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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2012/0779**
Property	:	8 Eton Hall, Eton College Road, London NW3 2DW
Applicant	:	Mrs Leila Mohammadi
Representative	:	Harriet Holmes (Tanfield Chambers), instructed by Hodge Jones & Allen LLP
Respondent	:	Shellpoint Trustees Ltd
Representative	:	Howard Lederman (42 Bedford Row), instructed by Lennons (Chesham, Bucks)
Type of Application	1	For determination of reasonableness and payability of service charges for the years 2002–2013 [LTA 1985, s. 27A]
	2	For determination of reasonableness and payability of administration charges for the above years [CLRA 2002, s.158 & Sch 11]
	3	For an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with these proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant [LTA 1985, s.20C]
Tribunal Members	:	G K Sinclair, R Thomas MRICS & P Tunley
Date and place of hearing	:	6th & 7th November & 3rd December 2013 at 10 Alfred Place, London WC1
Date of Decision	:	20th March 2014

DECISION

Cases referred to in skeleton arguments or handed in

- *Associated Deliveries Ltd v Harrison* [1984] 2 EGLR 76, CA
- *Brent LBC v Shulem B Association Ltd* [2011] EWHC 1663 (Ch); [2011] 1 WLR 3014
- *Church Commissioners v Derdabi* [2011] UKUT 380
- *City of Westminster Assurance Co Ltd v Ainis and ors* (1975) 29 P&CR 469
- *Forcelux v Sweetman* [2001] 2 EGLR 173
- *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1
- *Liverpool Properties Ltd v Oldbridge* [1985] 2 EGLR 111
- *Macclesfield v Parker* [2003] EWHC 1846 (Ch)
- *Meadows v Clerical Medical and General Life Assurance Society* [1981] 1 Ch 70
- *Murphy and ors v St Andrew's Square (West) Management Company Ltd* [LVT – LON/00AW/NSI/2003/0054 and related cases]
- *Paddington Walk Management Ltd v Peabody Trust* [2010] L&TR 6
- *Remon v City of London Real Property Co Ltd* [1921] 1 KB 49

Legislation referred to

- County Courts Act 1984, s.138
- Landlord and Tenant Act 1985, ss.18–30 & 36
- Limitation Act 1980, ss.5–9, 19 & 38

Statutory instruments referred to

- Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 3

Contents

Summary

1. Eton Hall is the central block of a group of three large, 1930s mansion blocks built in-line on sloping ground on the south western side of Haverstock Hill, NW3 and near to Chalk Farm Underground station. To its north west is Eton Rise and to its south east Eton Place. The property comprises 118 flats, and "the Etons" collectively some 360. Officially the postal address is on Eton College Road, which runs parallel with and to the south west of Haverstock Hill, but vehicular access can also be obtained from the latter. Built in the shape of a broad H with splayed arms [ )—( ], the central core is six storeys high while the four arms are of five storeys. The property has the maintenance problems typical of a building of such age, size and construction. In the material period the managing agents also had to find a solution for a gas-fired communal heating system which was reaching the end of its useful life.

2. This case concerns just one leaseholder and although in her Amended Statement of Case [bundle 2/page 267] she raises a number of points of dispute the nub of the problem is this. Given her status as a tenant against whom an order forfeiting

her lease had been granted, but who had obtained relief from forfeiture on terms which took her many more years than initially expected to comply with, had the landlord – reluctant to do anything that might amount to waiver of forfeiture – done enough in the years from 2002 onwards to bring to her attention that at some future date she would incur a liability to pay service charges that had been incurred, so as to have sufficiently complied with section 20B of the Landlord and Tenant Act 1985 and thus enable it later to claim arrears of service charges?

3. The tribunal heard evidence and oral submissions on three days in November and December 2013. The tribunal met shortly thereafter to consider its decision. On 9th January 2014 the respondent sought to introduce additional documents which it said had been located after the hearing had ended. It also wished to make further submissions. There was a suggestion that one of its witnesses could be recalled if the tribunal required it, and that of course the applicant should be entitled to comment by way of reply. On 22nd January the applicant's solicitors filed a lengthy objection, citing further authorities not listed at the head of this decision. The tribunal, in the exercise of its case management powers under rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and in the interests of achieving finality, declines to admit further evidence or submissions.

4. For the reasons set out later in this decision the tribunal is satisfied that in most respects the landlord has met the test posed in paragraph 2 above and, with little by way of evidential challenge to the cost and/or reasonableness of the services provided in each disputed year, the tribunal determines that the amounts recoverable for the years 2002 to 2013 are as set out in the Schedule annexed. With a concession by the respondent that a sum of £849 (being the applicant's share of some landlord's legal costs included in the service charge) should be deducted from the total, that deals with points 1 to 3 [page 2/267] in the applicant's Amended Statement of Case.

5. Of the other numbered points on [2/268] :
   a. Point 4 (housing costs element of Pension Credit) is dismissed
   b. Point 5 (requiring proof of three significant cost items) is dismissed
   c. Point 6 (need for service charge demand to be accompanied by summary of tenant's rights) is acknowledged as correct
   d. Point 7 (limitation) is wrong, and a concession to that effect was made by the applicant's counsel. The service charge is recoverable by way of lease covenant and not as rent. The limitation period is therefore twelve years and not six
   e. Point 8 (that the applicant had made certain payments) is for her to prove, and the tribunal is not satisfied that she has done so
   f. Point 9 (return by landlord's managing agents of payments on account while forfeiture arrears remained outstanding) is not accepted as a good point
   g. Point 10 (that service charge should be suspended during the period in 2010–11 while the flat was uninhabitable) was also conceded by counsel and is dismissed
   h. Point 11 (failure of landlord to serve section 20 notices for major works) is dismissed
   i. Point 12 (challenge to reasonableness of costs for planned maintenance) is dismissed.

6. The parties agreed to await the delivery of this decision before making written submissions concerning any application under section 20C, should the applicant care to proceed with one. Directions appear in paragraph 106 below.

Background

7. It is with some trepidation that one approaches a multi-bundle case and sees that the first bulging lever-arch file is marked "Background documents", especially when the index refers to Orders made by no fewer than six High Court Judges, to say nothing of a judgment of the Court of Appeal and Orders by numerous District Judges, Masters and Deputy Masters. Although this details the litigious history between the parties it was necessary to look at a number of documents within bundle 1 in the course of the 3-day hearing.

