FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HN/LSC/2018/0083
Property:	Flat 5, Caledonian Court, 446 Christchurch Road, Bournemouth, Dorset BH1 4AY
Applicant:	Mrs Z Youssefi
Representative:	In Person
Respondent:	Caledonian Court (Bournemouth) Ltd
Representative:	Mrs G Drysdale
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenants application for the determination of reasonableness of service charges for the years 2015/16 to 2018/19 inclusive.
Tribunal Members:	Judge A Cresswell (Chairman) Mr M J F Donaldson FRICS MCIArb MAE Mr M R Jenkinson
Date and venue of Hearing:	22 May, 1 and 2 October 2019 in Bournemouth
Date of Decision:	14 October 019

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DECISION

The Application

1. This case arises out of the Applicant tenant's application, received on 1 August 2018, for the determination of liability to pay service charges for the years 2015/16 to 2018/19 inclusive.

Summary Decision

2. The Tribunal has determined that, subject to exceptions detailed below, the Respondent landlord has demonstrated that the charges in question were reasonably incurred and that the services or work was of a reasonable standard and that they are reasonable in amount and are payable by the Applicant for the years 2017/18 and 2018/19.
3. However, because there was a failure by the Respondent to make timely demands, the demands for the years 2015/16 and 2016/17 are "out of time" and are disallowed; some of the sums demanded in the year 2017/18 are also "out of time" and are also disallowed.
4. The Tribunal allows the Applicant's applications under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its costs in relation to the application by way of service charge or administration charge.

Preliminary Issues

5. There were a number of issues raised by the Applicant, which were not pursued at the hearing following either the written explanations in the Scott Schedule or oral explanation at the hearing. Those issues are not dealt with substantively in this determination because they were not further pursued by the Applicant who told the Tribunal that she was satisfied in respect of them.
6. The Issues for the Tribunal hearing were decided at the Case Management Discussion held on 17 December 2018 and relate to the demands for service charge years 2015/15 and 2016/17 and for 2017/18 and 2018/19.
7. The Tribunal's Directions of 17 December 2018 made clear that the Tribunal would not hear arguments about the workings of the company or its finances or ownership. The Tribunal also made clear in its response to the Applicant's request of 2 May 2019 for further disclosure that it would hear no further argument on the issues as to whether or not Napier Management Services Ltd has been employed or engaged by the Respondent Landlord.
8. On the first day of the hearing on 22 May 2019, the Applicant complained that the Respondent had failed to supply her with copy service charge demands prior to the Case Management Discussion and she had failed to provide the schedule required by the Directions flowing from that Discussion setting out her submissions in respect of the demands. She also asserted a failure by the Respondent to serve upon her any of the relevant demands prior to the service by it of its bundle of papers on 20 February 2019. The parties agreed that the Directions needed to be reset if there was to be a successful hearing of the issues. Accordingly, fresh Directions were set, which included a requirement for the Respondent to send to the Applicant and the Tribunal evidence of the notification to the Applicant of the Service Charge Demands for the years 2015/16 to 2018/19 inclusive.

9. On 30 September 2019, the day before the adjourned hearing, the Applicant made an application for an adjournment on the basis that she wanted audited accounts from the Respondent and had not received same. The Tribunal refused this very late application and referred the Applicant to its response to the Applicant's request of 2 May 2019 for further disclosure, when it had said the following:
9. The Tribunal will make its Decision on the basis of the evidence which has been provided to it and any oral evidence given at the hearing.

10. The Tribunal cannot order a Landlord to disclose audited accounts where none, so audited, exist.
Without wording ***which specifically states that the auditing of accounts is a precondition of payment*** *then monies cannot be withheld on that basis, and the remedy available to the Leaseholder is to make a counter claim in the County Court for breach of lease (****Elysian Fields Management Company Ltd v John and Patricia Nixon; Imperial Buildings Management Company Ltd v John Nixon*** *[2015] UKUT 0427 (LC).*

11. Failure to audit the service charge accounts might possibly be a factor relevant to the performance of the landlord/managing agent of its duties, but it should be noted that an audit process is a costly exercise because it involves far more than simply compiling the accounts. An auditor must act in accordance with the guidance of the ICAEW (Institute of Chartered Auditors of England and Wales). ICAEW's Tech 03/11 makes clear at
3.1.4 Where a lease that has been drawn up since 1980 refers to an audit then this is what should be undertaken.
Appendix E of Tech 03/11, says:
Where an audit is required, it should be carried out in accordance with International Standard on Auditing (ISA) 800 Special Considerations – Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks.

10. The Tribunal, nevertheless, kept its decision to refuse the adjournment in mind throughout the hearing so as to avoid any detriment to the Applicant, but never saw a reason why the decision was not properly made.
11. At the end of the second day, the Respondent was asked to provide the Tribunal with a copy of its management agreement prior to examination of the management fees on the final day of the hearing. On the final day, the agreement was produced and the Applicant complained that the agreement was or appeared to be a qualifying long-term agreement. Because this was a new issue, the Tribunal allowed the Respondent 2½ days to show that the agreement was not a qualifying long-term agreement. In the event, the Respondent provided its response to that issue on the day following the final day.

Procedural Issues

12. The Applicant raised a number of procedural issues.
13. The relevant law is set out in Sections 20B and 21B and 20 Landlord and Tenant Act 1985 and the cases to which the Tribunal will refer.
14. The relevant statute law is set out in the Annex below.

Section 20B Landlord and Tenant Act 1985

15. Under Section 20B of the 1985 Act, if any of the costs taken into account in determining the amount of the service charge were incurred more than 18 months

before a demand for payment of the service charge is served on the tenant, the tenant is not liable to pay those costs, unless during the 18-month period 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.

