charges for the 13-year period prior to Mr Cleaver's appointment. She made two payments after Mr Cleaver's appointment, but then withheld further payment because she considered there had been a lack of repairs to her Flat. However, she did not pursue a counterclaim for disrepair in the County Court claim, and did not advance any defence of set off to the service charge sums claimed, despite her being afforded to so in the tribunal's directions following the CMH. In addition, as stated in paragraph 88 above, the presence of any disrepair would not have provided her with a set-off defence to this County Court claim because prior to Mr Cleaver's appointment, responsibility for carrying out repairs lay with the leaseholders themselves;
- (b) given the level of arrears that had accrued both before, and after his appointment, there is no doubt that it was reasonable to issue and pursue these proceedings; and

(c) a large part of Ms Gordon's case was a challenge to the apportioned sums payable by her. That challenge was squarely rejected by the FTT in paragraphs 40 and 41 above;

(d) although the sum of £16,591.51, claimed by Mr Cleaver for a period prior to his appointment as manager, was found to not be payable by her, this was not because of any point advanced by Ms Gordon. Rather, it was a point identified by the tribunal at the CMH and on which Ms Gordon failed to make any representations (see paragraphs 16 and 24 above). It was not part of her case.

31. Having weighed all the circumstances, I determine that Ms Gordon should pay 100% of the Claimant's costs incurred up to transfer of the claim to the FTT, subject to summary assessment by the Court.

Assessment of costs under section 51

32. The Claimant's bundle contains three Statements of Costs in N260 format dated, respectively, 9 March 2020 (totalling £11,900.88 including VAT), 20 August 2020 (totalling £1,952.40 including VAT), and 20 October 2020 (totalling £2,233.80 including VAT). A fee note for Mr Wand in the sum of £1,550 plus VAT has been provided. As I have determined that the Claimant is only entitled to an order for costs incurred up to that date transfer of the claim to the FTT, it is only the first of these N260 statements that is relevant to my assessment. That statement includes costs incurred in the County Court as well as some costs incurred after transfer to the FTT. The later statements concern costs incurred during the tribunal phase. I will assess costs by reference to the headings in the N260 dated 9 March 2020.

33. In relation to the assessment as a whole, I bear in mind the provisions of CPR 44.4(3) which sets out factors that the court should have regard to. The amount claimed in the Claim form was £47,317.29, plus a court fee of £2,129.28. The amount is substantial, and I accept that there was some legal complexity given the unusual lease arrangement, and the fact that the claim was pursued by a tribunal-appointed manager. In addition, there was some factual complexity given the number of heads of expenditure challenged by Ms Gordon. These factors need to be reflected in the assessment.

34. Bearing in mind that I am assessing costs up to transfer to the FTT, I do not consider any issues of conduct of either party are relevant to the assessment. The Claimant was quite entitled to issue the claim in the County Court given the level of arrears, and in defending the claim Ms Gordon has obtained some very modest reductions to the sums payable to the Claimant for two service charge years. In addition, a substantial sum concerning historic arrears was found not to be payable by her. I do not consider the evidence suggests that Ms Gordon's pre-transfer

conduct caused significant additional work to be carried out by the Claimant.

35. There are no other relevant factors to be considered under CPR 44.4(3).

Hourly Rates

36. In the 9 March 2020 N260, costs are sought in respect of a Grade A fee earner, Mr Weaver, two Grade C fee earners and two Grade D fee earners. On balance, given the complexities of the claim, I accept that the involvement of a Grade A fee earner is appropriate, although that degree of experience should be reflected in the amount of time spent by him on work undertaken.

37. The hourly rates sought are £310 for the Grade A fee earner, £215 for the Grade C fee earners, and £180 for the Grade D, all plus VAT. The Claimant's solicitors are based in Nottingham and I consider it reasonable to instruct a Nottingham firm. The guideline figures for carrying out a summary assessment of court costs, published by HMCTS, place Nottingham in National Band 1, and suggest hourly rates of £217 for a Grade A fee earner, £161 for a Grade C, and £118 for a Grade D.

38. However, the guideline rates have not been updated since 2010, and are only guidance. They are not binding on me. I bear in mind the factors referred to in CPR 44.4(3). Given the amount of money involved in this claim, the complexity referred to above, the importance of the claim to the Claimant who requires Ms Gordon to pay the sums reasonably demanded by him in order to manage the Building, and the specialist nature of the subject matter of the claim, I am satisfied that it is reasonable to allow an hourly rate of: £270 for Mr Weaver; £200 for the Grade C fee earners; and £130 for the Grade D.