8. Briefly, in a claim proceeding in the Central London County Court under claim number 93/531983 (ie a claim issued as long ago as 1993) between the applicant, the respondent freeholder and Anston Investments Ltd (an intermediate landlord interposed between respondent and the applicant leaseholder) an order dated 24th October 2002 was made by Judge Hallgarten QC granting Anston possession of the applicant's flat at 8 Eton Hall but also granting her relief from forfeiture on conditions as to payment of certain sums including past ground rent, service charges and costs (when assessed). This Order, as later varied by an Order of the Court of Appeal dated 16th July 2003, appears at pages 1/1–6. The Court of Appeal's judgment is at 1/7–21.

9. From 1992 the applicant had stopped paying her ground rent and service charges in protest at damage she alleged was caused by water leaking into her flat from above. Apart from a few items her claim was largely dismissed, and following the court's order in 2002 and the appeal in 2003 she found the money to pay most of the arrears awarded against her. Assessment of costs, however, took a very long time. A costs award made in 2007 was appealed, partially successfully, in 2009 but payment was not finally made, and relief from forfeiture thus obtained, until 15th May 2011.

10. However, despite the court's order that she pay past service charge arrears, from 2002 the applicant paid no more. No demands were issued because, after such prolonged litigation had achieved an order for possession with relief being granted only on condition of payment of sums by the applicant, the respondent and especially its managing agents were extremely nervous of doing anything which might be deemed to have waived the breach and thus remove the leverage securing greater likelihood of payment from the applicant's mortgagee provided by the possession order.

11. Acting in person, the applicant issued her application in November 2012. An oral pre-trial review took place on 8th January 2013 and another on 30th April 2013, as a result of which it was accepted that the applicant had now amended her Statement of Case and it was in the form contained in the document at [2/267-268]. Directions were also given for the preparation of a detailed Scott schedule extending over 11 service charge years, and for seeking agreement where possible about payments forwarded by the applicant but immediately returned.

12. Due to be heard on 3rd September 2013, with a time estimate of one and a half days, the case was eventually heard over three days in November and December,

by which time the applicant had secured legal representation from what Mr Lederman for the respondent says is now her fourteenth firm of solicitors. While the respondent has also instructed several different firms this has only been because the case has clung to one particular solicitor, Mrs Jacqueline Piggott, as she has moved from one firm to another. Mr Lederman also seems to have been involved in the multifarious aspects of this dispute since the outset, while for the applicant Ms Holmes was instructed very much at the last minute.

Material lease provisions

13. Since 1984 the applicant has been the lawful assignee of an underlease dated 25th January 1978 made between Peachey Property Corporation Ltd as lessor and Miss Caroline Fasler as lessee granting a lease of flat 8 on the ground floor for a term of 99 years from 25th March 1969, yielding and paying the yearly rents set out in the third schedule by equal quarterly payments in advance. As well as covenanting to pay the rent the lessee also covenants by clause 1(2) to pay to the lessor without any deduction a proportionate part of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and insurance of the building and the provision of services therein and the other heads of expenditure as set out in the fourth schedule, all of which is referred to as the service charge.

14. Clause 1(2)(a–i) set out how the service charge is to be ascertained, certified and paid. Amongst the service charge costs provided for in the fourth schedule are the cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the heating and domestic hot water system serving the building and the lifts, lift shafts and machinery therein (para 2) and of insuring the building, etc (para 4).

15. Although the tribunal was informed that, in conjunction with the New Etons Residents Association, the landlord had applied to the then leasehold valuation tribunal for variation of the lease provisions concerning the continuance of this communal heating and hot water system the precise approved amendments were not to be found in the hearing bundle. It is believed that some additional lease amendments desired by the landlord were not approved, even on appeal to the Upper Tribunal (Lands Chamber).

Relevant statutory provisions

16. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, as :

> 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...

17. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :

a. only to the extent that they are reasonably incurred, and
b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

18. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The

first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

19. Please also note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)[1] is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

20. Insofar as major works are concerned, ie those in respect of which the contribution of any tenant liable to pay towards the service charge will exceed £250, then section 20 provides that the relevant contributions of tenants are limited to that amount unless the consultation requirements have been either complied with in relation to the works or dispensed with by (or on appeal from) a leasehold valuation tribunal. The consultation requirements, in the instant case, are those appearing in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003[2] (as amended).

21. However, any non-compliance is not fatal to recovery by the landlord. Although not by the tribunal's findings material in this case, section 20ZA(1) provides :

> Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

22. However, of critical importance to this case are the provisions of section 20B. In order that tenants can keep track of what they owe, and to discourage tardiness by freeholders or their managing agents, the section provides that :

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Burden of proof

23. In *Schilling v Canary Riverside Development PTD Ltd*[3], to which the tribunal drew counsel's attention in the course of argument, His Honour Judge Rich QC

1 Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

2 SI 2003/1987

3 LRX/26/2005; LRX/31/2005 & LRX/47/2005 (His Honour Judge Rich QC, 6th December 2005)

had to consider upon whom lay the burden of proof. At paragraph 15 he said :

> I have felt more difficulty in regard to the question whether a service charge which would be payable under the terms of the lease is to be limited in accordance with s.19 of the Act of 1985 on the ground either that it was not reasonably incurred or that the service or works were not to a reasonable standard, is to be treated as a matter where the burden is always on the tenant. In a sense the limitation of the contractual liability is an exception in respect of which Lord Wilberforce in *Nimmo v Alexander Cowan & Sons Ltd* [1968] AC107 at p.130 stated "the orthodox principle (common to both the criminal and the civil law) that exceptions etc. are to be set up by those who rely upon them" applies. I have come to the conclusion, however, that there is no need so to treat it. If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the *Yorkbrook*[4] case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.

24. In this case, insofar as the points raised in the Scott schedule at [2/9–45] are concerned, the burden therefore falls on the applicant to show that either the cost or the standard of the various items disputed was unreasonable. However, where it is common ground that the respondent landlord and/or its managing agents have not served a valid service charge demand in the disputed years, and where the applicant has raised section 20B as a defence to liability, the position is slightly different. The respondent has to show that it has sufficiently complied with the section, and in particular section 20B(2), if it is to recover any or all of the sums which it seeks to recover for the years 2002 onwards.