Skelton v DBS Homes (Kings Hill) Limited [2017] EWCA (Civ):
The date on which the "demand for payment" was served was the date when the demand became fully valid. Section 20B applied to a demand for a payment on account because the definition of "service charge" encompassed costs to be incurred as well as costs which had been incurred. The amounts of any payments must be reasonable.
Arden LJ**:** "*17. In my judgment, it is clear from the definition of "service charge" in section 18 that section 20B applies to service charges in respect of costs to be incurred as much as costs that have been incurred. In my judgment, the judge was wrong to hold otherwise on the basis of* ***Gilje****. In* ***Gilje*** *the landlord served demands for 1999 and 2000 before incurring any costs. The landlord had spent less than the amounts demanded, and there was no balancing charge. The argument was that none of the on-account payments was payable. Etherton J held that there was no "metamorphosis" from an on-account demand and a demand for actual costs once costs had been incurred. Section 20B did not apply where the tenants made on-account payments of their service charges, the landlord's actual expenditure did not exceed the estimated amount on which the service charges were based and the landlord did not serve any further demand on the tenant. There was then no "demand for payment" after the incurring of costs to which section 20B could apply.* ***But that reasoning does not assist in this case because the demand was only validly served after the costs were incurred.***

18. Further, in my judgment, it is not enough under section 20B that the tenant has received the information that his landlord proposes to make a demand. As Morgan J held in ***London Borough of Brent v Shulem B Association Ltd*** *[2011] EWHC 1663, [53], there must be a valid demand for payment of the service charge. In that case, the landlord had served several different demands for payment but they were all invalid because they did not comply with the terms of the parties' contract. The content of the alleged demand did not comply with the service charge provisions of the lease. So there was no valid demand for the purposes of section 20B(1) of the 1985 Act…*

20. Ms Gourlay also draws to our attention that retrospective correction of a demand is possible in certain situations. Thus, in ***Johnson v County Bideford*** *[2012] UKUT 457 (Lands Chamber), the landlord had failed to comply with the requirement in section 47(1) of the 1985 Act to provide his name and address. The Upper Tribunal held that, by serving fresh demands, the landlord had provided the information required by section 47(2) to validate the original demands. Section 47(2) allows for this possibility. Ms Gourlay submits that* ***Johnson v County*** *is about statutory validity not contractual validity. I agree. We have not been shown any authority for the proposition that as a matter of contract law the delivery of the estimate validated the demands in this case as of the date of the demand.*

21. If in the situation in this case, the tenant receives a windfall, that is the result of the landlord not having complied with the terms of the lease for service of a valid demand."

16. As indicated above, it was the Applicant's case that she had not been served with any notice of the Respondent's intention to demand of her the expenditure contained within the service charge demands submitted by the Respondent for this hearing in respect of the 4 years in issue until she received a bundle of papers from the Respondent following the Case Management Discussion. It was not in issue that those papers had been sent out by Mrs Drysdale on 21 February 2019 so that they were likely to be received on 22 February 2019 in the normal course of the post.
17. The Applicant told the Tribunal that any information that she did receive about financial issues was as a result of her neighbours keeping her informed. She said that the Respondent did not communicate with her and that whenever she telephoned, they would bang the receiver down; Mrs Drysdale always told her to speak to their solicitor, Mr Newberry, as they were instructed not to talk to her.
18. She said that when the Respondent sends out the accounts for the AGM, they never send them to her and she has to get a photocopy from her neighbours.
19. Mrs Drysdale told the Tribunal that the Managing Agent collates and agrees an estimate for expenditure for the year with the Respondent prior to 18 June. Thereafter they produce a service charge demand, described as an invoice, and send that and a property service charge budget calculation, listing heads of expenditure, to the tenants. Sometimes a letter is also sent. The documents are automatically issued each year using a Propman system. A letter is only issued if there is a significant change to what tenants would expect to receive in the service charge year or the Managing Agent would like to alert tenants to something about the property.
20. Mrs Drysdale told the Tribunal that she had been involved since June 2007.
21. Mrs Drysdale said that the reason that the documentation for the years 2015/16 and 2017/18 were addressed to the Applicant "Care Solicitor Section 146" was to reflect the fact that during those years there had been on-going and separate disputes with the Applicant and that it was necessary to take the advice of solicitors before issuing demands so as not to prejudice forfeiture proceedings.
22. At the first day of hearing on 22 May 2019, Mrs Drysdale had initially told the Tribunal that no communication had been made with the Applicant during the past 10 years, whilst she was the subject of forfeiture. When this was questioned, she went on to say that there had been demands for all of the relevant periods. At the resumed hearing, Mrs Drysdale told the Tribunal that there had been occasions when the Applicant had been told that she must speak to a solicitor and that there had been occasions when she had become frustrated with the Applicant, a circumstance for which she apologised.
23. Mrs Drysdale properly conceded that, when she referred in the written submissions in the Scott Schedule to the Applicant discussing items of expenditure at Annual General Meetings, she accepted that it was more likely that the Applicant was aware of the accounts rather than service charge demands.
24. Mrs Drysdale told the Tribunal that letters marked "Care Solicitor Section 146" would be sent out to the Applicant in that form.
25. In relation to 2015/16, she said that the documentation would have been sent out by a Shirley Chiltern, but that she had not asked her whether the documentation was sent to the Applicant because she no longer worked for the company. She did not know if Ms Chiltern had made a check with the solicitor. Nor did she know if a check had been made with the solicitor in relation to the documentation for the year 2017/18.
26. Mrs Drysdale said that the documentation for the 3 years following 2015/16 would have been served by either Jill Harris or Katy Lee, both of whom are still employed

but neither of whom had been asked whether they remembered sending out the documentation.

27. Mrs Drysdale said that she was relatively confident that the Applicant got the documentation. She could not find a reference that would support its having been sent in any other documents. *"We have neither proof of sending or delivery"*.