Documents

39. Consideration of papers and preparation of a letter before action by the Grade D fee earner was reasonably incurred and reasonable in amount at £250.

40. Correspondence by the Grade D fee earner with the mortgagee was reasonably incurred but, at £230 is unreasonable in amount. I allow 1 hour at £130 per hour (£130).

41. Review of the lease by the Grade D fee earner was reasonably incurred but, at £450, is unreasonable in amount. I allow 2 hours at £130 per hour (£260).

42. Advice to client regarding lease terms by the Grade D fee earner was reasonably incurred, but, at £270, is unreasonable in amount. The client is a tribunal appointed manager and should have been familiar with the lease terms. I allow 1.5 hours at £130 per hour (£195).
43. Preparation of particulars of claim by the Grade D fee earner was reasonably incurred and, but at £360 is unreasonable in amount. I allow 2 hours at £130 per hour (£260).
44. Preparation of claim form by the Grade D fee earner was reasonably incurred but, at £90, is unreasonable in amount. I allow £0.4 hours at £1.30 per hour (£52).
45. Filing/serving of separate Particulars of Claim was unreasonably incurred. This is routine correspondence. Disallowed.
46. Completing and filing certificates of service by the Grade D fee earner was reasonably incurred and is reasonable in amount at £36.
47. Review of Defence and advice to client by a Grade C fee earner was reasonably incurred, but at £322.50 is unreasonable in amount. The Defence consists of seven short paragraphs in form N9B and a one-page email I allow 1.25 hours at £200 per hour (£250).
48. Preparing, filing and serving draft directions and directions questionnaires by a Grade C fee earner was reasonably incurred, but at £193.50 is unreasonable in amount. I allow 0.7 hours at £200 per hour (£140).
49. Consideration of directions given and giving advice to the client by the Grade C fee earner was reasonably incurred, and at £86 is reasonable in amount.
50. Time spent by the Grade C fee earner in consideration of the Management Order (0.4 hours) by was reasonably incurred as was the 0.1 hours spent by the Grade A fee earner (mistakenly recorded as 1 hour) Adjusting the hourly rates, I consider £107 to be reasonable.
51. Time spent by the Grade C fee earner advising the client regarding the Management Order (0.5 hours) by was reasonably incurred as was the 0.1 hours spent by the Grade A fee earner Adjusting the hourly rates, I consider £127 to be reasonable.
52. All the remaining items on the Documents schedule appear to concern work carried out after transfer of this application to the tribunal and not, therefore relevant to this assessment. The work in question is described as: drafting submissions as to lease clauses, management order and

costs(Grade C fee earner, 5.7 hours); drafting instructions to counsel (Grade C fee earner, 1 hour); and drafting statement of costs (Grade C fee earner, 0.8 hours). Supervision of 0.2 hours by the Grade A fee earner is also recorded.

53. The total allowed in respect of work on Documents is therefore £1,893.

Attendances on Claimant

54. No personal attendances are recorded. Letters/emails out are recorded as: 2.5 hours (Grade D); 2.7 hours (Grade C); and 1 hour (Grade A). Telephone attendances are recorded as: 0.3 hours (Grade D); and 0.3 hours (Grade C).

55. Some of these attendances will have been after transfer of the proceedings to the tribunal. Doing my best on the information provided, I assess the costs that I consider to have been reasonably incurred, and reasonable in amount, for the pre-transfer period as: 2 hours of Grade D time (£260) 2 hours of Grade C time (£400) and 0.5 hours of Grade A time (£135).

56. The total allowed is therefore £795.

Attendances on Opponent

57. Letters/emails out are recorded as: 2.4 hours (Grade D); 0.1 hours (Grade C); and 0.3 hours (Grade A). Telephone attendances are recorded as: 0.6 hours (Grade D); 0.3 hours (Grade C); and 0.4 (Grade A).

58. Again, some of these attendances will have been after transfer of the proceedings to the tribunal. Doing my best on the information provided, I assess the costs that I consider to have been reasonably incurred, and reasonable in amount, for the pre-transfer period as: 1.5 hours of Grade D time (£195) 1 hour of Grade C time (£130) and 0.3 hours of Grade A time (£81).

59. The total allowed is therefore £406.

Attendances on Others

60. Letters/emails out are recorded as: 0.9 hours (Grade D); 0.8 hours (Grade C); and 0.1 hours (Grade A). Telephone attendances are recorded as: 0.5 hours (Grade D); and 0.4 hours (Grade C).