Evidence and submissions

25. The parties put before the tribunal a hearing bundle comprising two full lever-arch files, their respective skeleton arguments, and files containing the statute law and authorities to which they wished to refer. As the hearing progressed additional documents were handed in, including a bundle of the applicant's bank statements, an undated letter found in the managing agents' file for 2003, the certified service charge accounts for the year ended 6th April 2013, and further excerpts from *Woodfall* and case law.

26. In addition to the applicant, whose witness statement is at [2/152–156], her friend Dr Sheida Oraki, whose letter [2/319–320] was treated as a statement, also attended and gave oral evidence. Although Mr James Barnett had provided a statement only page 1 was in the bundle [2/157], and he did not attend. The page in the bundle raises a number of issues which do not feature in the applicant's case and/or lack any corroboration. The tribunal found this of no real assistance.

27. For the respondent the tribunal heard from Mr Solomon Unsdorfer, managing director of Parkgate Aspen Ltd, the respondent landlord's managing agents. His statement is at [2/158–160]. He spoke to some historical matters and to policy

4 *Yorkbrook Investments Ltd v Batten* [1985] 2EGLR 100

and company procedure. In addition Mr Daniel Weil [2/161–162] gave evidence. He is both a director of Parkgate Aspen and also the current property manager, so has direct knowledge of events since taking over responsibility for the Etons in 2007. Several historic statements made by Jacqueline Piggott in the course of High Court Chancery Division proceedings were in the bundle and were referred to, but (while present throughout) she did not give oral evidence.

28. Although the hearing took three whole days some time was spent at the outset on housekeeping issues, the opening took the rest of the morning, Ms Holmes was allowed an hour and a quarter at the start of day two to read and take instructions on a large bundle of documents which had been brought to the hearing by her client that morning, some additional time was needed at the end of the day to find a mutually convenient date for day three, and over half of the final day was spent on the parties' closing submissions.

29. A decision announced at the outset was that, instead of going through the entire Scott schedule and challenging items in each of the eleven years in dispute, the parties would take the service charge year ending 6th April 2009 as a sample by which to examine the reasonableness of the costs incurred. Of this choice of year the tribunal shall have more to say later.

30. It is not the purpose of this decision turgidly to recite the evidence given orally by the various witnesses and the submissions of counsel. Instead the main points shall here be summarised and in the next section commented upon. Points that were conceded by the conclusion of the hearing shall be ignored.

31. Mrs Mohammadi is an Iranian lady who has been lessee of flat 8 on the ground floor since 1984. She lived there for a number of years with her now-adult daughter and latterly alone. The daughter is a trained accountant and has at times assisted her mother in connection with disputes with her landlord, for example at around the time when her mother had to vacate the flat from July 2010 to 12th July 2011 due to water damage to the interior while insurers dealt with the repairs.

32. The applicant's principal point was that unlike all her fellow lessees she had not received a full breakdown (as she put it) of the annual service charge since 2002. Of this she was certain. She received some general information about the risk of burglary in the area, etc but nothing about the service charge. This was despite requests on her part, and efforts she had made to tender payment. She was suspicious of the documentation sent to her, saying that it was not a breakdown of the service charges : there had been not a single major work carried out in the last five or six years.

33. Under cross-examination she began by stating that her memory was good – it was perfect. Later, however, her answers to questions about whether she had received certain documents became more equivocal – she could not recall seeing them, or she did remember but it was at a later date, despite the fact that she had clearly replied in March 2011 to a point made in a letter dated 5th January 2011 enclosing a form printed in December 2010. If she did not receive the letter until May 2011 then how did she get hold of the form in time to return it with a cheque for ground rent on 7th March [1/383–384]?

34. Asked about the residents association, which had co-operated with the landlord in seeking a variation in the leases so as to remove the landlord's obligation to maintain a communal heating system, she said that she did not trust them - and that few did.

35. About the service charge, she was not saying that she didn't want to pay, but she wanted a service charge demand every year – not one claiming for twelve years. On the other hand, it was her right to rely on section 20B when they (the agents) did not give her annual demands. She had tried to make payment on account but her money had been returned. Asked by the tribunal what she had done with the money sent back to her, she said that she put it to one side in a bank account, but when she needed it she had spent some of it.

36. It was put to her that Parkgate Aspen had sent her an annual service charge estimate, like that for 2005 [2/323], each year – just like every other lessee. She denied it.

37. On specific service charge items she objected to the cost of the gas boiler repair but agreed that she had no evidence to support her belief that it was excessive. However, she would not accept it without being shown the receipts. The same applied to the cost of insurance, which it was put to her was partly because of the poor claims history – including the water damage claim in respect of her own flat.

38. Dr Sheida Oraki [2/319–320] gave evidence on the morning of day two. Asked if she had been helping Mrs Mohammadi for about a year she said No, it was about five. She agreed that she was quite friendly with her : "I support her and justice".

39. With a Mr David Bailey she had attended the offices of Parkgate Aspen on the applicant's behalf on the morning of 10th April 2013 to inspect documents that supported the service charge accounts. They travelled by train. The offices of Parkgate Aspen are on Station Road, London NW4 4QE; a short distance from Hendon station. Despite arranging to meet at 10:00 the two had great difficulty locating the offices and, although they phoned the agents at around 11:00 to say they would be late, they did not finally arrive until 12:30. With reduced time at their disposal they concentrated on examining the documents for a single year only, viz 2011–12. She said that the documents for 2002 and 2003 were missing, and those for 2009 were also not available.

40. She was able to go through the one year's documents in the time available, and had chosen that year as it was the most recent. She did not know why those for 2009 were not there, nor remember whether anything was asked about them.

41. Dr Oraki and Mr Bailey remained there until everyone left at around 17:30. She found the documents confusing in the way they were presented, and could not make them add up to the figures in the service charge accounts. She took some notes and later handed them to Mrs Mohammadi, telling her not to look at other years as it was a waste of time, but did not know whether she kept them.

42. It was put to her that she had really made up her mind about who is right and who is wrong. She said No, but that "this [presumably meaning forfeiture action] is a trick that landlords are using to deprive leaseholders of their flats".

43. Mr Solomon Unsdorfer confirmed the accuracy of his quite short statement, which referred to the Scott schedule that had been prepared, and his willingness to answer any questions about it. He had also had some direct involvement with the case before Mr Weil took over as property manager.