28. In respect of the other 3 years in issue, Mrs Drysdale accepted that she had no evidence that the documents had been sent out or delivered.

29. Nor did the Respondent have any evidence from the solicitor that an enquiry had been made of him in either of the 2 years where reference "would" have been made. Mrs Drysdale said that the firm was no longer in existence due to the retirement of Mr Newberry. She had not checked the solicitor's invoices to see whether there was reference to service of documentation on the Applicant.

30. Mrs Drysdale told the Tribunal that a reminder letter would be prompted by the system about a month after an invoice was due for payment; that that prompt would come to her; that they would normally send out a follow-up; that she doubted that there are any follow-up letters in relation to the Applicant.

31. The Tribunal concluded that the Respondent was unable to show that service charge demands had ever been made of the Applicant for the 4 years in issue until she received the bundle of papers on 22 February 2019 following the Case Management Discussion.

32. The Respondent was given every opportunity to provide evidence capable of showing the service of service charge demands upon the Applicant. In the event, the Respondent has relied upon documents within its Propman system and what "would" or "should" have happened with those documents. In the face of the Applicant's denial of receipt, there appears to have been a singular inability by the Respondent to source any evidence supportive of its submission, such as evidence from those who were actually involved in the process as detailed above. Also, this had to be seen against the background of a person with whom there was admitted limited communication. Further, the Tribunal found it unlikely that correspondence would have been sent to the Applicant with the appellation "Care Solicitor Section 146". Further, the absence of any follow-up letters following the prompts which Mrs Drysdale said would have come to her, but which she cannot recall, also points to a lack of initial demands.

33. The Tribunal would like to record its gratitude to Mrs Drysdale for her honesty in dealing with this issue and, indeed, throughout the proceedings. Similarly, the Tribunal very much appreciated the reasonable approach taken by the Applicant over the 3 days of hearing.

34. Having reached the conclusion that it has, i.e. that no valid demands were made of the Applicant and no notice given to her of expenditure which would been required of her under the terms of the lease until she received the documentation on 22 February 2019, an application of Section 20B of the 1985 Act leads the Tribunal to disallow all expenditure prior to 21 August 2017 (i.e. earlier than 18 months prior to 22 February 2019). That has the effect of disallowing the whole of the demands for 2015/16 and 2016/17 and some of the expenditure in the year 2017/18 as being "out of time" under the terms of Section 20B.

35. The Tribunal has had to do its best with the information available to it. It has not been possible for the Tribunal to assess with exactitude the sums due from the Applicant in respect of Service Charge for the year 2017/18 because it was not wholly clear which items of expenditure had been included within the demands and Mrs Drysdale was unable to tell the Tribunal into which budget heads some of the invoices were tallied.

36. The following items of expenditure in the year 2017/18 are out of time and 1/29th (£142.81) of their total (£4,141.65) needs to be deducted from the total due from the Applicant:

- MCPM Limited in the sums of £702 and £216 dated 15 August 2017 (x2).
- Rubbish clearance in the sums of £45, £45 and £45 dated 9 August 2017, 1 August 2017 and 21 July 2017.
- Apex Pest in the sum of £120 dated 1 August 2017.
- Clarks Landscapes in the sums of £116.40, £180 and £116.40 dated 3 August 2017 (x2) and 6 July 2017.
- Napier Management Fees in the sum of £1461.25 dated 12 August 2017.
- Napier Audit Fee in the sum of £200 dated 24 June 2017.
- Cleaning in the sum of £180 dated 28 July 2017.
- Premier Park Permits in the sums of £14.40 and £7.20 dated 1 August 2017 and 3 July 2017.
- R Elliott in the sum of £312 dated 9 August 2017.
- Spinners in the sum of £45 dated 3 July 2017.
- Touch Access Hoist Hire in the sum of £120 dated 7 June 2017.

37. For the avoidance of doubt and because their position in the bundle and Scott Schedule might mean that these items were taken into account in the service charge demand for 2017/18, **the following items are also noted as being out of time and 1/29th of their total needs to be deducted from the total due from the Applicant if they were included in that total for 2017/18**:

- Napier Service Charge in the sum of £959.33 and dated 19 June 2017.
- Rubbish clearance in the sum of £45 and dated 29 March 2017.
- Electric bill in the sums of £38.76 and £36.72 dated 5 June 2017 (x2).

38. There was substantial discussion and investigation during the hearing of numerous invoices which the Tribunal has found to be out of time; those issues are not detailed in this Decision because the invoices in question were found to be out of time.

Section 21B Landlord and Tenant Act 1985

39. The service charge demands served upon the Applicant following the Case Management Discussion were not each accompanied by a summary of rights and obligations, notwithstanding that there is a free standing copy of same within the bundle.

40. Under Section 21B of the 1985 Act, a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. A tenant may withhold payment of a service charge which has been demanded from him if that is not complied with in relation to the demand. As can be seen from reference to **Roberts v Countryside Residential (South West) Ltd** (2017) UKUT 386 (LC), the failure to serve a summary of the rights and obligations can be cured by re-serving the demand together with a summary of the rights and obligations. The decisions of this Tribunal in respect of the payability of items of expenditure covered by the service charge demands for 2017/18 and 2018/19 will become operative subject to the Respondent re-serving the demands (showing the figures resulting from the Tribunal's Decision) together with a summary of the rights and obligations.

