FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

HMCTS code (audio, video, paper)		**V: CVPREMOTE**
Case reference	:	**CAM/22UG/LSC/2021/0043**
Property	:	**Various Properties at Quayside Drive/ Colne View Colchester CO2 8GQ**
Applicant	:	**Chia Oh and others**
Respondent	:	**Firstport Property Services Ltd (1)** **Holding & Management (Solitaire No.2) Ltd (2)**
Representative	:	**Mr William Beetson of Counsel**
Date of Application	:	**30 June 2021**
Type of application	:	**Application for a determination of liability to pay and reasonableness of service charges**
The Tribunal	:	**Tribunal Judge S Evans** **Mr Gerard Smith MRICS FAAV** **Mr John P Francis QPM**
Date/ place of hearing	:	**22 to 24 June 2021** **By cloud video platform** **4 July 2021 (reconvene of Tribunal only)**
Date of decision	:	**16 August 2022**

DECISION

REASONS

The Parties

1. The Applicants are various leaseholders on a large Estate known as Colne View. They are listed in Appendix 1 to this decision, which records their flats and the dates of their acquisition of leasehold interest.

2. The First Respondent is the Managing Agent of the Second Respondent, which is the Management Company under the Lease. After a period out of management from 1 January 2018, the First Respondent was re-appointed on or about 1 October 2019 as the Managing Agent for the Estate.

3. The Estate was constructed between about 2002 and 2007. The Tribunal has not undertaken an inspection. Some of the blocks have exercised a right to manage.

The Relevant Law

4. The relevant provisions are set out in Appendix 2.

The Lease

5. The Tribunal has been provided with one sample lease in relation to number 208 Colne View (now known as 197 Quayside Drive), made between Barratt Homes Limited (as Lessor) and Holding and Management Solitaire no.2 Limited (as Management Company) and Chia Yen Oh (as leaseholder). It is dated 15 June 2007.

6. Under the Particulars of the Lease, the half yearly days are stated being 1st April and 1st October in each year, and paragraph 12 of the Particulars sets out the service charge apportionment, which differs according to which service is being provided:

> *"Service Charge Proportion*
>
> *(a) One two hundred and eighty-third part (283rd) of the aggregate Annual Maintenance Provision attributable to the Estate (excluding the Blocks and basement car parking areas) for the Estate services set out in Part I of the Fifth Schedule*
> *(b) 1.45 % of the Annual Maintenance Provision attributable to the insurance of the Block in which the Flat is situated set out in Part II of the Fifth Schedule*
> *(c) 1.45 % of the Annual Maintenance Provision attributable to the services to all the flats in the Block in which the Flat is situated set out in Part III of the Fifth Schedule*
> *(d) One seventieth (1/70th of the Annual Maintenance Provision attributable to the audit and administrative*

charges apportioned to the Block in which the Flat is situated as set out in Part IV of the Fifth Schedule

(e) One sixtieth (l/60th) of the Annual Maintenance Provision attributable to the Undercroft or Basement Parking Area within the Block in which the Undercroft or Basement Parking Space is situated as set out in Part V of the Fifth Schedule

(f) One Sixty Second (1/62nd) of the Annual Maintenance Provision attributable to the lift services to the Block in which the Flat is situated as set out in Part VI of the Fifth Schedule)

(g) One seventieth (1/70th of the Annual Maintenance Provision attributable to the pumped water supply services to the flats within the Block in which the Flat is situated asset out in Part VII of the Fifth Schedule"

7. Pursuant to Clauses 1.6 to 1.8:

> *1.6 "the Maintenance Year" shall mean every twelve monthly period ending on the 30th day of September the whole or any part of which falls within the term*
>
> *1.7 "Annual Maintenance Provision" shall consist of a sum calculated in accordance with the Fourth Schedule Part II*
>
> *1.8 The Service Charge "the Service Charge" means a sum equal to the aggregate of the amounts derived from the relevant Service Charge Proportions (or such other proportions as may be determined pursuant to Part I of the Fourth Schedule) of the aggregate Annual Maintenance Provision for the Block in which the Flat is situated and the Estate for each Maintenance Year (computed in accordance with Part II of the Fourth Schedule)"*

8. By clause 3.2 of the Lease, the leaseholder covenants every maintenance year (1st October to 30th September) to pay the service charge to the Company by 2 equal instalments in advance on the half yearly days.

9. By clause 3.3 of the Lease, the leaseholder covenants to pay the Company on demand a due proportion of any Maintenance Adjustment, calculated pursuant to paragraph 3 of part 2 of the 4th schedule.

10. By clause 3.4 the leaseholder covenants to pay to the Company on demand any due proportion (calculated on the basis of the relevant proportion specified in paragraph 12 of the particulars) of any Special Contribution that may be levied by the Company.

11. The 4th Schedule Part II contains provisions concerning the computation of the Annual Maintenance Provision. In summary, 1 September in each year is the latest date for computation, para. 2 provides the heads of charge, para. 3 provides for a maintenance adjustment after the year end, and paragraph 5

makes provision for the Company to produce accounts and provide the leaseholder with a summary.

12. Part II of the Fourth Schedule in full provides:

> *"1. The Annual Maintenance Provision in respect of each Maintenance Year shall be computed not later than the beginning of September immediately preceding the commencement of the Maintenance Year (other than the Maintenance Provision for the current Maintenance Year which has already been computed) and shall be computed in accordance with paragraph 2 hereof.*
>
> *2. The relevant head or heads of charge of the Annual Maintenance provision shall each consist of a sum comprising: (i) the. expenditure estimated as likely to be incurred in the Maintenance Year by the ' Company in respect of such head or heads of charge for the purpos.es mentioned in the · Fifth Schedule together with (ii) an appropriate amount as a reserve for or towards those of the matters mentioned in the Fifth Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year during such unexpired term. including (without prejudice to· the generality of the foregoing) such matters as the decorating of the exterior of the Blocks the repair of the structure thereof and the repair of the Conduits (iii). a reasonable sum to remunerate the Company for its administrative and management expenses (including a profit element) such sum if challenged by any lessee to be referred for determination by an independent Chartered Accountant appointed on the application of the Company by the President of the Institute of Chartered Accountants in England and Wales acting as an expert and whose fees and disbursements shall be paid as the said independent Chartered Accountant shall direct #*
>
> *3. (a) after the end of each Maintenance Year the Company shall determine the Maintenance Adjustment for each head of charge calculated as set out in the next following sub paragraph·*
>
> *(b) the Maintenance Adjustment for each head of charge shall be the amount (if any) by which the estimate under paragraph 2 (i) above shall have exceeded or fallen short of the actual expenditure in the Maintenance Year*
>
> *(c) the Lessee shall be allowed or shall on demand pay as the case may be the Service Charge Proportion of the Maintenance Adjustment appropriate to the Flat and the Parking Space*
>
> *4. Subject to the provisions of paragraph 2 (iii) of this part of this Schedule a certificate signed by the Company and purporting to show the amount of the Annual Maintenance Provision or the amount of the Maintenance Adjustment for any Maintenance Year shall be conclusive of such amount*

5. The Company shall arrange for accounts of the relevant head or heads of Service Charge in respect of each Maintenance Year to be prepared and shall supply to the Lessee a summary of such account"

13. Schedule 5 makes provision for the purposes for which the Service Charge is to be applied, as follows:

    Part I: Estate Services
    Part II: Block Insurance
    Part III: Flat/Block services
    Part IV: Audit & Administration Charges
    Part V: Undercroft/basement parking
    Part VI: Lift costs
    Part VII: Pumped Water costs

14. Given that block insurance is one of the disputed items in this case, it is appropriate to set out the material parts of Part II, para. 1 :

    (a) to keep the block in which the flat is situated (whether separately or in common with other blocks) (including the lessor's fixtures and fittings and the furnishings of the common parts thereof but not the contents of any flat therein) insured against loss or damage by subsidence landslip and heave fire lightning storm tempest flood escape of water explosion impact aircraft or anything dropped therefrom riots or civil commotion and such other risks as may from time to time be required to be covered by the Council of Mortgage Lenders handbook or that the Company shall think fit for a sum equal to not less than the full replacement value thereof including loss of ground rent and all architects surveyors and other fees necessary in connection therewith in some insurance office of repute and through such agency as the Company shall in its absolute discretion decide and to have the lessee and the Company included in the policy as insured persons and to produce to the lessee on request the policy of insurance and the receipt for the current premium…

    (b) to have the block revalued for insurance purposes and to carry out any appropriate risk assessment from time to time in accordance with good estate management practice.

Background

15. In or about 2013 there was a challenge by various of the Applicants to the service charges levied in the years ending 30 September 2006 to 30 September 2012. This culminated in a settlement agreement dated 4 December 2014, a copy of which appears in our bundle. In short, by this compromise, the applications were withdrawn on OM Property Management Ltd paying to the applicants the sum of £46,750 in full and final settlement of any dispute regarding the reasonableness of service charges for 2007 to 2012.

16. By clause 4 of the agreement, OM Property Management Ltd agreed that it, "or any other company within the Peverel group of companies with responsibility for discharging the obligations contained in leases for the Colne View development, further agrees to use all reasonable but commercially prudent endeavours to adhere to those matters set out in the third schedule to this agreement regarding the ongoing and future management of the development."

17. The 3rd Schedule to the agreement includes the following:

    "B. OM Property Management will procure that the agent for the landlords of the various blocks forming this scheme (Estates and Management Ltd) will:

    a. undertake a full remarketing exercise prior to renewal of the insurance policies for the blocks; and
    b. consider any alternative quotations submitted before the next renewal.

    SAVE THAT this paragraph shall not apply to any block which has acquired the right to manage."

The Application

18. The Application seeks a determination as to payability and reasonableness of service charges for the years ending 30 September 2013 to 30 September 2021.

19. The Application is dated 30 June 2021 and was made on behalf of a limited number of the Applicants. After that date, the Tribunal joined certain other leaseholders as Applicants, between 21 July 2021 and 28 July 2021.