44. He discussed the TRAMPS computerised property management system that he said was industry standard, how it can mark a particular tenant's account with a "breach flag", but that all this does is prevent the system from producing a rent or service charge demand when there was good reason for not doing so. What it did not do was exclude that tenant from receiving other communications from the managing agents. General communications are not addressed personally and go out in plain envelopes. A label request for every tenant is therefore generated by a manager for the post room/reception, who do all the envelope stuffing, franking, posting and matching up. If Mrs Mohammadi had been missed then her label would be left on the sheet. There was no reason to single her out in the case of general communications, and no-one in the post room would know about her case and deliberately exclude her from a mail shot. The same procedure applies for estimates or budgets, and if there was anything particularly remarkable in the budget then it would be mentioned in the covering letter.

45. Asked about the New Etons Residents Association, he said that they are probably the most representative of the associations in all the blocks of flats managed by his company. There are over 360 flats, but many of the lessees are non-resident. He confirmed that the association and Shellpoint had made a joint application for variation of the leases to delete reference to the communal boiler.

46. Asked why Dr Oraki may have had such difficulty in matching up the documents examined with the accounts, he said that the accounts are prepared on an "accruals" basis and not on a "receipts" basis.

47. Cross-examined, he said that while his statement was short this was partly to do with the fact that when he made it he was unsure precisely what objections the applicant was making. His understanding was that its purpose was to enable him to answer any questions put to him.

48. He explained that it was his company's very firm procedure that any letter from Mrs Mohammadi was to be referred to Mrs Piggott of the solicitors, without any answer from the managing agents. That was the policy, and he had no doubt that was very much in force. He said :

> I can tell you from my own knowledge that this saga has been going on so long that at no particular time was I ever clear whether it was safe to respond without solicitors, because the entire path was littered with costs orders and further legal hearings and costs taxations, etc. I was never able to say where we were – it was that nebulous. If I got a bus ticket from Mrs Mohammadi I would have handed it to the solicitors.

49. The solicitors did not handle general correspondence to Mrs Mohammadi. It was simply that any letter from her would routinely be sent to Mrs Piggott's firm. Everything else was normal as there was a breach flag on the system, eg letters about insurance, the sending out of notices, etc. It was only where there were issues that might prejudice on-going litigation. There were a succession of firms acting for her, so he and his staff never really knew where this was.

50. Asked about the requests by the applicant for a detailed breakdown of the service charge, he commented :

> A breakdown of service charges is presumably a bill, and if someone who was in breach asked me for a breakdown – if anyone asked – we would send them an R14 off the system, which is a demand, effectively. If we had done so Mrs Mohammadi might have taken it to a lawyer to strike out the proceedings. There were various orders outstanding, and costs orders outstanding. We had to keep the possession proceedings alive to force lenders to pay. The opposing strategy was to compromise that by tendering payment, so we had instructions from solicitors to beware of that.
>
> We had a very long and hugely expensive litigation saga, and we had to be careful to avoid the flat being sold and not getting paid. Service charge estimates would be sent out. An R14 is a statement.

51. Asked about the letter from the applicant addressed to Parkgate Aspen dated 27th October 2006 and tendering a banker's draft for £900 covering ground rent and service charges (so far as she knew) for 2005–06 [2/164], he said that it would have been read at the managing agents. It was an unusual letter because Mrs Mohammadi knew who she was dealing with and would have addressed a letter to him. This, he said, was designed to go into a large accounts department and result in a banked cheque. That was precisely why he was very wary about what was coming in, in an attempt to compromise the legal process.

52. He said that if Mrs Mohammadi had wanted to discuss payment of her arrears he would have involved Mrs Piggott as there were all these outstanding costs issues. His company did not have the wherewithal to come to a conclusion. He knew what the service charges were but there were so many costs issues that it was beyond any managing agent to deal with. In October 2006 the arrears of service charge were £27 000 and she was sending a draft for only £900. She was clearly not trying to settle if offering only that amount against a £27 000 debt. This was an attempt to compromise the legal process.

53. Asked about budgets and section 20 notices he confirmed again that they are sent out to every lessee; during his period of time he would ask his assistant to print off labels and they would go straight out.

54. Day three of the hearing, 3rd December 2013, began with the evidence of Daniel Weil, the current property manager. He started his evidence by referring to a service charge schedule that had been handed in, comparing it with the source documents – the certified accounts – in the bundle. He also produced an undated letter which had been found in the company's papers for the latter part of 2003. Page 2 of the letter refers to a number of enclosures, but none of those documents were found with the letter in the file.

55. He confirmed that the company would have sent out the audited accounts to every lessee, including Mrs Mohammadi. He knew that because of the breach flag on the system. Its only effect is to prevent a demand being run. Every other mail-out produces labels for everyone. It would be very unlikely that a label would be missed, as they are peeled off sheets. The accounts are addressed to "Dear leaseholder". There are three blocks with different sets of accounts. They

would be sent out by labels produced block by block.

56. Asked where post would be sent while the applicant had moved out in 2010–11 to 29b Elsworthy Road he said he had looked through the file and had not found any letter saying "Please address my post to another address". An instruction like that would have to come from the flat owner. Had it come from Mrs Mohammadi it would have been a straightforward thing to do.

57. He confirmed that the Scott schedule had in large part been compiled by himself, although much of the comment at the start was from the lawyers. He was largely responsible for page 6 onwards [2/14 onwards].

58. On the subject of the TRAMPS management system he said that it does not store copies of specific demands on the system, although one can be generated on request. Letters come from his office, and he keeps hard copies. The company had not been instructed to lift the breach status as, so far as he was aware, there was still ongoing litigation. On lifting breach status a leaseholder would get a demand with lots of backdated amounts, with demands that had not been raised before (in a case such as this, probably running over several pages). Lifting the breach status requires a signature from a manager, which the accounts staff keep on record to avoid accidentally lifting breach status. Breach status remains on there, so no demands have been sent to Mrs Mohammadi.

59. He confirmed that all documentation other than demands would have been sent to the applicant at the address on record, viz 8 Eton Hall. The accounts were sent to her like everyone else.

60. Mr Lederman began his closing submissions at 12:15 and concluded after the lunch break at 14:20. The timing has a significance which shall be addressed later.