Section 20 Landlord and Tenant Act 1985 Limitation of service charges: consultation requirements

41. The provisions of section 20 apply where a landlord either enters into a **qualifying long -term agreement**.

42. They provide that if the consultation requirements have not been complied with or dispensed with by a Tribunal, the amount of the relevant costs incurred under the agreement which may be recovered through the service charge is limited to the "appropriate amount". The application of the provisions is regulated by the *Service Charges (Consultation Requirements) England) Regulations 2003 – SI 2003/1987).*

43. "The appropriate amount is –
in respect of a qualifying long term agreement, an amount which results in the relevant contribution of any tenant in respect of any accounting period exceeding £100 (*Note – "accounting period" is defined in the Regulations, as amended*)

44. The Applicant submitted to the Tribunal that the Management Agreement had not been the subject of consultation under Section 20. She relied upon **Corvan (Properties) Ltd v Abdel-Mahmoud** (2018) CA (Civ Div): *A management agreement, which had a contract period of one year which would continue thereafter until terminated, was an agreement for a term of more than 12 months and therefore a qualifying long-term agreement under the Landlord and Tenant Act 1985 s.20ZA.*

45. The terms of the Management Agreement, which was signed by Chris Silverthorne, a director of the Respondent company (using the wrong name for the company) on 1 January 2007 were such that fees for company secretarial duties and management fees were detailed as subject to annual review and agreement and the contract itself could be terminated by one party serving on the other three months' notice in writing or by notices following unremedied breach.

46. In **Corvan (Properties) Ltd v Abdel-Mahmoud,** the Court of Appeal considered a number of earlier cases. One of those cases, **Poynders Court v GLS Property Management Ltd** [2012] UKUT 339 (LC), related to an agreement which was silent as to the duration of the term, was indefinite with a proviso for termination and was clearly intended to be a continuing arrangement, all as is the case here.

47. The Court of Appeal, determined that *the deciding factor is the minimum length of the commitment*. McFarlane LJ said:
I would disagree with the approach of the respondent that the deciding factor is the maximum length of the period. HHJ Marshall QC was correct in Paddington Walk at paragraph 49 that the deciding factor is the length of the commitment. That must be read as the 'minimum commitment'. Adopting the language of clause 5 itself, the issue is the duration of the "term" the parties have "entered into" in the "agreement".

48. He went on to say:
Whether the agreement is for a term exceeding 12 months is not about the substance of the management agreement and its various obligations. Rather, it is about whether it is an agreement for a term which must exceed 12 months. In ***Poynders Court****, whilst the managing agent may have been "intended" to provide the services for a period extending beyond 12 months, the relevant clause as to the term of engagement did not secure that they were under contract to do so for the period of more than twelve months. The requirement that the contract be for a term of more than twelve months cannot be satisfied simply by the contract being indeterminate in length but terminable within the first year.*

49. The Tribunal finds, following this guidance, that the Management Agreement here was not a qualifying long term agreement and so was not subject to the Section 20 consultation provisions, so that there could not be a failure thereof leading to an inability by the Respondent to demand the full fees.

Inspection and Description of Property

50. The Tribunal inspected the property on 22 May 2019 at 1000. Present at that time were Mrs Z Youssefi and Mr Mark Williams, Mrs Gail Drysdale and Mr Mark Palumbo, respectively senior property manager and property manager with Napier, and Mr Steven Kenyon, lessee of Flat 19 at the property. The property in question is at the corner of Christchurch Road and Drummond Road.

51. The building, the original part of which was built circa 1910, has been substantially extended to comprise 2 sections containing 29 Flats in all on 3 floors. The building is constructed of brick walls, largely rendered and colour washed with pitched timber roofs clad in tiles with sections of flat roofing and UPVC windows.

52. There is an area of car parking at the front and side of the site and a further area of parking accessed via the arch separating the two sections of the building. There is very limited garden area, part of which serves 3 Flats and which is separated off. There is an external store for bicycles and furniture adjacent to the refuse bins.

53. The parties pointed out the areas that they wished to bring to the Tribunal's attention.

54. The Tribunal noted missing and mismatched wallpaper and ill-patched areas of papering; broken and incomplete guttering and downpipes; blocked grids; an area of detached soffits; scruffy gardens; 3 vermin boxes, which had an appearance of being untended; in a second block, it was smelly and dirty, the floors and walls being dirty; in that second block, there was evidence of long-unpainted wood surfaces and a damaged wooden spindle; in the entrance way to that block, there was further evidence of a lack of cleaning; the external decoration also left much to be desired, there being evidence of staining and simply painting over broken and missing patches of render.

Directions

55. Directions were issued on various dates.

56. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.

57. This Decision is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by the Applicant, Mrs Youssefi, by her friend, Mr Mark Williams, and by Mrs Drysdale and Mr Palumbo on behalf of the Respondent. At the end of the hearing, both Mrs Drysdale and Mrs Youssefi told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

58. The Tribunal has regard in how it has dealt with this case to its overriding objective: The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 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

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(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.

The Law

59. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.
60. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable - or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
61. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.
62. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and

their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

63. "*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*** *case* **(Yorkbrook Investments Ltd v Batten** (1986) 19 HLR 25) *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.":* **Schilling v Canary Riverside Development PTE Limited** LRX/26/2005 at paragraph 15.

64. "*Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available:* **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

65. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** [2015] UKUT 0333 (LC)).

66. Where a party does bear the burden of proof:
"*It is common for advocates to resort to [the burden of proof] when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law… It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out…: the burden of proof is a last, not a first, resort.*" (Sedley LJ in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38 at paragraph 86).

67. In **The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** (see below), the Tribunal was faced with a three-way choice:
1) To make no reduction, thereby leaving the costs as they were;
2) To adjourn to allow the landlord to provide evidence, or

3) To adopt the **Country Trade** "robust, commonsense approach".

The first of these options would have been wrong in the light of the landlord's concession that the CCTV charges included an element designed to allow the developer to recover some of its construction costs.

The second would have imposed a disproportionate burden on the parties in the light of the relatively modest sums at issue.

The Tribunal concluded that the third was the right option to have followed. It may have been unscientific, but it was proportionate and involved the application of the Tribunal's overriding objective.

68. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost*.

69. The relevant statute law is set out in the Annex below.

Ownership and Management

70. Tyrrel Investments Inc. is the owner of the freehold. The Respondent is the lessor of the Head Lease. The property is managed for it by Napier Management Services Limited.