20. At the commencement of the first day of the hearing, the Tribunal was concerned to be informed that other leaseholders had written to the Tribunal requesting to be joined as Applicants. This was despite the Applicant's skeleton argument dated only 4 days earlier saying there were 15 Applicants. It did not appear to the Tribunal hearing the matter that any order had been issued formally joining these Applicants. Having heard representations, and on the basis their cases did not expand upon the issues already before the Tribunal, they were duly joined.

21. Directions had been given by the Tribunal on 28 September 2021. These had not been complied with, and the Tribunal had cause to write to both parties on 18 January 2022 to explain themselves. One of the main issues was the Respondents' failure to provide invoices to the Applicants. This was eventually done on 27 January 2022 when the Respondents' solicitors emailed the Applicants a link to access the invoices for 2016 to 2020 only, electronically.

22. The directions were extended by the Tribunal in early February 2022, and witness statements followed from the following persons:

For the Applicants:

- Derek & Sally Howes, 5 March 2022
- Roxanna Mohammadian-Molina, 10 March 2022;
- Jamie Smith, 11 March 2022;
- Roderick Purves, 12 March 2022;
- Chia Oh, 14 March 2022 and 23 March 2022;
- Adam Bulbulia, 13 March 2022;
- Kevin Bloomfield, 13 March 2022.

For the Respondents:

- Nicholas Franklin, 19 April 2022.

23. The Applicants' Statement of Case/main witness statement listed various heads which were challenged in each of the years. These are:

- Insurance;
- Water;
- Electricity;
- Management Fees

24. The Respondents joined issue in detail on these in their Statement of Case.

25. In addition, the Applicants had produced a Scott Schedule, but not in the format required by the Tribunal directions. A copy appeared in our bundle, but the font was so small that some of it could not be read on paper, only electronically with magnification. We were told it ran to about 1000 or more lines. The Respondents had not put in any written reply to each of the challenges in these lines. Many of the challenges were no more than questions raised of the Respondents.

26. As regards the documentary invoices, there were none in the Tribunal's materials prior to the year ending 2016.

The Hearing

27. The Tribunal was accordingly faced with an unenviable task at the start of the hearing. The matter had been listed for 3 days, but the way in which the Applications had been brought, and in particular the prolix and unfocused nature of the Scott Schedule, made the Application untriable in the state it was. Both the Applicants and the Respondents conceded that fact. The Applicants, represented by Ms Oh (leaseholder of 197 Quayside Drive) at first suggested an adjournment, and then withdrew the suggestion.

28. This exchange led the Respondent to make an oral application to strike out the Application, pursuant to Rule 9(3)(a) and (e) of the Tribunal Procedure (First tier tribunal)(Property Chamber) Rules 2013, which provide:

"The tribunal may strike out the whole or a part of the proceedings or case if-

the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it....

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

...

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding."

29. The Respondents contended that the directions dated 28 September 2021 on p.2 warned of the risk of a strike out under the Rule set out above if the Applicants failed to comply with directions.

30. The Respondent contended the Applicants had not provided a schedule "in the form annexed to these directions" as para.6 of the Tribunal directions had required. In particular, the Respondents rightly pointed out that the Applicants had not stated in any of their Scott Schedule what they were prepared to pay, at any point. This, the Respondents said, had caused them very significant difficulties.

31. When asked by the Tribunal why no application to strike out had been made by the Respondents, given that the "defective" Scott Schedule had been in their possession since March 2022, the response from Mr Beetson, Counsel for the Respondents, was that he had not been instructed at that stage, and it was now apparent that step was necessary now all the evidence was before the parties. The Respondent's case was that it was simply not workable to proceed as it was.

32. The Respondent agreed with the Tribunal's suggestion that the word "reasonable prosect" in rule 9(3)(e) should be interpreted in the same way as under the case law under Civil Procedure Rules 1998, Part 3.4, namely that there is more than a fanciful prospect of success. However, the Respondent contended the Applicants had not even made out a prima facie case. In this regard, Mr Beetson relied implicitly on his skeleton argument, in so far as it reads:

> *"23.It is now trite law that the burden of showing that service charges are unreasonable in amount lies upon the leaseholder. Pursuant to Enterprise Home Developments LLP v Adam [2020] UKUT 151 (LC) at Paragraph 28:*
>
> *"Much has changed since the Court of Appeal's decision in Yorkbrook v Batten but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to*

establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions."

24. Further, and in any event, it is equally trite law that the landlord need not choose the least expensive option available to it. Pursuant to Forcelux v Sweetman [2001] 2 EGLR 173, a landlord is not obliged to obtain the lowest possible price available on the market."

33. Mr Beetson contended the Applicants had provided no comparables for services, and no argument the sums were not contractually payable.

34. The Applicants opposed the strike out. Ms Oh emphasised they were representing themselves, without legal assistance. She complained that the Respondents had missed out various documents from the bundle even as it was, such as her latest witness statement, the exhibit to Mr Bulbulia's statement and the exhibit to Mr Bloomfield's witness statement. She represented that the Applicants had put a lot of time and energy into the case, but that they had still not received all the invoices, in particular those prior to 2016 to enable them to forward their best case.

35. Having heard the representations, the Tribunal gave an oral decision. It had at the forefront of its mind the overriding objective, under Rule 3 of the Procedure Rules, which provides:

"3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) *help the Tribunal to further the overriding objective; and*

(b) *co-operate with the Tribunal generally.*

36. The Tribunal decided that it could not be seriously contended that there was no reasonable prospect of the Applicants succeeding on any part of their case. The principal heads of challenge are set out in Ms Oh's main witness statement, and there was more than a fanciful prospect of success in relation to those. As regards the Scott Schedule, with appropriate reduction and focus, there could be a fair and just hearing. The Respondents could still advance their argument that the application should be restricted to the 6 years which preceded the filing of the Application.

37. As regards the failure to comply with the Tribunal's directions, the Applicants were principally to blame, but neither party covered themselves in glory. The Scott Schedule was not completed in due form. However, the Tribunal considered the application to strike out to be opportunistic. The Respondents had not previously indicated they were prejudiced; they had instructed Counsel for the hearing, and there was no mention in his skeleton argument or at the outset of the hearing that any adjournment would be sought because a fair trial was not possible. Equally, there had been no application for a strike out either after the Scott Schedule was originally sent by the Applicants on 27 September 2021 to the Respondents, or between the 24 March 2022 (the date the last of the Applicant's evidence was emailed to the Respondent) and the date of the hearing. The Respondent's Statement of Case, dated 13 April 2022, is silent as to the Applicants' Scott Schedule, and its deficiencies. It addresses the Applicants' main heads of challenge, however, in some detail.

38. It appeared to the Tribunal that a fair hearing would be possible if the main heads of challenge plus a selection of Scott Schedule items only were to be considered. The Tribunal therefore dismissed the application to strike out under rule 9(3)(a).

39. The Applicants were asked by the Tribunal whether they accepted proceeding on the basis of a determination of only the main items of challenge and a revised Scott Schedule, and Ms Oh confirmed that they did.

40. In due course the Applicants produced a revised Scott Schedule with 31 lines on it, although it was accepted by Miss Oh that items 1-6 and 12-13 were not valid challenges, or at least separate challenges, because they either fell within the main heads of challenge already, or concerned missing/duplicated invoices, or were no more than a bald contention that the service charge had increased year on year.

41. That left the Tribunal with some remaining evidential disputes to be considered. A skeleton argument had been filed and served by the Applicants, which appeared to contain fresh evidence. In addition, the Applicants wished to adduce 2 videos in evidence, plus the exhibits to Mr Bulbulia's and Mr Bloomfield's statement, as well as her latest statement, none of which had been included in the bundle prepared by the Respondents.

42. The Respondents objected only to the video evidence and the fresh evidence in the skeleton argument prepared by Ms Oh, the former primarily on the basis that Counsel had not seen it, and that it had been served only the day before, but also that the footage was taken on 5 June 2022 and therefore outside the

period with which the Tribunal was dealing. As to the skeleton argument, the new material had not previously been disclosed and it was too late to do so now, Mr Beetson said, since it would prejudice the Respondent's defence. In response, the Applicants explained they had been so focussed on the other issues in the case that they had overlooked serving the video; but it should be admitted in evidence because it gave a good representation of the issues which the Applicants had allegedly suffered over the years. As to the new photos and documents in the skeleton argument, Ms Oh said she had just come across these while writing her skeleton argument. She was also keen to provide a retort to the minimising of the defects of which the Applicants complained, such as the contention in Counsel's skeleton argument that there was "a puddle in the car park" and not a flood.

43. The Tribunal acceded to the admission to adduce the videos, with a degree of reluctance. The Tribunal was prepared to see how they might dovetail (or not) with the documentary material. As it is, and having heard all the evidence, we consider the videos to be of no evidential value, not least because they are not contemporaneous.

44. The Tribunal at the hearing declined to accept any new photos or documentary evidence in the addendum to the skeleton argument, save for items 1, 3, 4, 7, 11, 12 and the letter from Woodward Markwell dated 22 June 2022, on the grounds of prejudice to the Respondents. The items allowed in were either communications with the Tribunal, or text concerning legal authorities, or evidence that Mr Purves could give concerning insurance relating to events which had transpired since his witness statement was made, and therefore could not have been included in it.

Issues

45. The main issues remaining to be determined were therefore reduced to the following:

    (1) The Respondent's arguments concerning the service charges challenged before 16 July 2015;

    (2) The main heads of challenge contained in the main witness statement of the Applicants, i.e. whether insurance, management fees, water and electricity costs were reasonably incurred and reasonable in amount;

    (3) Whether the revised Scott Schedule items were costs reasonably incurred and reasonable in amount;

    (4) Whether an order should be made pursuant to s.20C of the Landlord and Tenant Act 1985/ para. 5A of Sch.11 to CLARA 2002.

The Respondent's arguments concerning the service charges challenged before 16 July 2015

46. It was accepted by the Applicants that the compromise of 4 December 2014 settled their claims in respect of disputed service charges up to and including 30 September 2012.

47. Despite the Respondent's statement of case, in closing submissions Mr Beetson expressly disavowed any intention on his clients' part to run a Limitation Act defence.