61. Again, some of these attendances will have been after transfer of the proceedings to the tribunal. Likely pre-transfer attendances on others

will be with the court. Doing my best on the information provided, I assess the costs that I consider to have been reasonably incurred, and reasonable in amount, for the pre-transfer period as: 0.5 hours of Grade D time (£65) and 0.5 hours of Grade C time (£100).

62. The total allowed is therefore £165.

Counsel and Disbursements

63. All of the work carried out by counsel was after transfer of the claim to the tribunal and is therefore not relevant to this assessment.

64. Land Registry fees of £12 recorded on the N260 are reasonably incurred.

65. The Court fee of £2,129.28 paid by the Claimant was reasonably incurred and is also payable by Ms Gordon.

66. The total allowed is therefore £2,141.28.

Total Assessed Costs

67. My assessment of the costs payable by Ms Gordon therefore breaks down as follows:

Work on Documents	£1,893
Attendances on Claimant	£795
Attendances on Opponent	£406
Attendances on Others	£165
Subtotal	£3,259
VAT	£651.80
Disbursements	£2,141.28
TOTAL	£6,052.08

68. I therefore determine that the reasonably incurred and reasonable in amount costs are £3,259 plus VAT of £651.80, and disbursements of £2,141.28, being a total of £6,052.08. Under CPR 44.3(2)(a) I must step back and consider, by reference to the factors at CPR 44.3(5), whether this sum is proportionate. I remind myself that this was a claim in a

substantial sum, brought by a tribunal-appointed manager who requires funds from leaseholders in order to fulfil his obligations under the Management Order to manage the Building. Ms Gordon's non-payment required the issue of these proceedings. No additional costs were caused by the conduct of the defendant, and there were no wider issues involved. Taking CPR 44.3(5) into account, I am satisfied that the sum of **£6,052.08** is proportionate and accordingly I assess the Claimant's costs in that sum.

Interest

69. The Claimant claims interest pursuant to section 69 of the County Courts Act 1984 at the statutory rate of 8%, on both outstanding service charges and outstanding ground rent. He calculates the sums payable as £4,811.81 in respect of service charges and £53.33 in relation to ground rent.
70. My power to award interest under section 69 is a discretionary one and I may award it for all or any part of the period between the date when the sums were due and the date of judgment. I also have discretion at what rate to award. The Claimant has not made any submissions as to why I should exercise my discretion to award interest at 8%, nor why I should award it for the whole of the period between demand and judgment. Ms Gordon argues that the rate is exorbitant.
71. In exercising my discretion, I bear in mind that the purpose of awarding interest is to fairly compensate the Claimant in interest for being deprived of money which he should have had. I recognise that the Claimant is a tribunal-appointed manager that requires funds in order to properly discharge his duties under the Management Order. He does not however, profit from the letting of this property in the same way that a commercial landlord does. There is no evidence before me that the Manager has had to borrow in order to make up the income lost by Ms Gordon's non-payment and, in my view, I see no reason to award an interest rate over the likely return that the Claimant would have received if the money in question had been placed on deposit. Given the low inflation rates, and very low Bank of England base rates that have applied throughout the whole of the relevant period (currently 0.1%), I determine it appropriate to award statutory interest at the rate of 2%.
72. As stated in paragraph 10 above, the amounts claimed in the County Court Claims were the estimated (budgeted sums) for the service years ending 31 March 2018, and 31 March 2019. Although, at the parties request the tribunal also determined the actual charges for those years, it was only the budgeted costs that formed the subject matter of the County Court claims and on which interest can be awarded. The Claimant is therefore only entitled to an award of interest from one month after the date of the quarterly demands issued by the Manager to date of judgment.
73. For the 2017/18 service charge year the quarterly demands issued by the Claimant to Ms Gordon were in the sum of £2,288.88. Ms Gordon paid

the first two of those invoices, albeit that they may have been a few days late. She made no further payments. Interest on the third invoice runs from 7 October 2017 and on the fourth from 5 January 2018.