The Lease

71. The Applicant holds Flat 5 under the terms of a lease dated 16 September 1988, which was made between Caledonian Court (Bournemouth) Management Co Limited as lessor, Ali Sadeh and Hamid Reza Shokrani as the Developer and Lindsey Newton as lessee.

72. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

73. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:
Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen

(trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

74. By clause 2 of the Lease, the Lessee covenants with the Lessor to perform and observe the covenants on the part of the Lessee set out in the 6th Schedule of the Lease.

75. By clause 3 of the Lease, the Lessor covenants to perform and observe the covenants on its part set out in the 7th Schedule of the Lease.

THE SIXTH SCHEDULE

Covenants by the lessee

19 The lessee shall contribute and shall keep the lessor indemnified from and against 1/29 of all costs and expenses incurred by the lessor in carrying out its obligations under and giving effect to the provisions (clauses I to 16) of the seventh schedule hereto

20(a) The Lessee shall on the execution hereof pay to the Lessor on account of the Lessee's obligations under the last preceding clause an advance calculated from the date hereof to the Twenty-fourth day of June next at the rate of One hundred Pounds per annum

20(b) The lessee shall hereinafter on the twenty fourth day of June in each year during the continuance of this demise pay to the lessor an advance amounting to the proportionate amount (as certified in accordance with clause 15 of the seventh schedule) due from or paid by the lessee to the lessor for the accounting period to which the most recent notice under clause 16 of the seventh schedule relates

21 The Lessee shall within twenty-one days after the service by the Lessor on the Lessee of a notice in writing stating the proportionate amount (certified in accordance with Clause 15 of the Seventh Schedule) due from the Lessee to the Lessor pursuant to Clause 19 of this Schedule for the accounting period to which the notice relates pay to the Lessor or be entitled to receive from the Lessor the balance by which that proportionate amount respectively exceeds or falls short of the total sums paid by the Lessee to the Lessor pursuant to the last preceding clause during that period

23 The lessee shall pay to the lessor and the developer (as Head Lessor) all costs charges and expenses (including legal costs and surveyor fees) incurred by the lessor and the developer (as Head Lessor) for the purpose of or incidental to the preparation and service of any notice or proceedings under section 146 of the Law of Property Act 1925

THE SEVENTH SCHEDULE before referred to

Covenants on the part of the lessor

I. The Lessor shall pay any existing and future rates taxes assessments and outgoings now or hereafter imposed on or payable in respect of the Reserved Property

2. The Lessee paying the rents hereby reserved and performing and observing the covenants on the part of the Lessee hereinbefore contained shall peaceably hold

and enjoy the Premises during the term hereby granted without any interruption by the Lessor or any person lawfully claiming under or in trust for it.

3. The Lessor shall keep all buildings for the time being on the Estate insured in the joint names of the Lessor and the Developer (as Head Lessor) and of all persons having any interest therein against loss or damage by fire aircraft impact explosion storm tempest flood subsidence and (so far as insurable) act of war or accident and by any other peril within the usual comprehensive policy of the insurance to the full cost of rebuilding from time to time as specified by the Developer (as Head Lessor) under the terms of an index-linked policy plus 12.5% for professional fees in some reputable insurance office and through an agency nominated by the Developer (as Head Lessor) and shall make all payments necessary for those purposes within seven days after they become payable and shall produce to the Lessee on demand the policy or policies of such insurance and the receipt for every such payment as often as the Premises are destroyed or damaged by any of the insured risks the Lessor shall forthwith rebuild and reinstate the same in accordance with the bye-laws or building regulations and planning or development schemes of any competent authority for the time being affecting the Premises by applying all moneys received by virtue of such insurance for such purpose.

4. The Lessor shall in the year One thousand nine hundred and Ninety- two and thereafter in eveiy fourth year of the term hereby granted or more frequently if necessary paint with at least two coats of good quality paint in a workmanlike manner all wood iron and other parts of the exterior of the Estate usually or which ought to be painted.

5. The Lessor shall maintain the Reserved Property and all other parts of the Estate not included in the Underlease of any Flat in good repair and condition and properly cleaned at all times and shall pay a fair proportion of the expense of repairing and maintaining any party walls bounding of the Estate not included in any such Underlease.

6. The Lessor shall before repairing any walls serving the Premises in common with any other Flat on the Estate or with any other part of the Estate and before carrying out any repairs or works to the Reserved Property for the carrying out of which it requires access to the Premises give reasonable notice (and except in cases of extreme urgency at least forty-eight hours notice) in writing to the Lessee the Lessor shall on giving such notice he entitled to carry out those repairs or works in doing so to have any required access to the Premises but shall act carefully and reasonably doing as little damage as possible to the Premises and making good all damage done.

7. The Lessor shall keep the said garden area at the Estate properly cultivated and in a neat and tidy condition.

8. The Lessor shall take out and keep on foot in the joint names of the Lessor and the Developer a policy of insurance in some reputable insurance office nominated by the Developer through its agency covering liability for injury to persons on the Estate.

9. The Lessor shall maintain the paladin hunker forming part of the Reserved Property in good and substantial repair and in a tidy condition at all times and shall hire or otherwise provide one or more paladins and pay all fees due in respect thereof to the Local Authority or otherwise.

10. The Lessor shall pay the rents reserved by the Head Leases and shall perform and observe all the covenants on its part therein contained so far as neither the Lease nor any other Owner of a Flat is liable for such performance under the covenants on his part contained in this or a similar Underlease.

11. The Lessor shall be entitled to employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule and pay their wages commissions fees and charges.

12. The Lessor shall provide such lighting television aerial and other services as it thinks fit.

13.(a) The Lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this Schedule by charging against such costs and expenses in each year and carrying to a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future expenses liabilities or payments whether certain or contingent and whether obligatory or discretionary.