48. Instead, as per his skeleton argument, Respondents' Counsel argued that the Applicants should be restricted to 6 years preceding the Application (i.e. no claim should be allowed to be brought between 1 October 2012 and 16 July 2015, the latter date being 6 years before the Application was received by the Tribunal) on the grounds the Applicants had agreed these sums / were estopped from denying they had agreed them.

49. The Respondents' written arguments may be summarised as follows:

    (1) The Respondents state that they do not keep substantive records going back further than 6 years. This was raised at the Directions hearing.

    (2) The principles in *Cain v Islington LBC* [2015] UKUT 0117 (LC) should be applied by the Tribunal, in particular the following:

        > "29… On analysis, what the F-tT was really saying was that the applicant had had ample time within which to challenge these service charge items and had failed to so do so should not now be able to challenge them, it being proper to find that he had admitted or agreed them. With that I respectfully agree."

    (3) The Applicants knew or ought to have known that it was open to them to make a challenge in respect of the years preceding 2016 sooner should they have wished to. Indeed, Ms Oh was party to a settlement agreement which included the service charge year in relation to 2012. Many of the same Applicants in these proceedings were parties to the proceedings within which settlement was reached for 2012.

50. The Applicant's submission was that nothing should be payable by them between 2012 and 2015, because the Respondents had destroyed the invoices for those years, meaning they could not raise specific allegations in relation to them.

51. In the materials before us, it is a fact that Mr Bulbulia had written an email to OM Property Management on 24 December 2013, which included the following words:

    > "We have told you on many, many occasions you would receive payments from us once you improve the conditions in which we live in and also give us a complete and simple breakdown of every penny you have ever charged us and provide us with invoices/receipts for every single penny you claimed to have spent the last eight years."

52. On 7 April 2015 Mr Bulbulia also wrote to OM Property Management, in terms which included:

> "We disputing the charges from 2012 until now as you are fully aware of so would appreciate you from refraining from sending us anymore threatening letters until it is resolved. With everything we discovered before, you know as well as I do but we will find the exact same missing/ duplicate/ nondescriptive /excessive invoices, fraudulent activity etc etc in the last three years."

53. On 4 April 2018 Leon Jennings e-mailed the First Respondent in terms which included:

> "We have been requesting a copy of every single invoice from 2012 until now for over six months. Something you are obliged to provide. And I'm sure if you had nothing to hide, you would have provided them six months ago."

54. The above are examples of various complaints made by the Applicants as disclosed in Mr Bulbulia's exhibit, all of which we have read and considered.

55. The FTT can only determine disputed service charges, not ones which are admitted: s.27A(4) of the Landlord and Tenant Act 1985. However, s.27A(5) says that the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

56. In the decision of *Cain v Islington* [2015] UKUT 0542, the UT had considered the impact of s.27A(5):

> "18. Looking at the reasoning behind this provision, no doubt the reason why the making of a single payment on its own, or without more, would never suffice is that such will often be insufficiently clear but also, in the peculiar area of landlord and tenant, it is common enough for tenants to pay (even expressly disputed) service charges so as to avoid the risk of forfeiture and preserve their home and the value of their lease. But the reason why a series of unqualified payments may, depending on the circumstances, suffice is because the natural implication or inference from a series of unqualified payments of demanded service charges is that the tenant agrees or admits that which is being demanded. Putting it another way, it would offend commonsense for a tenant who without qualification or protest has been paying a series of demanded service charges over a period of time to be able to turn around and deny that he has ever agreed or admitted to that which he has previously paid without qualification or protest. Self-evidently, the longer the period over which payments have been made the more readily the court or tribunal will be to hold that the tenant has agreed or admitted that which has been demanded and paid. It is the absence of protest or qualification which provides the

additional evidence from which agreement or admission can be implied or inferred."

And

"24. The only explanation put forward is that the appellant did not have the material which he required to mount his challenge and still does not have all of the material he would like because the Respondent has failed to provide it despite, I am told, over 70 requests for service charge information having been made some of which have been abortive and refused on appeal to the Information Commission and dismissed as "vexatious" by the First-Tier Tribunal General Regulatory Chamber Information Rights. That explanation does not stand scrutiny in respect of the gardening costs and insurance management fee for reasons stated, and probably does not in respect of the aerial. So far as the other items are concerned, I do not know when the first requests for information were made under the Freedom of Information Act 2000 although they were probably from around November 2011 onwards. Neither do I know what precisely was requested. However, it does not follow from the fact of a request for information being made that something is being challenged, especially where it would appear that the items now being challenged are of such antiquity and payment has been made without qualification or protest. As the F-tT said, the requests were in the nature of requests for information and nothing more.

25. The question is whether there are any facts and circumstances from which the F-tT could properly have found that the appellant had agreed or admitted the service charge items in respect of the 2001/02 to 2006/07 period he now seeks to challenge. In my judgment, the F-tT was entitled to so find based purely upon the series of payment in respect of the demanded service charge throughout this six year period, and subsequently, without reservation, qualification or other challenge or protest. That of itself is sufficient. The (sic) is, however, reinforced by the sheer length of time which has elapsed before challenge was first made – between eight years in respect of the 2006/07 service charge and 12 years for the 2001/02 service charge. Whilst distinctions can be made between the nature of the different service charge items being challenged, the F-tT is entitled to look at matters in the round and find that where there has been substantial delay in making any challenges to the items now in dispute, and most if not all of which have long-since been paid, that the tenant has agreed or admitted the amounts claimed which, after all, have long-since lain dormant without challenge.
…

27. There is, however, no magic to the claim being limited to six years before the making of the application: that is was what the F-tT was asked to find, and it acceded to that request. The fact that it coincides with what is frequently the applicable limitation period is of no materiality because a finding of admission or agreement is a finding of fact to the effect that the tenant has agreed or admitted the amount due so ousting the

jurisdiction of the F-tT and indeed the county court by dint of section 27A(4)(a): it is not a question of limitation. Had the F-tT been asked to find that agreement or admission should be treated as having been made within a shorter period before making the application, the F-tT would, depending on the facts and circumstances, have been entitled to so find."

57. In *Marlborough Park Services v Leitner* [2018] UKUT 230 (LC) the Upper Tribunal applied *Cain v Islington,* so as to find the tenants could not rely on service charges disputed for the years 2007 to 2012 brought within a challenge made in 2018.

58. In this Tribunal's determination, the Applicants are precluded from disputing service charges between 1 October 2012 and 16 July 2015 on the grounds that they are estopped from doing so, along the principles in *Cain v Islington*. For a start, we have no evidence of any qualification or protest from any of the Applicants up to 16 July 2015 save the joint leaseholders Mr Bulbulia and Ms Jennings of 79 & 383 Quayside Drive. This is despite the Respondent's Statement of Case squarely pleading *Cain v Islington* and *Marlborough Park Services v Leitner*. We agree with the Respondents that each Applicant has in effect a separate application, and the actions of one or more cannot be attributed to the other Applicants, if they did not themselves complain. As Mr Beetson put it, the other Applicants cannot piggy-back onto Mr Bulbulia's emails.

59. As regards those 2 specific Applicants, the Tribunal has considered the emails before July 2015: the first email from 2013 was no more than a request for information, and the second one in 2015 indicates a dispute to the service charges, but no actual qualification or protest. Moreover, none of the Applicants mounted a service charge challenge, despite having ample opportunity to do so. Indeed, many of them were engaged in the s.27A Application which was eventually settled on 4 December 2014, and yet, despite that experience and assertion of their rights, they made no further application, notwithstanding that they continued to consider the quality of services to be poor, and believed the Third Schedule of the Agreement to have been broken.

60. We consider the Respondents, in the face of the emails received, were unwise to destroy the invoices pre 2016 (which we're told, was standard practice once they were 6 years old). However, this must be balanced against the fact that the Applicants had chosen not to intimate another challenge under s.27A of the Act, let alone bring one.

61. The Applicants' delay has meant that a challenge to the service charges between October 2012 and July 2015 is evidentially extremely difficult to advance or determine, just as was the case in *Marlborough Park*.

62. We determine that it is stale, and should not be allowed to proceed on the grounds that the Tribunal does not have jurisdiction over matters which have been agreed or admitted. The Tribunal therefore strikes out this aspect of the Application under Rule 9(2)(a) of the Procedure Rules, which provides that

the Tribunal must strike out the whole or part of a case if it does not have jurisdiction.

Main items: Insurance

63. The challenge, Ms Oh explained, was only to reasonableness of amount, not whether insurance was reasonably incurred. The Applicants had asked the First Respondent's predecessors to shop around for insurance, as per the settlement agreement of 2014. But they did not believe the Respondents had done so; they had not undertaken a full remarketing exercise, nor attempted to get at least some alternative quotes, but had stuck with Zurich, as before 2012.

64. The Applicants pointed to the Third Schedule of the Agreement from 2014 at section B, sub-paragraph (b), and stated they expected the Respondents to have used a broker to get alternative quotations.

65. The Applicants complained that the First Respondent had not given them the claims record until very recently. Ms Oh claimed their recent alternative quote was 40% cheaper than the Respondents' cost. She accepted that 383 Quayside Drive (part of 349-383 Quayside Drive) went Right to Manage in 2018.

66. In cross-examination Ms Oh accepted the need to insure and that the Lease required a number of risks to be covered, and that the Respondents' cost did not have to be the cheapest (as long as it was reasonable in amount). Ms Oh did not accept that the £72,686.52 in the Woodward Markwell quotation dated 22 June 2022 was close to the £84,000 for insurance the Respondents had incurred in 2020. It was for a different year.

67. Mr Purves gave evidence that he had only received the full claims record on 17 June 2022, despite his asking for it since 22 January 2022 (he later gave a date of 10 March 2022). Initially, he said, the First Respondent had asserted he could only have it for his own block. In the end, he had to get the details from Estates & Management Ltd. He had added up the premiums for the insurance year up to 1 March 2022 and they totalled £105,000. He gave a full breakdown of all the premiums to the Tribunal, which included terrorism cover. He explained the difficulty of getting retrospective alternative quotes. He accepted he had not challenged the allegedly high insurance at the time, adding that maybe he should have. Mr Purves added that he had been astounded to find approx. £200,000 of insurance claims in respect of escape of water in the preceding 5 years.