61. Mr Lederman emphasised that he was not accusing Mrs Mohammadi of lying in any way, but with the plethora of applications in different courts and tribunals he suggested that she was simply confused about when she thought she had first seen certain documents. He urged the tribunal to consider the totality of the evidence and consider that it was more likely than not that she had indeed seen those documents that she claimed not to have received. Letters do go astray in the post once or twice, but not all the time.

62. As well as the January 2011 letter that she claimed not to have seen until much later but had replied to in March Mr Lederman referred also to that sent to her daughter by Mrs Piggott on 6th May 2008 [2/66–68], outlining the various amounts then said to be outstanding, with a very similar one also sent to her then solicitors, Oliver Fisher, on 30th December 2008 [1/470].

63. Mr Lederman drew to the tribunal's attention a series of documents and letters sent over the years which collectively kept the applicant and her advisers informed of the sums then incurred by way of ground rent and service charge which would, if relief from forfeiture were obtained, become payable.

64. He then dealt with the argument raised in Ms Holmes' skeleton argument that it would have been possible for the landlord to have served a Without Prejudice

demand even though the lease was forfeit until 2011. The question, he argued, was whether the applicant was notified under section 20B, not what other course might have been adopted.

65. Each of the letters to which he had referred was, he said, a sufficient notification that she would be required to pay costs under section 20B(2). In line with the *Shulem B* case it is sufficient that the notice mentions a figure for costs, even if it is later found to be too high.

66. He observed that in his skeleton argument he had argued that there was no need to notify because the service charge was not payable during forfeiture, referring to *City of Westminster Assurance Co v Ainis*, at page 472, and *Meadows v Clerical Medical*, where Sir Robert Megarry V-C considers the above at 77A–E.

67. On the subject of returned payments, he argued that the three payments which had not been conceded could not be traced by the applicant and the tribunal should find against her. As for the lengthy Scott schedule, the applicant had not produced any evidence whatever to challenge the items listed.

68. For the applicant Ms Holmes concede that the six year limitation argument was wrong. Section 8 of the 1980 Act applies and so the limitation period is twelve years.

69. She urged upon the tribunal that Mrs Mohamadi was very clear about when she had or had not precisely remembered receiving a document, and she drew attention by way of example to those at [2/74] and [2/182]. The applicant has sought to be as clear and honest as she can be to the tribunal.

70. Ms Holmes then dealt at length with the question of the precise legal status of the tenancy during this "limbo" period between the order being made in 2002 and relief eventually being obtained in May 2011.

71. Addressing the requirements of section 20B she referred the tribunal to the LVT decision in *7 Paddington Walk*, at paragraphs [15–17], [20] and [26–31]; and to Morgan J's comments in *Shulem B* at paragraphs [54–55] and [57].

72. She then turned to the various documents relied upon by Mr Lederman, arguing that some are insufficient but conceding that one or two might comply with the requirements of section 20B(2).

73. On the issue of reasonableness the tribunal reminded Ms Holmes where the burden of proof lay, according to *Schilling*. Without evidence it would be difficult for her to make submissions on this point.

74. As to the question whether section 20 notices were ever received by the applicant, this really followed the same arguments applied as with whether service charge budgets and certified accounts had been sent to her by the managing agents.

75. Responding briefly, Mr Lederman continued to argue that, as Master Campbell's costs order was made in 2007 and the appeal was determined on 22nd May 2009 yet the condition of payment was not complied with by the applicant until May 2011, it was wholly artificial and unrealistic to treat s.20B as applicable when

there was an order for possession and the conditions for relief appeared unlikely to be fulfilled in that period. It may be that the lease is subsequently reinstated, but during this twilight period there was an order for possession that could have been enforced up until 2011, so it was unrealistic to consider that service charges were payable under that lease.

76. Finally, Ms Holmes maintained her contention that the 1985 Act could apply when the lessee's interest was merely as tenant at will or at sufferance, as these fell within the statutory definition in section 36. As to the burden of proof where section 20B was concerned, she insisted that it fell upon the landlord when the section was raised.

Discussion and findings

77. The tribunal was presented with two large lever-arch files comprising statements of case, a lengthy Scott schedule, witness statements, and documents stretching back to 2002. The first file was dipped into from time to time, but much of it could be ignored. The second file was the active one, with the more recent and in some cases most relevant documents and statements. However, in a case where individual documents are generated from a computer database but no copies of actual documents are retained on file, and where correspondence with lessees other than demands and receipts for payment is simply addressed "Dear leaseholder" and posted or distributed by the on-site porter by instructing the program to generate address labels, proof that specific documents were sent to the applicant in this case does depend to a high degree on an assessment of the credibility of the various witnesses.

78. Four witnesses gave oral evidence, of which three are relevant to this issue : the applicant, Mr Unsdorfer and Mr Weil.

79. Mr Lederman was careful to stress that he was not accusing Mrs Mohammadi of lying in any of the evidence she gave, but that with the long and tortuous history of litigation between landlord and tenant she will have been served with various documents directly or in the course of litigation at different times and she was simply confused about when she may first have seen them. A classic example was the letter dated 5th January 2011 [2/74], to which was attached a notice from the schedule to the Landlord and Tenant (Notice of Rent) (England) Regulations 2004, a copy of which appears at [1/384] and was returned by the applicant with a banker's draft under cover of a letter dated 7th March 2011 [1/383]. How then could she say that she did not receive the information in the January letter until May 2011?

80. Other documents allegedly were not sent, or must have gone astray while she was living in temporary accommodation at Elsworthy Road. She said that post sent to her flat may not have reached her, because access to the flat was barred while building work was going on, and the porter may have kept mail intended for her. However, it is noteworthy that her daughter from time to time attended at Eton Hall to collect any mail, that letters were sometimes addressed to the applicant at 8 Eton Hall and also copied to Elsworthy Road, and on occasions sent to her daughter or the solicitor then acting for her. Even when letters were being written to her at Elsworthy Road, however, the applicant's replies were always addressed from "8 Eton Hall".

81. While Mrs Mohammadi began her evidence by seeking to assure the tribunal that her memory was perfect, it soon became less so, with answers couched in terms of her not recalling that something or other had been received at a certain time.