(b) If and so far as any monies received by the Lessor from the Lessee during any year by way of contribution to the Lessor's said costs and expenses are not actually expended by the Lessor during that year in pursuance of this Schedule nor otherwise dealt with so as to be in allowable expense in calculating the Lessor's income for tax purposes for that year the Lessor shall hold those moneys upon trust to expend them in subsequent years in pursuance of this Schedule and subject thereto upon trust for the Lessee absolutely.

14. The Lessor shall keep proper books of account of all costs and expenses incurred by it carrying out its obligations under this Schedule and an account shall be taken on a date to be fixed by the Lessor within two years of the date hereof and on the anniversary of such date in every subsequent year during the continuance of this demise of the amount of those costs and expenses incurred since the date hereof or the date of the last preceding account as the case may be which the account relates and the proportionate amount due from the Lessee to the Lessor pursuant to clause 19 of the Sixth Schedule.

16. The Lessor shall within two months of the date to which the account provided for in Clause 14 of this Schedule is taken serve on the Lessee a notice in writing stating the total and proportionate amounts specified in accordance with the last preceding clause.

76. Clause 21 of the Sixth Schedule provides for a year-end balance to be taken and any credit refunded to the Lessee. Clause 13(b) of the Seventh Schedule provides for year-end surpluses to be transferred to reserve.

77. Clause 20(b) of the Sixth Schedule requires the Lessee to pay on the 24th June each year 1/29th of the amount of the certified expenditure for the previous year. It is impractical to calculate what figure this is until the certified account for the previous year has been calculated which in reality will not be completed until probably two to three months after the 24th June. The basis for the "on account" charge is not an amount "estimated" by the Landlord's Agent as there is no provision for such a basis within the terms of the lease but is an amount based on the previous years actual expenditure.

Substantive Items of Expenditure
Borrett Cleaning
The Applicant

78. The Applicant believed that charges for cleaning were excessive and that rates for cleaners including materials in the Bournemouth area are about £10 per hour. The actual charge of £37.50 would equate to 3½ hours per visit, whereas visits last 10 minutes at most and sometimes no work is done.
79. The Applicant, via Mr Williams, gave evidence of 2 occasions, one in the summer of 2017 and one perhaps last year, when the cleaner had spent only minutes at the property, 10 minutes on the first occasion and a couple of minutes on the second.

The Respondent

80. The Respondent said that there had been no complaints in the past year about cleaning apart from by the Applicant and that there had been no lack of cleaning apparent during the quarterly visits by Mr Palumbo.

The Tribunal

81. The sum of £37.50 for cleaning a property such as this did not appear to be unreasonable. A Managing Agent will turn to a contractor with the right insurance and the ability to provide cleaning staff even during times of holiday and sickness, which a £10 an hour cleaner could not provide.
82. The Tribunal noted the limited evidence from the Applicant about a lack of attention on 2 occasions during the past 2 years (she told the Tribunal that she is usually away from home during the week) and also noted that there was no real evidence of quality control. The Tribunal itself had observed evidence of dirt at the inspection, but again this is very limited evidence, particularly as the inspection was on a Wednesday preceding the Thursday cleaning visit.
83. Taking all of the above into account and seeking to reach a balanced view, the Tribunal finds that **it is reasonable to reduce the cost of cleaning by 10%**. That has the effect of **reducing the cleaning element in 2018/19 by 10% (£1900-10% = £1710) and a similar reduction for the remaining cleaning element within 2017/18 after the removal of the out of time invoice detailed above (£1904 - £180 = £1724; - 10% = £1551.60).**

Pest control
The Applicant

84. The Applicant initially believed that invoices were being provided by a limited company which had been dissolved. She did not believe that this service was being provided at all.
85. Mr Williams said that he had monitored the bait boxes over a one-year period, checking them each month, and finding them to be clean each time. The Applicant said that in 2015 she had looked at the boxes and asked Mr Williams to look inside.

The Respondent

86. The Respondent said that there was no evidence of continuing rodent problems despite there having been a huge problem with the dumping of waste over the last few years. The access code would be given to contractors. The contract is still on-going and serves a purpose.

The Tribunal

87. The Tribunal noted that the invoices were not in the name of the dissolved company, but rather in the name of Mr Pike trading as a name similar to that of the dissolved company.

88. The Tribunal saw 3 bait boxes during the inspection. Mr Williams opened one of them and it appeared to be empty, although Mr Palumbo believed he had seen something inside.
89. The best evidence of the effectiveness of pest control is that the Respondent has received no complaints and that the Applicant makes no complaints about the presence of vermin at the property. It is not possible for the Tribunal to conclude on the basis of empty boxes in 2015 that there has not been feed placed therein during the relevant periods, which has been taken away by vermin and achieved its purpose. Accordingly, there being no challenge to the reasonableness of the actual sum charged for this work, the Tribunal has concluded that this is a reasonable charge.

Garden maintenance

The Applicant

90. The Applicant said that she had spoken to the gardener and that he was at the premises for 15-20 minutes maximum each time. She had seen him on 3 occasions.
91. The main garden is in front of Flat 12. He does hardly any weeding and the grass does not need to be cut on each visit.
92. The charge is far too expensive and the work of poor value.

The Respondent

93. The Respondent stated that the contractor was a small local business, who performed the work for £49.50 + VAT per visit, which was fortnightly.

The Tribunal

94. The Tribunal saw the garden at the property on the inspection and did not believe that it was in as poor a state as the Applicant suggested. Its worst aspect resulted from the selfish and irresponsible behaviour of dog owner(s) in allowing their dogs to foul the lawn and not removing the faeces. The Tribunal noted in a statement produced by the Applicant on the final day, from R Maddison of Flat 12, reference to the grass being cut once every 2 weeks.
95. The charge of £49.50 + VAT for 3 hours gardening did not appear to the Tribunal to be an unreasonable charge by a professional gardener with proper insurance.
96. The Tribunal finds that 3 hours per fortnight at the property is a reasonable expenditure given the size of the grounds in question and that the sum charged was reasonable in the circumstances.