68. Under cross examination, Mr Purves was asked whether he had asked the First Respondent if it had put insurance out to competitive tendering, and he said he believed Ms Oh had previously asked. He explained that OM Property was part of the Peverel Group, as was the First Respondent. He conceded that the allegations of secret commissions came only anecdotally, through the media. He accepted he did not have any direct evidence of the same. He said JA Gallagher were the brokers and referred to a decision he had found called *Peachey v Regis*. Mr Purves was taken to the 22 June 2022 "comparable", and

accepted that the document said it contained indicative terms, and did not say what risks were covered.

69. Mr Purves explained that this broker, Mr Scutcher of Woodward Markwell, was retained by the owner of 1-11 Marina House, who was familiar with the block. He claimed there had been double insurance (i.e. the First Respondents had insured that block as well as the owners). However, Mr Purves conceded he was going on what he had been told, and that he would have to get the certificate from the owner of 1-11 Marina House, Mr Wong.

70. Mr Purves confirmed he had told Woodward Markwell of the claims history before obtaining their indicative terms.

71. The Respondents' opening position on insurance was that there was an absence of reliable comparable quotes from the Applicants, because it was not clear what risks were covered in them. Then Mr Franklin then gave evidence on the morning of Day 2. He confirmed his witness statement, after correcting the fact that it referred to the Applicants' statement of case instead of the Respondents'.

72. Mr Franklin did not dispute the figures given by Mr Purves for 2022 incurred by the Respondents, but was unable to assist the Tribunal as to what the premium was for the service charge year ending 30 September 2021.

73. Mr Franklin then attempted to assist the Tribunal as to the premiums payable for all blocks for the insurance year 1 March 2020 to 1 March 2021, but it became clear he did not have the data to hand. Mr Franklin said he would need to go back through the computer. He said he would not be able to agree to the Applicants' pleaded figure of £84,054 odd without further research. He was able to agree the figure for 2019.

74. He stated that they trusted the brokers to give them adequate cover. He said he was the manager when it came to insurance matters, but they also have an in-house insurance team to assist.

75. Asked by the Tribunal why there had been an increase from £39,000 odd in 2019 to over £105,000 in 2022, he said the market had hardened as a result of risk to taller buildings, especially as regards 18m+ buildings, of which there were 3 here, he said.

76. As to whether a remarketing exercise had taken place, Mr Franklin said he had not directly seen any document to indicate it had happened, but believed it had.

77. Mr Franklin answered some questions posed by the Applicants. He accepted they had used Zurich since at least 2016, but did not know the situation before then. He could not say if Gallaghers took a commission, and his understanding was they were the sole broker. He denied the First Respondent took any commissions. He said he did not know if Estates & Management did get a commission. He accepted he was mistaken in including Marina House as

one of the three 18m+ buildings, when it was put to him it was only 3 storeys high.

78. He was adamant the risk of terrorism was something which needed to be covered, as there was a stipulation in the Lease [he was incorrect in this assertion, the lease has no such express stipulation]. He said it would be remiss not to insure against that peril, because they could not predict where such an event might happen next.

79. In answer to questions from the Tribunal, Mr Franklin confirmed that First Respondent had an in-house insurance team, as well as Firstport Insurance Services Ltd, registered by the FCA, but the latter had not been involved here, as they do not provide any brokering services.

Determination

80. The Tribunal is not satisfied on the evidence in this case that there were any commissions which the Respondents have failed to disclose, nor that there has been any double insurance.

81. We do not consider the decision in *Peachey v Long Term Reversions (Dulwich Ltd)* CAM/34UF/LSC/2018/0023 to be of much assistance. It is not binding authority and could only be persuasive. Whilst it concerns insurance, it lays down no point of principle, and was a case on its own facts.

82. However, the FTT decision at paragraph 66 does refer to *Cos Services Ltd v Nicolson et anor* [2017] UKUT 382 (LC), which we note with interest. In that case HHJ Bridge found insurance premiums to be unreasonable where there was a substantial discrepancy between the quotations obtained by the tenants and the premium charged by the Landlord's insurer, and no explanation for it.

83. We were not impressed with the Respondents' inability to produce data for relevant years. The Tribunal has no reason to disbelieve the figures brought by the Applicant, albeit their data are necessarily incomplete because the Respondents had been unable to disclose documentary records for each of the years remaining under challenge.

84. Whilst the Respondents relied on the accounts from 2015 onwards, there are several points of concern. The first is that the Tribunal should not be expected to pick through the accounts to try to ascertain the evidence which the Respondents should have adduced by witness statement. Mr Franklin's witness statement, and the Respondents' Statement of Case, provide no concrete figures for insurance. The Tribunal has, however, endeavoured of its own motion to set out the premiums and excesses in the attached Appendix 3, the figures having been taken from the Respondents' accounts (except for 2022, which comes from Mr Purves' undisputed oral evidence).

85. The second is that whilst the accounts for the years ending 2015, 2017 and 2018 have an auditors' report, the accounts for 2016 do not. Moreover, the accounts for year ending 2018 have blank entries on 4 pages.

86. Yet further, the Tribunal was supplied only with unaudited income and expenditure accounts for 2019, 2020 and 2021 (the latter only shortly before the hearing, bearing a "draft" watermark).

87. Thirdly:

(1) The accounts for 2016 to 2018 do not have income and expenditure accounts for 164-229 & 278-281 Colne View, nor 77-105 Colne View, 4-26 Lightship Way, 387-419 Quayside Drive, nor Marine House;

(2) 2016 does have accounts for an area called "Reflections", a building which was unexplained to the Tribunal;

(3) In some years, there are other expenses which are not insurance premiums but they are lumped together under 1 heading, without explanation;

(4) It is clear that some figures for 2021 are simply cut and pasted from 2020.

88. In short, therefore, the Tribunal can place only the most limited reliance on the Respondents' accounts.

89. In what is something of an evidential vacuum, the Tribunal can do little more than apply a broad brush. Whilst, as an expert Tribunal, we can accept the contention that the market has hardened in recent years, and insurance premiums for higher rise blocks have indeed increased, there are only 2 such blocks here, and the increase from £40,000 odd in 2019 to £84,000 in 2020 is concerning. On the draft accounts, the figure for 2021 is high as well, being £84,373: see Appendix 3.

90. The premiums then rise to over £105,000 for the most recent year, which is alarming, even allowing for the fact that figures for all blocks were provided. In such circumstances we determine that, as in *Cos,* there is a substantial discrepancy between March 2019 on the one part and March 2020, 2021 and 2022 on the other.

91. The quotation obtained from a broker by the Applicants for 2022 was £72,686.52. In the Tribunal's experience, an entry level quotation from a broker who might be wishing to attract business and who does not have all documentation before it must be treated with caution. Indeed such a quotation might be as much as 20% too generous to the customer. In this case we emphasise that the broker himself calls it "indicative". The Applicants' quotation might therefore be expected to equate to as much as £87,323.82, with the 20% added.

92. The leap from 2019 to £84,000 odd in the next 2 years is also unexplained, as is in the increase again in 2022.

93. Applying *Cos*, the Tribunal determines that the insurance premiums for 2020 and 2021 were unreasonable because there is a substantial discrepancy between the quotation obtained by the tenants and the premium charged by

the Landlord's insurer, with no proper explanation for it. We take in account that the Applicant could not get quotes for those early years, and do not criticise them for it. Getting like for like comparisons when you are not insured is extremely difficult.

94. In real terms, therefore, the landlords' current premium of £105,000 odd is 20% higher than the figure in para. 91 above.

95. We determine there should be a discount of 20% in the insurance service charge payable by the Applicants, for the 2 years ending 30 September 2020 and 30 September 2021.

96. The Tribunal has considered whether terrorism cover was justified, albeit that this issue only surfaced during the course of the hearing. On the authority of *Qdime Ltd v Bath Building (Swindon) Management Company Ltd (2) Various leaseholders* [2014] UKUT 0261 (LC) at paras 30-41, terrorism cover was, this Tribunal decides, a cost which was reasonably incurred, for the 3 reasons in *Qdime:*

    (1) It is one of the risks which the Council of Mortgage Lenders recommend to be covered, and/or

    (2) The ordinary meaning of the word "explosion" includes explosions caused by terrorism and/or

    (3) The Respondents in this case legitimately exercised their absolute discretion to cover that risk. This was an urban environment, not a rural one.

Main items: Water and Electricity

97. The Applicants' accepted that water and electricity was a cost reasonably incurred. Their bullet-point objections to the cost were as follows:

    - The Respondents had not sought quotes from the market, just used the same suppliers as before;
    - According to the Table in their main witness statement, usage had increased a lot over the years;
    - Invoices were not on stationery heading;
    - The electricity invoices had estimated readings only.

98. The Applicants withdrew an allegation in their main witness statement concerning Barrett Eastern Counties using electricity in Block C in June 2012 to January 2013.

Electricity

99. The Applicants also relied on Mr Bulbulia's statement and exhibit, to the effect that lights were left on 24/7 in his block from 2006 to 2019 (when motion

lights were put in). Ms Oh confirmed that was the same problem in her block, notwithstanding there was some natural light in the corridors.

100. The Respondents' position was there have been fluctuations in the costs incurred over different years, but the increases (at least in relation to electricity) were not particularly remarkable, comparing 2012 with 2020.

101. Mr Franklin gave evidence that the Respondents do shop around for electricity. They use a service called EnergyCentric, who secure the best rates for them. This service is not paid for by the Respondents; EnergyCentric must make their money "further on", he said. This service can procure rates cheaper than the Respondents could do themselves, he added. He believed that the same approach had been taken since 2012, albeit that EnergyCentric had changed its name at some time down the years. He explained the invoices were not on headed paper because the Respondents pay EnergyCentric for the utility cost (but not the service itself). In relation to the lack of invoices pre-2016, Mr Franklin relied on the audited accounts, as he called them.

102. Mr Franklin explained that he had joined First Port in May 2018, but had been in his current role since April 2021, and did not know when invoices prior to 2016 had been "got rid of".

103. Mr Franklin denied that the communal lights were always on. He said that there were sensors in place, movement-activated since 2014, except for the emergency lighting, which was different. He said they did monthly inspections. When questioned by Ms Oh, he said he last went to the Estate in May 2022, and they made monthly visits, albeit not always him (it might be the Regional Manager). He said he had visited monthly since January 2022, and had visited all corridors as a matter of course. He said he would look into the alleged sensor issue in 191-321 QSD, when Ms Oh alleged her blocks had never had sensor lights on the ground floor.

Water

104. The Applicants, in addition to the points in para. 97 above, complained there had been many water leaks, which had led to the increase in water rates over the years. They pointed to damp and mould in their properties, flooding in the cupboards, the toilets constantly bypassing, and insurance claims for water leaks.

105. As for the table of costs incurred prepared by the Applicants which appears in the Applicants' main witness statement, Ms Oh withdrew challenge to the years ending 2013, 2014 and 2016, on the basis these costs were accepted to be low. The Applicants therefore pursued 2012 (a year which we have struck out), and 2017 to 2020.

106. In relation to these 4 years, excluding 2018 when there is only 1 figure for 1 block available, a comparison reveals an increase to £51,000 in 2017 (up from £21,000 odd in 2016), and then to £68,000 odd in 2019, rising still further to £77,000 in 2020.

107. The Applicants took the Tribunal to a selection of invoices in 2017, 2019 and 2020 to support their case of water escapes/ingress. Ms Oh said they had complained, and been told by the managing agents that anything within their own demise was their responsibility. But she could not provide an explanation as to why no claim for disrepair etc had been made by other leaseholders (she said she did not know herself that she could make such a claim).

108. Mr Purves gave evidence that there had been £195,000 paid out for insurance claims for escape of water in the last 5 years. Mr Purves also gave evidence of 4 individual figures for the period 21 June 2018 to 13 September 2019 totalling £93,000 odd, in just a year and a quarter.

109. The Respondents' representations were that the Applicants had no comparables, and had not said what they were willing to pay. There was no evidence the costings arose from poor management, and there was no evidence before the Tribunal that water leaks/escapes were not dealt with quickly. Moreover, there was evidence that leaks had originated from within demised premises.

110. Mr Franklin reminded the Tribunal in 2018 their predecessors Rylands had been in management, with the First Respondent stepping back in as of November 2019.

111. As for the charges, he emphasised that the invoices were cumulative, and any "carried forward" figures on the bills had to be discounted.

112. As for water, he could not accept that £195,000 had been claimed on insurance in the last 5 years. He emphasised that individual leaseholders have leaks, and that only communal piping leaks/repairs would cause a charge to the leaseholders.

113. He advised the Tribunal he did manage other blocks, which did not have as much flooding as the Property. It was put to him there might be a fundamental issue, warranting investigation. He could not say why a survey of communal water pipes had not taken place. He advised there were a number of meters, but no sub-meters to narrow any issue of leakage down. He confirmed there was no holding tank in the blocks, and that the taller ones had pumps, but they were serviced and maintained regularly.

114. Ms Oh asked if there had been a surveyor for the First Respondent called out in 2021 to look at potential sources of the leaks. Mr Franklin said that, unfortunately, he did not know if it had happened. He refuted the next suggestion that the First Respondent took a long time to deal with anything. He said that they try not to be slow or obtuse (his word). He said that the number of claims made on insurance shows this. He could not say when these leaks first began. He apologised for not knowing what the cause of leaks was in the communal hallway, positing that it might have been difficult to find the source. He said the First Respondents were prepared to look into it.

Determination

115. No set-off is pursued by the Applicants, and while the Tribunal has concerns over the number of alleged leaks taking place on the Estate, it is unable to apportion liability for those, or to find they resulted from poor management. The mere fact that they happened does not get the Applicants home, therefore, in so far as they pursue such matters. There was evidence of leaks in individual demises, and leaseholders are responsible for internal pipes. Clearly the Respondents would be well-advised to undertake a full survey of their communal pipework in the future, but that advice cannot impact our decision as to whether costs were reasonably incurred or reasonable in amount for 2015 to 2021.

116. Moreover, if the Respondents had to make historic claims on their insurance in respect of water leaks, again, unless it could be said to have been their fault, that was appropriate/ reasonable action, even if it meant an increase in premium for the following year (of which there was no direct evidence).

117. The Respondents did not have a choice of water supplier, and once it is realised the bills are not cumulative, the figures alone do not merit anxious scrutiny.

118. In the Tribunal's determination, in such circumstances, the Applicants have not raised a prima facie case as to the unreasonableness of cost of water charges.

119. As to electricity, the Applicants have no comparables of their own, and there was no evidence of widespread excess use of lighting in the blocks, such as to make any impact on the relevant costs. We accept the Respondents' submissions that the evidence of alleged excess lighting we were given was only likely to make the tiniest dint on the bills.

120. We also accept the Respondents' evidence that its use of EnergyCentric to source the utilities was a reasonable decision to make.

121. In the Tribunals' determination, in such circumstances, the Applicants have not raised a prima facie case as to the unreasonableness of cost of electricity charges.

122. We therefore allow all utilities costs, as being costs reasonably incurred and reasonable in amount.

Management fees

123. The Applicants alleged that they had received a very poor management service. They claimed emails were routinely ignored, and the First Respondent was slow to take action, having to be chased all the time. They found this very draining. They felt like they kept repeating themselves. They considered the state of the site to be embarrassing, with damp-stained walls and plaster coming off them.

124. When asked what discount they would expect from the management fees, or put another way, what they would be prepared to pay, Ms Oh reluctantly answered they would pay 5%, as the Applicants had been put through absolute hell, she said.

125. We were taken to Mr Bulbulia's complaints of the First Respondent's ignoring of emails and deliberate delay of proceedings.

126. Ms Oh then referred to the very poor state of the carpets on the communal stairs; that these are vacuumed but they never look clean. Ms Oh took the Tribunal to Mr Bloomfield's statement in this regard, and that a particular stairwell has had a stair cap missing since 12 March 2021, being a tripping hazard and fire escape risk.

127. Ms Oh also took us to Mr Jamie Smith's various statements, in which he alleges that his flats (in different blocks) had identical issues: being always dirty and very messy, with paint falling off everywhere, and carpet missing in places; the door has not worked, nor the intercom system, for well over a year; the gym looks like it is never been cleaned; the car park is constantly flooded; there is water leaking from outside of the flat which has never been sorted; the window has so much scale on it one cannot see out; there is water leaking in the communal outside space which the First Respondent has left for well over three months, despite its constant leaking; and there is water dripping from overflows.

128. When questioned by Mr Beetson, Ms Oh had to confess that there was very little evidence in the bundle of complaints about poor service. She claimed to have evidence on her computer which would assist, but it was not before us.

129. Mr Franklin was re-called and questions were asked of him by Ms Oh. He did not accept there was evidence that the Respondents' calculations were wrong. Again, he referred to audited accounts, for which they as managers had to have all information available. The auditing process, he said, meets a specific standard, although he did not know the ins and outs of the process.

130. He accepted that at the time the Applicants asked for invoices, there might not have been some available, and that what was in the hearing bundle was possibly not all of them. He explained the 2019 to 2021 accounts were not audited because it had proved difficult to get information from the previous agents, Rylands. He accepted there had not yet been year-end adjustments.

131. He said there would be a written management agreement but could not assist as to its contents or the duties set out therein; he said they may well be the same as ARMA, but could not confirm.

132. He said that there were 399 units excluding Reflections. Mr Franklin could give breakdowns of management fees for only 2 blocks, as follows:

(1) 2014: 5-93 QSD: £113 and £131.50 (estate), total £244.50;
(2) 2015: 5-93 QSD: £116 and £135 (estate), total £251;
(3) 2016: 5-93 QSD: £122.27 and £135.46 (estate), total £257.73
(4) 2014: 325-385 QSD: £111.74 and £131.50 (estate), total £243.24;
(5) 2015: 325-385 QSD: £115.16 and £135 (estate), total £250.16;

133. He said the management fee was set in line with their commercial goals, and when asked how leaseholders would know what the management fee rate was, he stated that they are sent anticipated figures. He could not say how the business model was applied, so as to result in year on year increases of fees.

Determination

134. The Tribunal determines a management fee was a cost reasonably incurred.

135. As to whether it was reasonable in amount, the method of calculation of the fee was wholly untransparent, with Mr Franklin unable to assist the Tribunal as why it was set as it was in 2014, and why and how it was thereafter increased.

136. We cannot simply accept the figures in the accounts, for the reasons given already in this decision, which have missing information and often lack of appropriate auditing.

137. In cases where the quality of the services delivered by the agents themselves or others and/or the condition of the development is below normal expectations, the Upper Tribunal has accepted this as being indicative of the management function not being executed to a reasonable standard. In *Kullar and Prior Place Residents Association v Kingsoak Homes Ltd* [2013] UKUT (LC) the management agent's fees were reduced on account of the many problems experienced in the block.

138. While we accept as a general submission the Respondents' points that few of the Applicants have appeared at the hearing to support their complaints and to be cross-examined, and that there is little documentary evidence of complaints of poor service, the Tribunal considers that the weight of the evidence, albeit hearsay in many circumstances, is sufficient for us to conclude that the condition of this development was not as to be expected in all the years since July 2015, and the quality of service was below par. The Respondents adduced no evidence about the performance of Rylands in

2018/2019. Whilst Mr Franklin did nothing other than try his best to assist the Tribunal in respect of the various issues, and he was an honest witness, but it was absolutely clear to the Tribunal that he did not have a sufficient mastery of the facts and figures and the wider picture of goings on within this Estate.

139. Applying *Kullar*, the Tribunal determines that the service charges payable by the Applicants for management fees should be reduced by 40% for the years from July 2015 to September 2021.

Whether the revised Scott Schedule items were costs reasonably incurred and reasonable in amount

140. The revised Scott Schedule is attached at Appendix 4. This is in the original format, with the item numbering as sent by the Applicants on the evening of Day 2 of the hearing. The only addition in Appendix 4 is the right hand column, giving the Tribunal's determination, the reasons for which are set out in full below. The Respondents' submissions are also reproduced below.

141. The Applicants conceded items 1-6, 12-13, 19, 21 and 25 on the Scott Schedule as being items which had already been covered under the main heads of challenge or which were not a challenge to a specific cost.

142. The Applicants did not adduce any prima facie case within the time available to them in relation to items 11, 23 and 26 and we dismiss the challenge to these.

143. Concerning the remaining items:

Item 3: £540

144. The Applicants bald point was there is no pool or spa at the Estate, and the invoice was not on headed stationery.

145. Mr Franklin responded as follows: there was a gym facility, and that this invoice was for a leisure risk assessment of the communal gym; the invoice simply contained a misdescription, he said.

146. Ms Oh asked whether or not the risk assessment was available, and Mr Franklin indicated he might be able to obtain it. In the event, we were not shown any risk assessment. However, Mr Franklin orally confirmed that it included an inspection of signage, a general inspection, monitoring, inspection of records/ maintenance of equipment, lighting, slip hazards, walkways being clear, glazing appropriate for impacts, and IEE testing of electrical items.

147. In reaching our conclusions, the Tribunal accepts the Respondents' explanation for the invoice, and that there was a misdescription. We also

remind ourselves of the general evidence that we had - that invoices were not always on headed notepaper because of the computer system used by the Respondents. This is covered later on in this decision.

148. We therefore find that this was a cost which was reasonably incurred and reasonable in amount.

Item 7: £44,461.34

149. The Applicants complained that the Respondents generated their own invoices, which they considered to be fraudulent. These were substantial in 2017 (the only year being challenged). The Applicants referred the Tribunal to an example invoice number 47876.

150. Mr Franklin conceded that there was an appearance that the First Respondent generated its own invoices. However, he explained, the First Respondent uses an ordering system called Cooper, which enables a supplier company to log in, use a portal, and create an invoice using a template. In this way, the supplier does not send a branded headed notepaper invoice. Mr Franklin wanted to assure the Tribunal that this system met all legal requirements. Not all of their suppliers use the system.

151. In the Tribunal's determination, the Applicants' challenge fails. We accept the Respondents' explanation. The Applicants come nowhere near to establishing a case of fraud, and there is a genuine explanation for the absence of headed notepaper invoices, we find.

152. On the basis that this was the only challenge to this substantial number of invoices, we find the costs therein to have been reasonably incurred and reasonable in amount.

Item 8: £43,200

153. The Applicants' challenge was made on the basis of a lack of section 20 consultation.

154. The Applicants based their mathematics on the following: that 328-385 Quayside Drive consisted of 57 units; the cost was £21,600 for all those units, i.e. a unit cost of £360, and this was above the section 20 consultation threshold of £250.

155. The Applicants also complained that they hadn't seen the decorative works happening, and therefore they had doubts as to whether or not they did take place. Ms Oh said that they did not recall any scaffolding being erected or being struck.

156. Mr Franklin confirmed there were 57 units in the above block. He was adamant that statutory consultation did take place. He said that he had the stage 2 notice in front of him, dated 19 December 2016, and that there had been a preceding stage 1 notice on 16 September 2016. The Respondents had

asked for observations by 25 January 2017. He could not say that there had been any observations made, as they were not in front of him now. However there had been 3 subsequent tenders which had been returned. He could not say if any scaffold had been used for this work, but the cost related to the outside of the building, and the work was for external decorations. He assumed that there had been at least a platform or scaffolding included in the costs.

157. Mr Franklin was unable to provide the specification of works, but he did indicate that the works included painting and a upvc wash down; and that there had been a post works inspection, because he had an e-mail from the property manager dated 28 November 2017 stated that the work was complete. He confirmed that these were cyclical works which would ordinarily be covered by the reserve fund.

158. Given the detail in the Respondents' evidence, we prefer the Respondents' case and find that the costs were reasonably incurred and reasonable in amount, because we accept the consultation process did take place and that the works were executed.

159. However, we determine that the monies are not payable by such of the Applicants who were billed this cost. The reason for this is the missing reserve fund (see item 16 below).

Item 10: £836.39

160. The Applicants challenged 5 invoices from S&T Electrical, on the grounds that they were vague; in fact, the detail was so unclear that they were unable to specify any specific challenge to the items. The invoices simply stated "Materials used" without further explanation or qualification.

161. Mr Franklin explained that the invoices related to emergency testing of lights. He posited that it might be the case that the contractors were already on site to do a test, found there was a repair needed, did it, and only charged for the materials which were used to undertake the repair. He said the Respondents were able to cross-reference with other uploaded information on their health and safety portal, in order to check that this was a genuine claim for services rendered. He said that the Respondents would have a record of the fault which was detailed enough for them to cross reference. He added that there was no evidence raised by the Applicants that the works had not been done.

162. In the Tribunal's determination, whilst it is concerning that there is a lack of information on the face of the invoices, we accept Mr Franklin's explanation. We find these to have been costs which were reasonably incurred. There was no obvious challenge to the amounts. We find those reasonable.

Item 14: £40,849.43

163. The Applicants challenged invoices from E&G Lawrence covering the period 2017 to 2020. The lead applicant gave an example of an invoice in 2018 numbered 35809. The challenge was that these are vague invoices, and not on letterhead stationery. Further, some of them concern the cleaning of the bin stores at a cost of £690, yet they were always very messy and dirty, attracting vermin. In this regard, the Applicants relied on an example in Mr Bloomfield's statement of an overflowing bin store on 16 May 2020, in relation to which there was photographic evidence as well.

164. The Applicants contended that they had asked the Respondents in 2015 to use different contractors.

165. When asked how much they would challenge, or rather they would be prepared to pay, the Applicants contended that there should be a 50% reduction in these costs.

166. Mr Franklin conceded that there appeared to be a lack of detail in the invoices, but using the example from 2018, the code 84251D denoted that it was block 325-385 Quayside Drive. He explained that it concerned one week's cleaning of 3 entrances, plus internal cleaning, including the bin stores.

167. He further explained that E & G Lawrence are still the cleaners and that they place a monthly order. The bins were getting into this state, Mr Franklin explained, because of contamination in the waste bins, for example persons placing non-recyclable materials in the recycle bin, so the council would refuse to collect. He said this was a common problem across Colne View. He also said there were instances where rubbish was left on the floor, so the council could not physically wheel the bins out, and refused to collect it.

168. The Applicants' response to this was that, if Firstport cared about the Estate, leaseholders would respect it. Ms Oh accepted that persons dump large items in the bin store. She still said that she felt the Respondents have neglected the site.

169. When asked whether CCTV might be a solution, Mr Franklin explained that it was not as cheap as one might imagine.

170. In the Tribunal's determination, these were costs reasonably incurred and reasonable in amount. The Respondents have provided a reasonable explanation as to why the service was needed, and there is no contra evidence as to price. Nor is there (or perhaps could ever be) any evidence as to the motives of the persons placing the items in the bin store. The service had to be provided by the Respondents, we find.

Item 22: £13,955.40

171. The Applicants represented that it was unclear who had undertaken this work, what had been done, and whether these invoices for management work should have been covered under the general management fee.

172. Mr Franklin gave evidence that these invoices were for work outside the general management contract. It was for preparation of documentation in advance of the service charge accounts being undertaken. They would check that all items fell within the provision of the Landlord & Tenant Act 1985, and prepare a complex spreadsheet for the auditors. Moreover, to prepare this information, they would need to collate all necessary records, including invoices. Mr Franklin added that the process is more automated now (after 2016/17) than it used to be.

173. Mr Franklin indicated that this charge would come under "Accountancy and Audit Fees" or "Accounts Preparation Fees" in the service charge accounts, rather than under management fees. Using the 2017 accounts as an example, the fee was £4448. There are 179 units charged. The fee was therefore £24.85 per unit for this additional work.

174. In the Tribunal's determination, this kind of work should normally come within a general management fee, and we disallow these specific 3 invoices. Each unit is already being charged at least £250 for general management at this time. These were not costs reasonably incurred, we find.

Item 15: £7016.84

175. The Applicants challenge within the Scott Schedule was that there was no headed notepaper in relation to this invoice, from Fortress Security Systems.

176. Mr Franklin explained that it concerned regular maintenance and repairs of the gates. Fortress were their approved contractors.

177. Ms Oh asked whether or not there was a more cost-effective way of reducing costs. Mr Franklin said that the only real option was removing them because they are in constant use, and they tend to find that parts wear out. He added that they have to undertake regular assessments to ensure that the gates are compliant with safety regulations, which includes preventative and reactive works.

178. In the Tribunal's determination, this was work which was reasonably incurred and reasonable in amount. Whilst the gates remain in place (and there was no indication that the leaseholders wanted them removed, which would itself have security implications), the Respondents have to repair them. In the Tribunal's experience, electric gates are frequently a service which results in high repair costs, because of the frequent wearing out of parts and/or occupier interference with the gates. We do not find the lack of headed notepaper to be a reason to disallow this cost.

Item 16: £119,698

179. The Applicants expressed concern that a reserve fund of £119,698.89 had been transferred to the previous Managing Agents, Ryland, and had never been recovered. The concern was heightened by the fact that Ryland are understood to have gone into liquidation.

180. This sum is revealed in the notes to the service charge accounts for the year end 30 September 2018, one of the few accounts which appear to have been audited (they bear the name of BDO LLP but are not signed). The relevant column in note 4 states: "Transfer to New Managing Agents re lost blocks", and gives a breakdown of the £119,698.89 missing in relation to each block.

181. Mr Franklin explained that the First Respondent had been de-instructed as Managing Agent from 1 January 2018 from the Estate as a whole, and that Rylands managed 5-93 and 191-321 Quayside Drive up to October 2019. The monies had been held in a client/trust account by the First Respondent, he said, but he could not at first say where the money had been transferred to, and whether it was a client/trust account, because he was not personally involved.

182. Mr Franklin confirmed that, as of yet, the money had not been transferred back. The Tribunal asked Mr Franklin to make enquiries over the short adjournment, which he did. On his return he informed the Tribunal that he had a confirmation email before him approving the transfer from the First Respondent. He told the Tribunal that the First Respondent would have transferred into Ryland's "normal account". The beneficiary name on the account was "Rylands Associates". The First Respondent had been de-instructed once it had discharged its liabilities.

183. He told the Tribunal that there had been attempts to get the money back. When Rylands went into liquidation, and the First Respondent was re-appointed, the liquidators held any money. The First Respondent did try to recover it, he said. The liquidators had provided some funds to "Gateway", which were then passed to the First Respondent.

184. Needless to say, the Tribunal is most concerned that this substantial sum of money has not been recovered. The First Respondent seemingly held that money in trust for the leaseholders. ARMA members must comply the RICS Service Charge Management Code. At 7.10 the Code makes clear that "service charge funds for each property should be identifiable and either placed in a separate bank account, or in a single client / trust account where the account records of the manager separately identify the fund attributable to each property." Whilst the First Respondent might have done this itself, it does not appear that this fiduciary duty was thought to extend to ensuring the monies went into a trust account when this substantial sum of money was passed to Rylands. The First Respondent was content to transfer it to a "normal account", which we understood to mean was not a trust account of the kind envisaged. Moreover, we are not convinced on the evidence before us that adequate steps have since been taken to recover these monies.

185. The Tribunal has no jurisdiction to order repayment of the sum. However, in the circumstances, the Tribunal determines that where such funds held in reserve would have been used for major works challenged in this case (item 8 above and item 30 below), the service charges for those works are not "payable" by the relevant leaseholders for the purposes of section 27A(1)

of the 1985 Act unless and until such time as the funds are recovered, because the leaseholders have already contributed to the relevant costs by way of reserve funds, which the First and/or Second Respondent have not secured and have been unable to recover without sufficient cause.

Item 20: £6444

186. The challenge was to the cost in 2020 of car park sweeping of £537 x 12 months. The Applicants contended it had been only £36 in 2017. They alleged that constant car park floods would make sweeping impossible. Ms Oh said she had never seen anyone, despite her working from home and there being fortnightly visits, allegedly. The Estate was always dirty, she maintained, with cigarette butts prevalent on the "slope".

187. The Respondents explained that the fact the lead Applicant may not have seen the sweepers did not mean they were not out and about. Mr Franklin gave evidence that he had seen them. He accepted there were cigarette butts on the "slope", often caused by persons throwing them out of the windows above. He explained that they try to tie in their inspection visits with the dates when the sweepers are coming. He had no doubt the work was performed by them. He confirmed the visits were fortnightly throughout the year. He explained he worked with the same contractors over the whole of their portfolio. He stated he understood it to be 2 persons sweeping on each occasion. He could not say the exact hours they were contracted to do, but estimated 3-4 hours. The Tribunal has not accessed any facilities such as Google Earth, but relies on the evidence of Mr Franklin that this was "quite a large open development" to sweep. He explained that wind does whip through the development, bringing litter, and that there was high footfall nearby because of shops.

188. He explained there would not have been any reduction in the price if the sweepers had been unable to sweep the car park because of flooding. They undertook the hours they had to do, and the Respondents would ask them to do another area if they could not sweep certain areas; that if they did not attend for any reason, they did not bill the Respondents. Mr Franklin denied the suggestion by Ms Oh that he was making this evidence up.

189. In the Tribunal's determination, this was a cost reasonably incurred and reasonable in amount. The Estate cannot be kept clean 24/7. We prefer Mr Franklin's evidence that there was a system in place, and that contractors did attend fortnightly, and that they were supervised to an extent, but the nature and location of the development make it more susceptible to the presence of litter. We do not consider that Mr Franklin was making up evidence. We have previously noted that we considered him to be an honest witness. The Applicants had no comparable figures to challenge the Respondents.

Item 24: £1627

190. The Applicants simply queried what the call out was for. They cited an invoice number 1321.pdf from 2020.

191. Mr Franklin explained that it was related to lift works, and the company was a different company to the ones used for maintenance. Mr Franklin confirmed that the contractors would have been approved suppliers at the time, but he did not think they were so now. He explained that contractors became approved by having the relevant accreditation and documents, being qualified, and having a proven track record, having liability insurance, and possessing all necessary risk assessments and paperwork.

192. In the Tribunal's determination, there has been no prima facie case raised by the Applicants in relation to this invoice, and we find the cost to have been reasonably incurred and reasonable in amount.

Item 28: £13,986

193. The challenge was to invoices from a company called Aquatronic. The Applicants contended that these seemed random, and appeared to relate to Legionella risk assessments which they did not need.

194. Mr Franklin explained that these had indeed been Legionella risk assessments for 191-323 Quayside Drive, for the investigation of infrequently flushed outlets and dead legs etc. He relied on the text in the invoices, and that there had been a risk assessment in 2015, but he could not say what actions had been taken, although these invoices were indicative of some of the works.

195. In the Tribunal's determination, these were costs which were reasonably incurred and reasonable in amount. It was a rational decision by the Respondents to undertake these works, and we were satisfied by Mr Franklin's explanation.

Item 29: £456

196. The Applicants challenged these costs on the grounds they related to gate fobs for the car park which are (or should be) purchased by leaseholders and not charged to the Estate. The Applicants' case was that key fobs should be passed over from leaseholder to leaseholder, and if not, the individuals should be charged.

197. Mr Franklin explained that this invoice was for 10 fobs, possibly for the staff of the First Respondent and/or its contractors. He was candid in saying that unfortunately he could not prove that it was for those persons. As regards leaseholders, if the fobs were for them, he said the Respondents would buy them using service charge funds, and then recharge the leaseholders.

198. Mr Franklin then conceded that they should probably not be charged as a service charge expense, but should be an individual costing.

199. In the Tribunal's determination, this was not a cost reasonably incurred, and we disallow it, on the basis that individuals and not leaseholders through their service charges should have been paying for these fobs.

Item 30: £18,289.90

200. The Applicants complained the relevant invoice dated 31 May 2017 was "vague", and they were confused as to why it was addressed to "Firstport Retirement Property Services". The Applicants were also unclear what works were being provided for such a sum, although it appears to have related to something in 5-93 QSD. The lead Applicant said she did not know if works had been carried out, because she had not seen them being carried out.

201. Mr Franklin explained that this was work on 5-93 QSD, and the relevant sum worked out at £207 per unit, and therefore below the consultation threshold, even after snagging, and the full costing was incurred. He confirmed the invoice related to external works of decoration and repair, which the Respondents would pay for on completion of snagging. He explained the address on the invoice was still a registered address of the Respondents.

202. In the Tribunal's determination, this was a cost reasonably incurred and reasonable in amount. We consider that the invoice, coupled with Mr Franklin's oral evidence, is sufficient evidence that the works were related to 5-93 QSD and were completed. Moreover, that these were "relevant costs" which related to the Respondent's obligations under the Lease. The Applicants have not raised a prima facie case that works were not completed to a reasonable standard. The Applicants have no alternative costing to challenge the Respondents' figure, which is not of such an amount as to cause the Tribunal to question it.

203. However, we determine the service charges for these works are not "payable" by the relevant leaseholders for the purposes of section 27A(1) of the 1985 Act unless and until such time as the funds are recovered, for the same reasons as given under paragraph 185 above.

Item 31: £5726.40

204. Again the Applicants' challenge was it was not clear what this item was for, and the labour of amount of £3156 only invoice seemed high. Also there was no proof that the work had taken place.

205. Mr Franklin gave evidence that this related to repairs to estate paving, as opposed to block works. He could not say how long the contractors had been on site. He accepted that more recent invoices contain more detail.

206. When asked by Ms Oh whether or not the first Respondent kept photographs, in order to show works had been done, Mr Franklin answered that they do, but only more recently - from August 2021 onwards. He added that they may have photographs of this work, but it was not something he was

able to prepare for, given the lateness of the challenge brought in the Scott Schedule.

207. The Tribunal is satisfied by the Respondents' explanation. As with all items bar insurance, the Applicants have no comparable quotes of their own to challenge the sums involved. We note the lack of detail in the invoice, but consider, having heard from Mr Franklin, that this was a cost which was reasonably incurred and reasonable in amount.

Item 32: £1194

208. Again the Applicants' challenge was that this was unclear as to what it related.

209. Mr Franklin explained that AHR Building Consultancy were a surveyor who had produced a specification of works in relation to an external major works project.

210. Ms Oh had no questions of Mr Franklin when this was explained.

211. In the Tribunal's determination, there has been no prima facie case raised by the Applicants in relation to this invoice, and we find the cost to have been reasonably incurred and reasonable in amount.

Whether an order should be made pursuant to s.20C of the Landlord and Tenant Act 1985/ para. 5A of Sch.11 to CLARA 2002.

212. In *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), HHJ Rich held:

"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

213. The Respondents contended that no such order should be made, this

being originally an unworkable application which the Applicants could never have pursued to their full extent, given there were over 1000 lines in the original Scott Schedule, many of which gave no particularisation and did not state what the Applicants would be prepared to pay. The Respondents said it was only because of the significant assistance of the Tribunal that the Applicants had been able to pursue their hearing at all, notwithstanding it had been listed for 3 days. Even when given the opportunity to reduce the Scott Schedule, the Applicants had failed to state what sums if any they were prepared to pay. The Respondents pointed to what they called a dearth of evidence that the Estate was in a terrible state, and they relied on the fact that no earlier application under s.27A of the Act had been made despite the passage of time since October 2012. All this went to demonstrate that the state of the Estate could not be so bad, Counsel contended.

214. The Applicants responded to say that they were only pursuing the Application because of the First Respondent's incompetence and lack of transparency. The Applicants pointed to the fact that they had requested invoices, but had been fobbed off, and the Respondents had as a result not kept any invoices older than 6 years. They said that, in respect of the bin stores, stairs and damp, no amount of regular cleaning would get rid of the problem, and they would have to constantly chase the Respondents. The Applicants contended that they had in their possession a letter from the property manager Susan Stewart in 2020, saying that the Estate had gone downhill, but the Applicants had not adduced this document in evidence, so we cannot take it into account. The Applicants repeated the issues to do with the reserve fund, the flooding, the fact that they were unaware that they could make a claim in the civil courts, the poorly arranged and incomprehensible accounts, the late supply of invoices in January 2022, the alleged lack of financial control over payments to suppliers, and the lack of due diligence into their invoices. As far as they were concerned, the First Respondent was charging what it liked, and getting away with it.