74. As to the 2018/19 service charge year, demands in the sum of £1,0207 were issued on 25 May 2018, 4 June 2019, and 7 September 2018. I presume the final quarterly demand was issued after the issue of the County Court Claim on 18 February 2019, as the demand does not appear in the hearing bundle.
75. It is not my function to work out exactly what sum in interest is due to the Claimant. I have to decide how to fairly compensate him and, in so doing, I disregard the very modest reduction Ms Gordon obtained in her challenge to the 2018/19 budget.
76. My assessment of interest on service charges is therefore as follows:

2017/18

Due Date	Amount	Daily Rate	Date of Judgment	No of Days	Interest Due
07/10/2017	2288.88	0.13	15/06/2021	1348	175.24
05/01/2018	2288.88	0.13	15/06/2021	1258	163.54

2018/19

Due Date	Amount		Date of Judgment	No of Days	Interest Due
24/06/2018	1027	0.06	15/06/2021	1088	65.28
04/07/2018	1027	0.06	15/06/2021	1078	64.68
07/10/2018	1027	0.06	15/06/2021	983	58.98
				TOTAL	£527.72

77. As to interest on ground rent, I decline to award interest to the Claimant. Under paragraph 4 of the Directions in the Management Order he is to “account forthwith to [the freeholder] for the payment of ground rent received by him.” The Manager has no legal entitlement to the ground rent. His only role is to pass it on to the freeholder on receipt. In my determination, any claim for interest on unpaid ground rent should be pursued by the freeholder and not the Manager.

20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act

78. Ms Gordon has not made any submissions in support of these applications. Mr Wand opposes both. I do not agree with his submission that paragraph 5A to Schedule 11 to the 2002 Act cannot limit the Claimant’s ability to recover his costs claimed in this case because Ms

Gordon has covenanted to keep the landlord “fully and effectively indemnified”. As determined above, the Manager does not have the benefit of that covenant, and even if he did, I am not persuaded that this would exclude the Court’s statutory jurisdiction to make a paragraph 5A order in Ms Gordon’s favour. Nor do I agree that a specific application for a paragraph 5A order is required. The issue was raised at the Case Management Hearing on 24 October 2019, and was referred to in the tribunal’s directions issued on the same date.

79. Mr Wand’s argues, relying upon the decision of the Upper Tribunal in *Avon Ground Rents Ltd v Child* [2018] UKUT 204 that as the costs claimed by the Claimant have not been demanded as variable administration charges, the Court has no power to make a paragraph 5A order. I do not accept that this is an absolute prohibition. As stated in *Avon Ground Rents* [55] it is open to a tenant to consider making a properly formulated application under para. 5A of Sch.11 for an order reducing or extinguishing liability for litigation costs *yet to be incurred*.

80. Although there is no properly formulated application to that effect before me, I bear in mind that the applicant is a litigant in person. On balance, I conclude that I have jurisdiction to make a paragraph 5A order in Ms Gordon’s favour, but I decline to do so. Under paragraph 5(2) the court may make “whatever order on the application it considers to be just and equitable”. I agree with Mr Wand that it would not be just and equitable to make such an order in this case. I accept that in bringing these proceedings the Claimant has acted properly and responsibly in his role as a tribunal appointed manager. He pursued a claim for outstanding sums needed to fulfil his obligations under the Management order. Ms Gordon defended the claim to trial, where the tribunal found substantially, in the Claimant’s favour, with only very modest reductions made to the sums payable by Ms Gordon. I recognise that the FTT found that Ms Gordon was not liable to pay the service charges demanded prior to his appointment as manager, but, as stated above, this was not because of any point advanced by Ms Gordon. It was a point identified by the FTT. The Claimant incurred significant legal costs in pursuing the claim and it would not, in my view, be just and equitable to deprive him of the costs that the Court has assessed are properly payable by Ms Gordon.

81. Under section 20C of the 1985 Act 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, or the FTT, 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. I can make such an order if I consider it just and equitable in the circumstances. For the same reasons as stated in the previous paragraph, I decline to make an order under section 20C of the 1985 Act in Ms Gordon’s favour. I do not consider it would be just and equitable to do so.

Claimant's Application to amend its claim form and particulars of claim

82. On 24 August 2020 the Claimant issued an application in the County Court to amend its claim form and particulars of claim to change the spelling of the Defendant's surname from 'Gorden' to 'Gordon'. The amendment has not been objected to by Ms Gordon. I am satisfied that the misspelling was a clerical error and that permission should be granted to amend both documents. I make an order in those terms and dispense with reservice of both documents.

Conclusion

83. I make the following awards in the Claimant's favour. Ms Gordon is liable to pay to the Claimant:

- (a) costs pursuant to section 51(1) of the Senior Courts Act 1981 in the sum of **£6,052.08**; and
- (b) interest on the amounts awarded at paragraphs 1(a) and 2(a) above at the rate of 2% in the sum of **£527.72**.

ANNEX - RIGHTS OF APPEAL

Appealing against the (addendum) County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.