82. While not necessarily dishonest, the tribunal is however inclined to agree with Mr Unsdorfer in his assessment of the applicant as manipulative. She had been in dispute with her landlord since about 1992 and had not voluntarily paid ground rent or service charges throughout that time. As required by the possession order she paid certain modest arrears but, despite the costs order against her being resolved on appeal in May 2009 she waited a further two years before complying with the remaining condition which would grant her relief from forfeiture. In that period, instead of simply clearing that last hurdle, she sought to offer tiny amounts of money, including £900 by banker's draft addressed to the managing agents but without marking it for the attention of the person whom she knew was managing her case. Is it any wonder that Mr Unsdorfer's company handled her correspondence with extreme caution, constantly forwarding it to the landlord's solicitors for advice.

83. The tribunal does not therefore regard Mrs Mohammadi as the most reliable of witnesses.

84. By contrast, Mr Unsdorfer and Mr Weil came across as professional men simply trying to do their appointed duty. As someone who professes to have given evidence in a number of previous cases, however, the tribunal is surprised by Mr Unsdorfer's attitude (evidently shared by his subordinate) that the purpose of making a witness statement is merely to provide a setting for cross-examination on any question the lessee's representative may care to ask. The primary purpose of making a witness statement as managing agent is to help to prove the basic facts on which the client landlord's case rests. If the statement fails to do that then the tenant's lawyer need not ask any questions at all and the landlord fails to prove its case on arrears, breach of covenant or whatever. Fortunately in this case the burden of challenging the reasonableness of service charge costs rests on the applicant tenant, so referring to rather than confirming the truth of the respondent's answers to the matters set out in the Scott schedule suffices.

85. The tribunal considers that the account given by Mr Unsdorfer and Mr Weil about Parkgate Aspen's methods of communicating with the lessees of various blocks, including Eton Hall, is most likely to be what happened here. The issue of ground rent and/or service charge demands would, in the applicant's case, be suppressed by the "breach flag" on the TRAMPS system. Additionally, demands had the name of the lessee printed on them and they were dispatched with window envelopes. Everything else was generic in form and was dispatched in plain envelopes to the list of lessees in that block generated as address labels by the management software. As the sticky labels are printed on sheets it would be obvious if one were left on the sheet and not used, and it is unlikely that a busy office staff with no particular knowledge of Mrs Mohammadi would choose to ignore her label.

86. It also determines on the balance of probabilities that – either directly or via her solicitors or daughter – the applicant received the various documents relied upon by Mr Lederman as satisfying the requirement of notice under section 20B.

87. What of the fourth live witness, Dr Oraki? She really deals only with the question of reasonableness of the service charge costs, but her evidence is of no help whatever. Despite the fact that Parkgate Aspen's offices are very close to Hendon station she got lost for an hour and only then phoned to say she would be late. Instead of then obtaining clear directions she wasted a further hour and a half before arriving at 12:30. Short of time, she decided to look at the files for the most recent year, 2011–12, and spent all day on them. She made notes of what she had seen and queried and gave them to Mrs Mohammadi, as she was going abroad on business. She does not know whether the applicant kept the notes, but they have not been produced or used at the hearing. Why then, at the outset of the hearing, did the applicant select the year ending 6th April 2009 as a sample year when the files for that year may have been missing and certainly were not looked at?

88. From her initial comments about supporting Mrs Mohammadi "and justice", and that landlords were regularly using forfeiture as a trick to deprive lessees of their flats, the tribunal was concerned that Dr Oraki's evidence may be partisan. This was compounded on the final day of the hearing, when she was also in attendance and sitting at the back of the room. From there she would have a better view than counsel, and at just after 12:30 she slipped out of the hearing room. At 12:40 she reported to a tribunal officer her suspicions that Mrs Piggott was using her mobile phone secretly to record what was being said in the hearing. An officer sat in, saw that a red light was flashing on a mobile phone in Mrs Piggott's handbag until the bag was shut, formed the view that no recording was taking place, and at the lunchtime adjournment reported this to the tribunal. Had any recording been going on it would, at that time, only be of the closing submissions of her own counsel, Mr Lederman. The tribunal considered that highly unlikely.

89. Before the hearing recommenced at 14:05 the tribunal simply asked those present to ensure that all mobile phones were switched off. Nothing was said by Ms Holmes, so either the matter had been reported to her and she had considered it was insignificant or it had not been reported to her at all. Ms Holmes was the person representing the applicant; not Dr Oraki. Notwithstanding that, Dr Oraki later contacted the tribunal office to enquire what was going to be done about it, as recording is a contempt of court. This does not encourage the tribunal to believe that Dr Oraki is or was an objective, unbiassed witness seeking only to assist the tribunal in its fact-finding exercise.

90. The tribunal having determined that the documents which the managing agents say were sent to the applicant were indeed sent, it follows that any required section 20 notices were also sent to her.

91. As for the applicant's comments in the Scott schedule, it quickly became clear that apart from questioning the figures, demanding proof, or expressing the view that the costs seemed high, Mrs Mohammadi had nothing by way of evidence to demonstrate that there was any cause for concern. Her cause was not helped by selecting as a sample year one (2009) for which she had not even checked any of the supporting documents. The burden of proof lies upon her to show that the costs sought to be recovered are unreasonable. She has utterly failed to do so.

92. As well as sending a banker's draft in the sum of £900 Mrs Mohammadi set up a standing order for monthly payments to Parkgate Aspen of £185 in late 2009.

These had been returned immediately they were spotted, but Mrs Mohammadi claimed that a number of payments had been retained. However, when on day two she produced some further bank statements the queries were whittled down even further than shown on a schedule completed by her which Mr Lederman had annexed to his skeleton argument. Finally the dispute was about only three payments. The tribunal pointed out that Mrs Mohammadi had disclosed details of two bank accounts from which some of this money had come and back to which it went. However, for the period in which two queried payments were made the vital sheets from one account were missing, and in respect of the third payment sheets from the other account were also missing. As it had been demonstrated in every other case that money received had been sent straight back to her the tribunal finds it most likely that nothing has been retained nor should be credited to her by the landlord or its agents.

93. The tribunal therefore makes findings of fact as contended for by the respondent. What then are the legal consequences that flow from that?

94. In *Liverpool Properties Ltd v Oldbridge Investments Ltd*[5] Parker LJ observed :

> The position of a tenant under a lease subject to forfeiture for breach of covenant, when there is no issue but that the breach has taken place, is somewhat obscure. There is a period of limbo during which it cannot be predicated for a certainty whether the lease will ever truly come to an end, for if there is a counterclaim for relief in an action for forfeiture and that counterclaim for relief succeeds and any conditions are complied with, the original lease continues. It is only when the forfeiture is operated by physical re-entry that there is a determination of the original lease. In such circumstances, if a separate claim for relief succeeds, there is then a new and separate lease upon the same terms and conditions as the old. But when the forfeiture is sought to be effected by action and the counterclaim succeeds, the original lease is reinstated as if nothing had happened.
>
> That suggests strongly that the intervening position is one of very considerable complexity. It has been ventilated in a number of cases. In certain instances it is clear that the tenant, despite a forfeiture effected by the issue and service of the writ, preserves an interest in the premises and for certain purposes may properly say that the tenancy survives.

95. Ten years earlier, however, in the case of *City of Westminster Assurance Co Ltd v Ainis and anor*[6] (which was not referred to in *Oldbridge*) Cairns LJ stated :

> In the arguments presented to the court by Mr. Upjohn on behalf of the defendants appears this passage:
>
> > The order is a conditional order, and the conditions are not mandatory at all. If the defendants decline to perform the conditions the order for relief falls to the ground. The defendants are no doubt tenants at will or on sufferance, and are bound to pay rent up to the time that they go out of possession,

5 [1985] 2 EGLR 111

6 (1975) 29 P&CR 469

and in the judgment of Walton J. appears the sentence : "The result is, I think, that I must agree with the construction put on the order by the defendants." In my view that is the proper construction, and if conditions are to be performed in the future then in the meanwhile, until the time comes for performance, the defendants here, if they remain on the premises, are there not as tenants under the lease but as tenants at will or on sufferance. That being so my view would be that, subject to any particular terms of the order which would lead to a different result, during the interval between the making of the order and the compliance with the conditions it is the plaintiffs who are entitled to possession, and if there is somebody in possession other than the plaintiffs they are entitled to take proceedings to have them ejected.

96. Section 36 of the Landlord and Tenant Act 1985 provides :

(1) In this Act "lease" and "tenancy" have the same meaning.

(2) Both expressions include –

(a) a sub-lease or sub-tenancy, and

(b) an agreement for a lease or tenancy (or sub-lease or sub-tenancy).

(3) The expressions "lessor" and "lessee" and "landlord" and "tenant", and references to letting, to the grant of a lease or to covenants or terms, shall be construed accordingly.

97. Thus, the section does not refer specifically either to a tenancy at will or to one on sufferance, but each is a species of tenancy.

98. This tribunal proceeds on the premise that during the "limbo" period until May 2011 Mrs Mohammadi retained an interest of sorts in the flat, and from grant of relief she held it again under the terms of her original lease.

99. Although Mr Lederman seeks to argue that the applicant had no lease during the limbo period and therefore the 1985 Act did not apply, is not the real point that when – post grant of relief and reinstatement of the original lease – the landlord seeks to recover all of what would have been service charges for the preceding years then at that stage the Act does apply, and so must section 20B.

100. What then does a notice need to contain? According to Morgan J in *Brent LBC v Shulem B Association Ltd*[7] (and with apologies for quoting quite such a lengthy passage) :

58 I have considered what a lessor should do if it knows that it has incurred costs but it is unable to state with precision what the amount of those costs was and it is concerned to serve a notice under section 20B(2) to stop time running against it. In my judgment, there is a clear practical course open to a lessor in such a case. It should specify a figure for costs which the lessor is content to have as a limit on the cost ultimately recoverable. In my judgment, a lessor can err on the side of caution and include a figure which it feels will suffice to enable it to recover in due course its actual costs, when all uncertainty has been removed. If a lessor states that its actual costs were £x that will be a valid notification in writing for the purposes of subsection (2) even though the lessor knows that it may turn out that the costs will be somewhat less than £x. If the lessor wants to ensure that the lessee is not misled by such a notice, it will

7 [2011] EWHC 1663 (Ch); [2011] 1 WLR 3014, at [58–60]

be open to the lessor to explain that although it is making a clear statement that its costs were £x, it hopes that it might be in a position later to state that the actual costs were less than £x. An example might be where the lessor is in dispute with the builder as to the sums payable to the builder. The lessor could properly notify the lessee that the builder is claiming a sum which means that the costs will be £x but the lessor is attempting to negotiate with the builder so that the resulting costs will be less. In such a case, the lessee would not be misled and the lessor would have protected itself by making a statement that the costs it had incurred were £x. In any event, it is my view that if a lessor states that the cost was £x, it satisfies the subsection even in a case where it is not certain as to what the costs will eventually turn out to be. If the lessor states that the costs are £x, and it later puts forward a service charge demand based on a smaller sum, then the statement of the greater amount includes a statement of the lower amount. In the present case, no issue arises as to what the legal result would be if the section 20B(2) notice referred to £x and the lessor later put forward a service charge demand which takes into account a figure which is greater than £x. My view is that the lesser sum of £x does not include the excess over £x so that no notification for the purposes of the subsection was given in relation to the excess.

59 The second matter which must be stated in a notification under section 20B(2) is that the tenant would subsequently be required under the terms of his lease to contribute to the costs by the payment of a service charge. Taken literally, this does not oblige the lessor to state the resulting amount of the service charge. On this reading, there will be a valid notification for the purposes of the subsection if the lessor notifies the lessee that it has incurred costs of £x on certain service charge matters without telling the lessee what sum the lessee will ultimately be expected to pay. It may be that in some cases, the lessee will know what proportion of the total costs it will have to pay. The lease in question may identify a fixed percentage of service charge costs. However, many leases do not specify a fixed percentage. It would no doubt be of more use to a lessee to be told what sum it will be expected to pay by way of service charge but, in my judgment, the words of section 20B(2) do not clearly so require.

60 Having identified what the language of section 20B(2) appears to require, it is relevant to consider the purpose of section 20B . It is obvious that the purpose of section 20B taken as a whole is to impose a time limit on a lessor's ability to make a demand for payment of a service charge. This purpose is advanced by the wording of subsection (1) in particular. This imposes a time limit of 18 months beginning with the time when the cost is incurred by the lessor and ending with the service of a valid demand for payment of the service charge. The period of 18 months might be said to be relatively short. Further, there is no power in the court to extend the time limit of 18 months, although subsection (2) gives the lessor the unilateral power to extend the period of 18 months by giving a written notification which satisfies subsection (2) within that 18 months. It should also be noted that if the lessor does operate subsection (2) , time is put at large. There is no further requirement that the lessor's demand for payment of the service charge is within 18 months of the notice given under subsection (2) . Further, once a demand for payment of the service

charge is given and the lessee comes under a liability to pay it, then the limitation period under the Limitation Act 1980 applies.

101. The documents relied upon as constituting notice under section 20B(2) are :

a. 2003 — the loose document found in the 2003 file and handed in during the hearing. If, as seems likely, this is the letter referred to by Jacqueline Piggott at paragraph 6 of her witness statement dated 30th September 2004 [1/28 @ 30] then it is that written to the applicant by Parkgate Aspen on 12th November 2003. Is it a demand under section 20B(1) or a notice under 20B(2)? If it is a demand then it is an anticipatory one, as it is intended to take effect only if she were to obtain relief from forfeiture. The tribunal prefers to treat it as a notice under section 20B(2). By its many attachments it provides more than sufficient information about how much has been incurred and what is owed.

b. 2005 — paragraph 3 of Mr Lederman's skeleton argument for a hearing in the Chancery Division on 30th March 2003 [2/52 @ 53]. This, which actually concedes that the claimants and defendant remain in a landlord and tenant relationship, sets out that the amount due as mesne profits, or service charge if relief is obtained, was then £12 484. As solicitors were then acting for Mrs Mohammadi good form dictated that communication was between legal representatives. Her solicitor will have been acting on her behalf and under a duty to inform her of its contents. This was not a demand and in the tribunal's determination falls within section 20B(2).

c. 2006 — paragraph 26 of the witness statement of Jacqueline Piggott dated 27th September 2006 [2/55 @ 63]. This would have been drawn to the applicant's attention by her solicitors. It refers to the amount owing in March 2005 and payable if relief is granted and says that this had now increased to 13 747.13. This is a notice, not a demand.

d. 2008 – letter dated 6th May 2008 [2/66–68] from Jackie Piggott of Bell Dening solicitors to Mrs Mohammadi's daughter, Homeira Chehrogosha, and copied to her mother due to lack of evidence that she held a power of attorney. On [2/67] at d "the sum which will become due" for ground rent and service charges since 2002 if her mother obtains relief are estimated to be in excess of £15 000. This is a notice, not a demand.

e. 2010 — letter dated 11th June 2010 [2/69–73] from Jacqui Piggott of Lorrells LLP to the applicant, at [2/70 g]. This estimates the amount that will be due should she obtain relief as in excess of £33 890.40. This letter was written 25 months after that in 2008. Insofar as costs above £15 000 were incurred within the 18 months preceding this letter then they are recoverable. The only questionable year, ironically, is therefore 2009.

f. 2011 – letter dated 5th January 2011 and attachments [2/74–82] from Jacqui Piggott of Lorrells LLP. This is a demand conditional upon the applicant obtaining relief from forfeiture (which she did in May that year) and/or a notice of an amount that will be sought. It includes the required summary of tenant's rights.

g. 2012 — letter before action dated 16th May 2012 and attachments [2/182–249] from Lennons solicitors to the applicant. This demanded payment of various sums including those secured by various charging orders, legal costs, ground rent and service charges. The latter were said to total £45 208.89.

102. Annexed to the letter dated 16th May 2012 were copies of the certified accounts

for each service charge year in dispute. Based upon these Mr Lederman produced a schedule setting out the total certified service charge costs for each year, with Mrs Mohammadi's apportioned percentage share of 0.8685%. As he went through this with the tribunal Mr Lederman explained that there was an error in the figures shown for 2010 on the schedule. As appears on the 2010 accounts appearing at [2/387] the totals should in fact be slightly higher.

103. The tribunal therefore determines that with the sole exception of the year ending 6th April 2009, where a proportion of the costs may have been incurred more than 18 months before the notice dated 11th June 2010, all of the amounts shown on the annexed schedule are recoverable.

104. As conceded in paragraphs 23 and 24 of Mr Lederman's skeleton argument the respondent agrees not to pursue legal costs against the applicant in respect of these proceedings and agrees that from the service charges determined to be payable there shall be deducted the sum of £842.39 in respect of legal costs.

105. In addition to her application under section 27A of the 1985 Act the applicant also sought an order under section 20C limiting the respondent landlord's right to include its legal costs incurred in connection with these proceedings as part of this or any future year's service charge. As agreed with the parties this issue will be dealt with by written submissions following delivery of this decision.

106. The tribunal therefore directs that, should the applicant still wish to pursue such application, she must file written submissions with the tribunal office and serve them upon the respondent's solicitors by close of business on Monday 31st March 2014. By close of business on Friday 11th April 2014 the respondent must file and serve its submissions in reply. Any submissions filed late shall be ignored.

Dated 20th March 2014

Graham K Sinclair
Tribunal Judge

Annexed : Schedule – Recoverable service charges

SCHEDULE – RECOVERABLE SERVICE CHARGES

Year	Bundle page		Total certified costs	Apportioned to flat 8	Allowed by tribunal
2003	2/344		£237,586.00	£2,063.43	£2,063.43
2004	2/350		£210,299.00	£1,826.45	£1,826.45
2005	2/356		£718,449.00	£6,239.73	£6,239.73
2006	2/362		£362,215.00	£3,145.84	£3,145.84
2007	2/369		£531,355.00	£4,614.82	£4,614.82
2008	2/375		£436,876.00	£3,794.27	£3,794.27
2009	2/381	*	£298,984.00	£2,596.68	£0.00
2010	2/387		£397,680.00	£3,453.85	£3,453.85
2011	2/393		£403,919.00	£3,508.04	£3,508.04
2012	2/399		£419,748.00	£3,645.51	£3,645.51
2013	2/403		£438,828.00	£3,811.22	£3,811.22
			Sub-total *		£36,103.16
			Less costs		(£842.39)
			Total *		**£35,260.77**

* Unless any service charge costs for the year ended 6th April 2009 are proved to have been incurred within the 18 months ending on 11th June 2010 then none are recoverable.