215. In the Tribunal's determination, there was no overall winner in this case. Neither party emerges unscathed. The Applicants' case was not well-brought, was unworkable in the state it was, and they have had to concede several items which they challenged. A proportion of their claim has been struck out. On the other hand, the Respondents are property professionals, and frankly can do better. There has been a lack of transparency on the part of the Respondents, with documents being destroyed (which they were unwise to do), and difficulty providing essential data and explaining documents such as invoices. We accept the Applicants have tried hard to get information, which was not provided, although this does not create an estoppel per se. We note the late disclosure of the insurance claims history, and the most unfortunate situation with the reserve fund. We are also concerned by the often incomplete and unaudited accounts, on which the Respondents (at least in their written case) had placed great reliance. We also note our finding in relation to the reduction in management fees in this case.

216. In all the circumstances, and weighing all the above, as well as our specific findings, we consider that it is just and equitable to make an order that the Respondent's costs in connection with these proceedings shall <u>not</u>

be regarded as relevant costs to be taken into account in determining the amount of any service charge or administration charge payable by the Applicants.

217. We also make an order that the Respondents reimburse the Applicants their application and hearing fees.

218. Finally, we emphasise that the disallowance or reduction in amount of any service charge payable by virtue this decision applies to the Applicants only to the extent that they were leaseholders at the relevant times.

Judge:

S J Evans

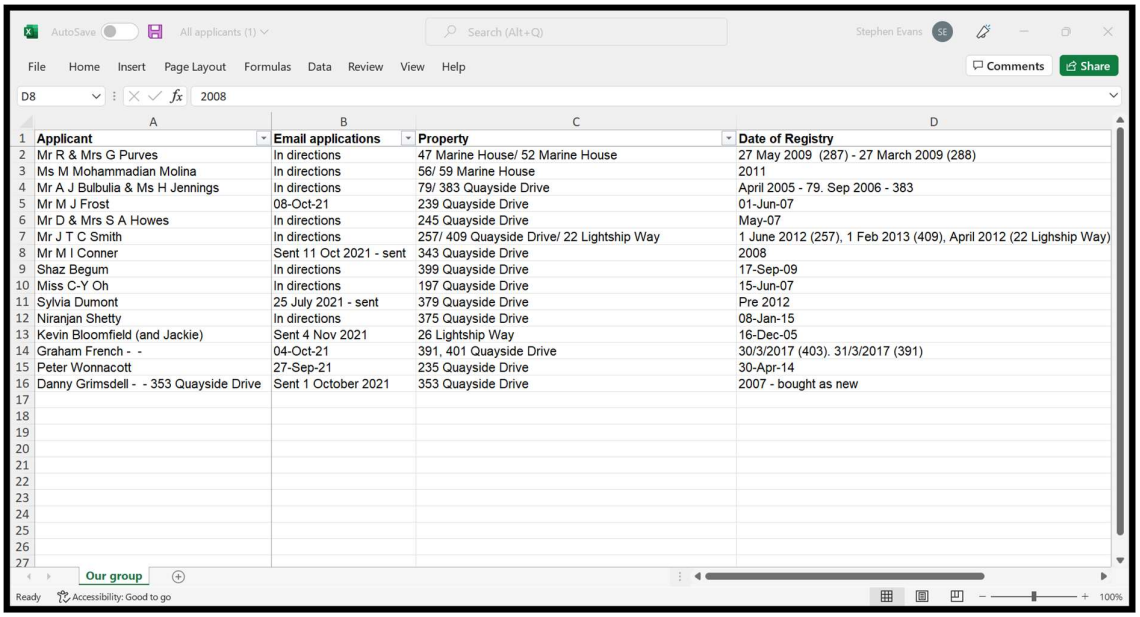
Date:

16/8/22

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written Application for permission must be made to the First-Tier 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 Tribunal sends written reasons for the decision to the person making the Application.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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 identify the decision of the Tribunal to which it relates (i.e. give the date, the Property and the case number), state the grounds of appeal and state the result the party making the Application is seeking.

Appendix 1



	A	B	C	D
1	**Applicant**	**Email applications**	**Property**	**Date of Registry**
2	Mr R & Mrs G Purves	In directions	47 Marine House/ 52 Marine House	27 May 2009 (287) - 27 March 2009 (288)
3	Ms M Mohammadian Molina	In directions	56/ 59 Marine House	2011
4	Mr A J Bulbulia & Ms H Jennings	In directions	79/ 383 Quayside Drive	April 2005 - 79. Sep 2006 - 383
5	Mr M J Frost	08-Oct-21	239 Quayside Drive	01-Jun-07
6	Mr D & Mrs S A Howes	In directions	245 Quayside Drive	May-07
7	Mr J T C Smith	In directions	257/ 409 Quayside Drive/ 22 Lightship Way	1 June 2012 (257), 1 Feb 2013 (409), April 2012 (22 Lighship Way)
8	Mr M I Conner	Sent 11 Oct 2021 - sent	343 Quayside Drive	2008
9	Shaz Begum	In directions	399 Quayside Drive	17-Sep-09
10	Miss C-Y Oh	In directions	197 Quayside Drive	15-Jun-07
11	Sylvia Dumont	25 July 2021 - sent	379 Quayside Drive	Pre 2012
12	Niranjan Shetty	In directions	375 Quayside Drive	08-Jan-15
13	Kevin Bloomfield (and Jackie)	Sent 4 Nov 2021	26 Lightship Way	16-Dec-05
14	Graham French - -	04-Oct-21	391, 401 Quayside Drive	30/3/2017 (403). 31/3/2017 (391)
15	Peter Wonnacott	27-Sep-21	235 Quayside Drive	30-Apr-14
16	Danny Grimsdell - - 353 Quayside Drive	Sent 1 October 2021	353 Quayside Drive	2007 - bought as new
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Appendix 2

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An Application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An Application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

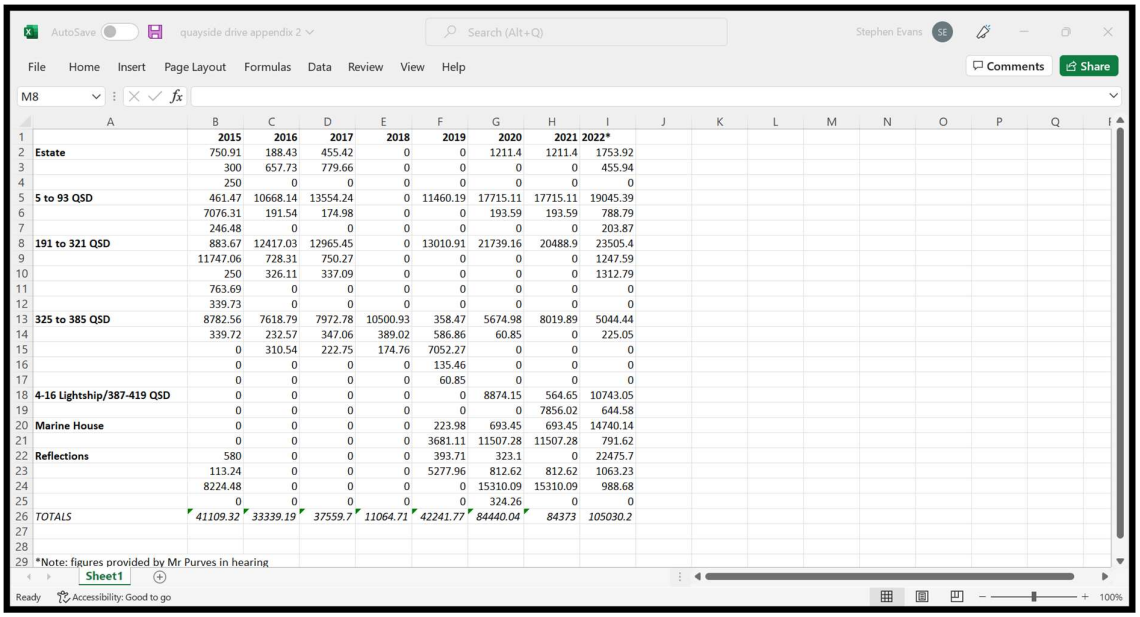
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No Application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Appendix 3



		2015	2016	2017	2018	2019	2020	2021	2022*
2	**Estate**	750.91	188.43	455.42	0	0	1211.4	1211.4	1753.92
3		300	657.73	779.66	0	0	0	0	455.94
4		250	0	0	0	0	0	0	0
5	**5 to 93 QSD**	461.47	10668.14	13554.24	0	11460.19	17715.11	17715.11	19045.39
6		7076.31	191.54	174.98	0	0	193.59	193.59	788.79
7		246.48	0	0	0	0	0	0	203.87
8	**191 to 321 QSD**	883.67	12417.03	12965.45	0	13010.91	21739.16	20488.9	23505.4
9		11747.06	728.31	750.27	0	0	0	0	1247.59
10		250	326.11	337.09	0	0	0	0	1312.79
11		763.69	0	0	0	0	0	0	0
12		339.73	0	0	0	0	0	0	0
13	**325 to 385 QSD**	8782.56	7618.79	7972.78	10500.93	358.47	5674.98	8019.89	5044.44
14		339.72	232.57	347.06	389.02	586.86	60.85	0	225.05
15		0	310.54	222.75	174.76	7052.27	0	0	0
16		0	0	0	0	135.46	0	0	0
17		0	0	0	0	60.85	0	0	0
18	**4-16 Lightship/387-419 QSD**	0	0	0	0	0	8874.15	564.65	10743.05
19		0	0	0	0	0	0	7856.02	644.58
20	**Marine House**	0	0	0	0	223.98	693.45	693.45	14740.14
21		0	0	0	0	3681.11	11507.28	11507.28	791.62
22	**Reflections**	580	0	0	0	393.71	323.1	0	22475.7
23		113.24	0	0	0	5277.96	812.62	812.62	1063.23
24		8224.48	0	0	0	0	15310.09	15310.09	988.68
25		0	0	0	0	0	324.26	0	0
26	*TOTALS*	*41109.32*	*33339.19*	*37559.7*	*11064.71*	*42241.77*	*84440.04*	*84373*	*105030.2*
27									
28									
29	*Note: figures provided by Mr Purves in hearing								