Repairs to the outside of Flat 1

The Applicant

97. The Applicant was concerned that the sum of £570 in respect of rendering and hole filling appeared to be excessive and did not appear to be of a good quality.

The Respondent

98. The Respondent said that the work related to the entire bay plinth around Flat 1.

The Tribunal

99. The Tribunal could not see how the work detailed could have cost such a relatively large sum. On the face of the invoice, the Tribunal finds that **a charge of £300 + VAT, a total of £360, would be a reasonable sum** for the work involved and disallows the charge insofar as it exceeds that amount. This has the effect of **reducing the overall demand for 2017/18 by £210**, remembering that the Applicant's share of this is £7.24.

Electrical repairs

The Applicant

100. The Applicant believed that charges of £224.64 for the replacement of 5 lamps of 26 October 2018 and £432 for the replacement of car parking lights of 22 August 2018 (Scott Schedule items 13 and 14) were excessive.
101. In relation to the former, Mr Williams had sourced lamps and bulbs at Screwfix for £30 and £6 to £8 respectively. In relation to the latter, he had sourced larger lights at £60.

The Respondent

102. The Respondent, via Mrs Drysdale, pointed out that the former work was attendance and replacement of 5 lamps and the latter involved the replacement of LEDs used as floodlights for the car park.

The Tribunal

103. The Tribunal could understand the concern of the Applicant, but there was no assurance that she was comparing like with like after Mr Williams told the Tribunal that he did not know the make of the items used by the contractor. There was nothing on the face of the invoices to suggest the prices were unreasonable for the work described and the sums are allowed.

Drains and gutters

The Applicant

104. The Applicant complained that invoices for £1117.92 and £822 (Scott Schedule items 57 and 58) represented poor value and the work had not been done correctly. There were caps missing from the drains. They seemed to be repeatedly doing the same job and not doing the job properly. The drains remained blocked.
105. She had telephoned builders who had given her a quotation and she had then doubled the cost and arrived at figures of £300 and £200 respectively.

The Respondent

106. The Respondent indicated that these costs related to a specific problem where Flat 3 was experiencing damp ingress from the drains. One charge was for a survey and the other was for the actual work.

The Tribunal

107. The Tribunal noted that there was some confusion in the mind of the Applicant as to what these works had actually entailed because she was also referring to missing pieces of guttering.
108. The Applicant told the Tribunal that she had no written quotations and that the quotations she had received were from builders who had not looked at the job; given those circumstances and the lack of clarity by the Applicant as to what was entailed when seeking quotations and because there was nothing on the face of these invoices to suggest they were unreasonable, the Tribunal finds them to be reasonable and payable.

CCTV

The Applicant

109. The Applicant submitted that expenditure on CCTV was not permitted by the lease and that there had been no consultation about connecting it.

The Respondent

110. The Respondent submitted that the expenditure was permitted under Clause 11 of The Seventh Schedule of the Lease.
111. There had been a problem with vagrants and dumping. There had been repeated occurrences of people sleeping in and using drugs on the premises. Residents had

been concerned and the police had been involved. The CCTV had worked wonderfully and the problem no longer existed.

The Tribunal

112. The Tribunal finds that the expenditure is permitted under Clause 12 of The Seventh Schedule of the Lease and that the expenditure was entirely proper given the circumstances detailed. There being no challenge to the reasonableness of the amounts expended, the Tribunal finds the expenditure to be reasonable and payable.

Major works

The Applicant

113. The Applicant believed that the charge of £540 for a survey (Scott Schedule item 87) for the internal decorating specification was not justified because it would be the same specification each time there was decoration because the building does not change. A total of some £1500 was expended even before these relatively minor works were conducted.
114. She had done the decorating in 2004 and there had been decorating only once since, in 2010 or 2011.
115. She did agree that somebody had to survey the work, but did not agree that it was a reasonable sum.
116. The fees charged by Napier in the sum of £660 as a Section 20 admin fee (Scott Schedule item 89) should be included in the annual management fees and the sum was, in any event, expensive.

The Respondent

117. The Respondent, through Mrs Drysdale, explained that the survey figure was similar to that charged for similar properties. This was for the redecoration of the 2 internal blocks and associated remedial repairs. She believed that previous repairs were done in around 2009.
118. Section 20 administration is not included within the Management Agreement. The fee charged represented a set fee agreed with the landlord for the project representing about 8 hours work to complete the Section 20 procedure and liaison with leaseholders.
119. Mrs Drysdale explained that the sum of £9360 (Scott Schedule item 90) was only a tender sheet; no costs had been incurred and there was likely to be a re-tender.

The Tribunal

120. The Tribunal noted the Applicant's concession that a survey was required. There was nothing on the face of the survey to suggest that it was an unreasonable sum; the Tribunal had seen the size of the task during its inspection; there was no informed alternative figure suggested; the Tribunal found this charge to be reasonable.
121. In respect of Napier's fee, the Tribunal noted that this work was not covered by the management agreement, that it represented a charge of £18.96 + VAT per flat and could not see that it was an unreasonable charge.

TV

The Applicant

122. The Applicant submitted that expenditure on TV was not permitted by the lease and that there had been no consultation about it. It was not good value.

The Respondent

123. The Respondent explained that the costs in question related to annual maintenance in the sum of £111.60 (Scott Schedule items 60 and 189), and individual issues. There had been one individual issue (Scott Schedule item 59), where the contractors charged for the installation of a 4G filter only in the sum of £84.00.

124. The expenditure was recoverable in accordance with Clause 5 of The Seventh Schedule of the Lease.

The Tribunal

125. The Tribunal finds that the expenditure is permitted under Clause 12 of The Seventh Schedule of the Lease.
126. The other concern of the Applicant is that the annual maintenance charge is of very poor value because the charge relating to a call out was also incurred. It is not otherwise suggested that the annual cost of £111.60 is unreasonable and the Tribunal, accordingly, finds it to be a reasonable sum. The Tribunal also notes the reason for the extra charge in relation to the 4G filter and the absence of a charge for replacing a faulty aerial and a call out on that occasion and, in the absence of any alternative costings, finds that too to be a reasonable charge.

Management Fees

The Applicant

127. The Applicant accepted that the fee charged by the Managing Agent was a reasonable sum to charge for a building of that nature, but only if the service was of a good standard. Here, the service had been below standard and there should be a reduction in the fee.

The Respondent

128. The Respondent, via Mrs Drysdale, accepted that the management was "*not perfect by any means*". The agent had managed the building for a very long time and despite challenges felt that it was done to the satisfaction of the majority of the tenants there. No other tenant had ever brought a claim before the Tribunal.

The Tribunal

129. The Tribunal has recorded above some of the evidence which it heard about how the management of the property was conducted and what it saw on inspection. It appeared to the Tribunal that the Managing Agent operated too often on the basis of assurances by others rather than through proactive supervision or post-work checks. There was too much reliance upon what "would" or "should" have happened; reliance upon a lack of complaints; reliance upon an on-site director.
130. In relation to the last aspect, it appeared to the Tribunal that there were tasks being undertaken by an on-site director, such as assessment of contractors and of work performed, which should have been conducted by the Managing Agent under the management agreement, for which the tenants were being charged and yet was not being performed by it.
131. There appeared to the Tribunal to be a culture of poor quality work but not poor quality pricing. The condition of the property seen at the inspection supports this view.
132. Mrs Drysdale frankly accepted that the management was not as good as it should be.
133. All of the above must, however, be set against other factors. The management fee for a property of this nature appeared to be a reasonable figure based upon the Tribunal's own experience and upon the proper concession by the Applicant. The Managing Agent was completing a range of duties. The Tribunal could see, for instance, its involvement in works at the premises, engagement of contractors, cleaners, gardener, etc., preparation for the AGM and attendance at the AGM and the production of all of the financial documentation.
134. The Tribunal saw for itself the state of the building and grounds. The three earlier decisions also record what was seen at Inspection and what was revealed by the evidence. Tenants need to be aware that historical factors cannot continue to be taken into account in assessing the reasonableness of management fees. In this case, the

Tribunal was hearing evidence going back over a four-year period; in any future case, an Applicant will be required and challenged to focus his/her attention and evidence on current issues.

135. The Tribunal needed to take a balanced view of all of the relevant factors and, in doing so, concluded that **in each of the 2 years, the management fee should be reduced by 10%. For 2018/19, this brings down the fee from £6000 to £5400, of which the share for the Applicant is £186.21**.

136. Separately, Mrs Drysdale agreed that charges for Napier Audit Fee were for works that should have been included within general Management fees and were unreasonably demanded because this was, essentially, a double charge. The Tribunal, therefore, **disallows the sum of £175 from the 2017/18 demand** (19 June 2018 – incorrectly shown in the Scott Schedule as 19 July 2018) and the sum of £200 from the 2017/18 demand (24 June 2017- already deducted above as out of time) (and notes that there was a similar charge in 2015/16).

Summary of Deductions

137. The deductions for 2017/18 are shown in paragraphs 36, 37, 83, 99, 134 and 135.

138. The deductions for 2018/19 are shown in paragraphs 83 and 134. The total expenditure shown on the service charge demand for this year is £28,335, of which a 29th share is £977.07. The effect is to reduce the overall demand for the Applicant for that year from £996.73 to £977.07 and then by deducting 10% from each of the charges for management fees and cleaning, deducting a 29th of £600 (£20.69) and £190 (£6.55) respectively, leading to a proper demand in the sum of £949.83.

139. The sums due for 2015/16 and 2016/17 are nil.

Section 20c and Rule 13 Costs and Paragraph 5A Application

140. The Applicant made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.

141. Mrs Drysdale told the Tribunal that she had been instructed not to oppose the applications and that the Respondent would not seek to recover its costs associated with these proceedings from the Applicant and that she would consent to the Tribunal making an order in those terms.

142. The relevant law is detailed in the Annex below.

143. **By Consent** of the Respondent, the Tribunal **Orders** that the Respondent's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge (and not to be recovered by an administration charge) for the Applicant for the current or any future year.

General

144. The Tribunal finds it unfortunate that this matter should have had to be brought before it, this now being the fourth application relating to this property.

145. If there is to be a more healthy relationship between the parties, there needs to be more dialogue and more clarity. Trust will remove the desire for constant querying of expenditure.

146. The invoices all too often had sparse information on their face; it was necessary to see the detail from the work orders to make sense of some of the invoices. When the Applicant saw the detail, this resulted in her withdrawing a substantial number of her

complaints. It was very clear to the Tribunal that much of its time and that of the parties could have been saved if only the Managing Agent kept a better system of accounting to tenants when queries were raised.

147. There could be some amelioration to the present system were the agent to insist on fuller invoices or combine the work order with the invoice when answering a tenant's query, for instance.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 20B Limitation of service charges: time limit on making demands

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

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been

incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."

Section 21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

18 Meaning of "service charge" and "relevant costs"

(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.

19 Limitation of service charges: reasonableness

(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 provision 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.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined accordance with, the regulations is limited to the amount so prescribed or determined.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 postdispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration
agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a … … leasehold valuation 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 or any other person or persons specified in the application.

(1) The … tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002 Schedule 11

Paragraph 5A Limitation of administration charges: costs of proceedings

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—
(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal