



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

Case Reference : **BIR/00FN/LIS/2021/0008**

HMCTS : **CVP**

Property : **Flat 20, 137 Danvers Road, Leicester LE3
2AB**

Applicant : **Arianne Buhari**

Respondent : **Jo Marks**

Type of Application : **1) To determine the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985)
2) For an Order to limit the service charges
arising from the landlord's costs of
proceedings (Section 20C Landlord and
Tenant Act 1985)
3) For an Order to reduce or extinguish the
Tenant's liability to pay an administration
charge in respect of litigation costs
(paragraph 5A of Schedule 11 of the
Commonhold and Leasehold reform Act
2002)**

Tribunal : **Judge JR Morris
Mr D Satchwell FRICS**

Date of Directions : **25th February 2021**

Date of Hearing : **28th May 2021**

Date of Decision : **6th August 2021**

DECISION

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Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not

practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines the following Service Charge costs incurred to be reasonable and payable by the Applicant to the Respondent when properly demanded for the years ending 31st March:
2016 £743.52
2017 £736.35
2018 £787.73
2019 £803,00
2020 £837.86
2. The Tribunal determines the estimated Service Charge costs to be incurred to be reasonable and payable by the Applicant to the Respondent when properly demanded for the year ending 31st March 2021 are £905.00.
3. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
4. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Reasons

Application

5. On 18th February 2021 the Tribunal received three Applications from the Applicant, the Leaseholder of the Property. The Applications are for:
 - 1) A determination as to the reasonableness and payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 and Administration Charges pursuant to Schedule 11 Commonhold & Leasehold Reform Act 2002.
 - 2) A determination whether the landlord's costs arising from the proceedings should be limited in relation to the service charge (section 20C of the Landlord and Tenant Act 1985).

- 3) A determination whether to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002).
6. The Respondent is Jo Marks the Freeholder of the Building and Self-Funding Ltd is the Managing Agent.
7. Directions were issued on 25th February 2021.

The Law

8. A statement of the relevant law is attached to the end of these reasons.

Description of the Property

9. The Tribunal was not able to make an inspection of the Property or the Development in which it is situated due to Government Coronavirus Restrictions. From the Statements of Case and the Internet the Tribunal finds as follows:
10. Danvers Road is an Estate of 20 purpose-built flats in two separate buildings ("the Buildings") in grounds comprising car parking and soft landscaping ("Danvers Road Estate"); 16 flats are in the larger building, this building has 3 external front doors each leading into a subdivision of the building an entrance lobby with two ground floor flats. Staircases lead to two further flats on the next floor, two of the subdivisions have a ground and first floor, so there are four flats in total in each of those subdivisions. The third subdivision is on three floors, so contains six flats.
11. At the end of the larger building are two more flats, one of which is Flat 20. These flats have a direct front door from the external area rather than being accessed via an entrance lobby.
12. The smaller building comprises four flats on two floors with one external door and staircase.
13. The entrance lobbies, stairs and landings are carpeted. There is no heat provided. Lights are on timed push switches. There are door entry systems to each of the communal entrances.
14. Around the Buildings are mature hedges and shrubs, including immediately in front of Flat 20. The rest of the frontage to the Buildings is laid to tarmac or pathways. There are two car parks with approximately 30 spaces altogether. Each flat is allocated a parking space with additional car parking spaces near the entrances. There are three brick bin enclosures/stores with storage bins. Each flat has its own general waste bin and recycling bin. There is no green waste collection. The Landlord through the Management Company has a trailer to remove green waste and large items that are occasionally fly tipped, a proportion of the cost of which is recharged to the Leaseholder tenants via the gardening service charge. The rear of the Buildings is fenced off and there are two large lawned areas with a small area of slab with washing lines.

15. The buildings were constructed in 1999 and have brick elevations under a pitched tile roof. The windows are upvc with double glazed units and there are upvc rain water goods and roof line. The hallways and landings are exposed brick with a metal banister to the stairs which are carpeted.
16. The Property is a ground floor flat comprising a hallway off which is a living room, kitchen, two bedrooms, a bathroom a separate w.c. and store.

The Lease

17. A copy Lease for the Property was provided. The Lease dated 27th July 2009 is between (1) Let Select Limited (“the Landlord”) and (2) Fatmatta Mbalu Sawaneh Buhari (“the Leaseholder”) and is for a term of 125 years from 27th July 2009. The Lease is a 50/50 shared ownership, the only one in the Block.
18. The Freehold Reversion of the Lease was assigned to Jo Marks, the Respondent and Landlord, in February 2011. The Respondent instructed TJD Trade Ltd trading as Self-Funding to manage the site until 2017 when Self-Funding commenced trading as a limited company in its own right (referred to hereinafter as the Management Company). The Respondent is a director of the Management Company.
19. The Property is the only Leasehold Flat in the Block.
20. The relevant provisions of the Lease of the Property are (in summary) as follows:
 1. Definitions
 - 1.2.3 Communal Facilities means
 - (i) facilities shared by the Leaseholder with others including (but not limited to) approaches parking areas, pipes ducts wires drains sewers and drainage pumps and
 - (ii) boundary walls (except walls dividing buildings) fences and hedges
 - 1.2.6 Main structure means
The roof foundations and main structure of the buildings excluding internal parts of the flats and the glass in the windows but excluding the window frames and external doors
 2. ...to pay ... a sum equal to the amount expended by the Landlord in complying with its covenant in clause 4.2.1 such sum to be paid by the Leaseholder by equal monthly payments in advance on the first day of each month
 3. The Leaseholder covenants with the Landlord: -
 - 3.1 To pay rent and interest on arrears
 - 3.1.1 To pay the rent and by way of direct debit to the Landlord’s bank
 - 3.1.2 To pay the Service Charge in accordance with clause 8 [this should read clause 7] Provided that whenever the

rent of nay other monies due to the Landlord under this lease shall be unpaid for fourteen days after becoming payable the same shall bear interest calculated from the date until payment on a day ato day basis at an annual rate of 4% above the Base Rate of Lloyds Bank Plc for the time being

- 3.3 To keep the interior of the Property and the glass in the widows and doors ...clean
- 3.9 To pay all reasonable and proper costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Landlord for the purposes of or incidental to the preparation and service of a Notice under Section 146 or Section 147 of the Law of Property Act 1925...
- 4. The Landlord covenants with the Leaseholder as follows: -
 - 4.2.1 At all times during the term... to keep the Property insured against loss or damage and any such other risks as the Landlord may from time to time reasonably determine
 - 4.4 ...the Landlord shall maintain repair redecorate and renew: -
 - 4.4.1 the roof foundations and main structure of the building and all external parts thereof including all external and loadbearing walls the balconies (if any) garden areas car parking areas bin stores the windows doors on the outside of the flats within the Building (save the glass in any such doors and windows...)
- 7 Service Charge Provisions
 - 7.1 the Service Provision means the sum computed in accordance with sub clauses (4) (5) and (6)
 - 7.4 The Service provision shall consist of a sum comprising
 - 7.4.1 The expenditure estimate Surveyor as likely to be incurred in the Account Year by the Landlord upon the matters specified in the sub clause 8.5 [should be 7.5] together with
 - 7.4.2 an appropriate reserve...
 - 7.5 The relevant expenditure to be included in the Service Charge Provision shall comprise all expenditure reasonably incurred by the landlord in connection with the repair management maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing:-
 - 7.5.1. The costs of and incidental to the performance of the Landlord's covenants in clauses 4.2 and 4.4
 - 7.5.3 All reasonable and proper fees and expenses payable to the Surveyor any solicitor accountant surveyor valuer architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection or rent (but not including fees charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost

of preparation of the account of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work

- 7.6 As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in paragraph 8.4.1 (Should be 7.4.1) shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy of the Certificate and the Leaseholder shall be allowed or as the case may be shall pay forthwith upon receipt of the certificate the Specified proportion of the deficiency

Evidence

21. A hearing was held by video conferencing on 28th May 2021 which was attended by Ms Arianne Buhari, the Applicant, and Ms Jo Marks, the Respondent.

Payability of Demands

22. The Applicant stated that she had not received the budgets or certificates for several years and therefore the backdated demands she had received were probably not compliant with section 20B of the Landlord and Tenant Act 1985 (“the 1985 Act”). Also, the name of Landlord did not appear on the demands and therefore were not compliant with section 47 of the Landlord and Tenant Act 1987 (“the 1987 Act”).

Section 20B of the 1985 Act Issue

23. With regard to the service of the Demands, the Respondent said in her written Statement of Case the Budgets and Certificates for the balancing payments for each year ending 31st March, so far as she was aware, were sent out on or about the day they were dated with the Summary of Rights and Obligations, as required under section 21B of the 1985 Act. The Budgets and Certificates were set out in the form of a demand with the Agent’s name and address, the heads of expenditure against each were the costs to be incurred or incurred and the total and monthly amount attributable to the Applicant. Where there were covering letters, these stated that the enclosed Budget or Certificates were Demands and some referred to J Marks and the Agent and its address. Copies of the Demands were provided and the Respondent said they were served as follows:

Year ending 31 st March 2016		
Budget		£946.80
Certificate	sent 25 th June 2016	£963.41
Year ending 31 st March 2017		
Budget	sent 26 th March 2016	£ 967.70
Certificate 2016/17	sent 30 th June 2017	£991.35

Year ending 31 st March 2018		
Budget	sent 26 th March 2017	£997.38
Certificate	sent 16 th April 2018	£1,064.62
Year ending 31 st March 2019		
Budget	sent 16 th April 2018	£1,052.29 (£87.69 per month)
Certificate	sent 11 th July 2019	£1,034.39
Year ending 31 st March 2020		
Budget	sent 7 th May 2019	£1115.50 (£92.96 per month)
Certificate	sent 20 th April 2020	£1,195.42 (£9.62 per month)

24. The Applicant said in her written Statement of Case that the Budgets and Certificates for the balancing payments for each year ending 31st March were not all received and therefore she submitted that they had not been sent and so not served. She said the record of her receipt of the Demands was as follows:

Year ending 31 st March 2016		
Budget received	18 th March 2015	£946.80
No Certificate received until	10 th May 2018	£963.41

Year ending 31 st March 2017		
No Budget 2016/17 received until	10 th May 2018	£ 967.70
No Certificate 2016/17 received until	10 th May 2018	£991.35
Therefore, did not know how much to pay for costs to be incurred or incurred for 2017 (i.e., from 1 st April 2016 to 31 st March 2017)		

Year ending 31 st March 2018		
No Budget 2017/18 received until	10 th May 2018	£997.38
No Certificate 2017/18 received until	10 th May 2018	£1,064.62
Therefore, did not know how much to pay for costs to be incurred or incurred for 2018 (i.e., from 1 st April 2017 to 31 st March 2018)		

Year ending 31 st March 2019		
Budget 2018/19 received	10 th May 2018	£1,052.29
Certificate 2018/19 received	11 th July 2019	£1,034.39

Year ending 31 st March 2020		
Budget received	26 th July 2019 dated 7 th May 2019	£1,115.50
Certificate received	20 th April 2020	£1,195.42

25. At the hearing the matter was discussed and the Tribunal commented that if the Budgets and Certificates for the balancing payments for each year were served as stated by the Respondent then, provided they were compliant with sections 47 and 48 of the 1987 Act and section 21B of the 1985 Act, all would be payable as the Applicant should have been aware of the amounts demanded.
26. If the demands were served as the Applicant submitted, the costs incurred for the year ending 31st March 2016 would be payable as it was conceded that the

demand in the form of the Budget for the estimated costs for that year was served.

27. However, the costs to be incurred or were incurred from 31st March 2016 to the 31st March 2018 may not all be payable if the demands were not served until 10th May 2018. It was agreed by the Applicant that the demands for this period were served and by the Respondent that they were 're-served' on that date.
28. The Tribunal informed the parties that, pursuant to Section 20B (1) of the 1985 Act, a tenant is not liable for the amount of any service charge which was incurred more than 18 months before the demand for payment of that service charge was served on the tenant. Although under section 20B (2), the tenant would be liable 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 the tenant would subsequently be required under the terms of the lease to contribute to them.
29. Applying section 20B of the 1985 Act, if the Demands had not been served until the 10th May 2018, counting back 18 months from that date, the costs included in those demands can only be claimed for the period to 10th December 2016. Therefore, the Applicant would not be liable for the costs incurred for the period 31st March 2016 to 10th December 2016 because these were incurred more than 18 months before they were demanded on 10th May 2018 (i.e., the first 8 months of the accounting year ending 31st March 2017).
30. The contested demands were as follows:
 - a) Demand with Certificate of actual costs of £963.41 for the year ending 31st March 2016, which the Respondent said was sent on or about 25th June 2016.
 - b) Demand with Budget for £967.70 for the year ending 31st March 2017 which the Respondent said was sent on or about 26th March 2016.
 - c) Demand with Certificate of actual costs of £991.35 for the year ending 31st March 2017 which the Respondent said was sent on or about 30th June 2017.
 - d) Demand with Budget for £997.38 for the year ending 31st March 2018 which the Respondent said was sent on or about 26th March 2017;
 - e) Demand with Certificate of actual costs of £1,064.62 for the year ending 31st March 2018 which the Respondent said was sent on or about 16th April 2018 and which the Applicant agrees was received on 10th May 2018.
31. The Respondent said at the hearing that the demands had been sent and provided an undated photograph of an employee, who has since passed away, hand delivering a letter in 2017. The Respondent added that she believed that there was a record of posting to the Applicant and of the date of the hand delivery in the photograph by the employee, but due to home working she did not have access, at the time of the hearing to the records to confirm this.
32. In answer to the Tribunal's questions the Respondent said that covering letters were sent with the budgets, certificates and invoices. The Tribunal

noted that copies of the budgets and certificates together with a Summary of Rights and Obligations as required by section 21B of the 1985 Act were provided for all the years. In addition, some covering letters were provided as follows:

33. Letter dated 30th June 2017 from the Respondent's Agent to the Applicant
This letter is headed "Service Charge Demand for £752.29 overdue"
It states:
"Please find enclosed copies of the Service Charge certificates which have been ignored on your monthly payments" (the remainder of the letter refers to the amount of the monthly payments being made which are not in dispute).
34. The Tribunal noted the two Certificates that would have been available as at that date for the years ending 30th March 2016 and 2017 each of which sets out the heads of expenditure, the cost incurred under each head, the total and the proportion payable by the Applicant.
35. Letter dated 16th April 2018,
This letter is headed "Service Charge Demand for £1,215.79"
It states:
"Please find enclosed copies of the Service Charge certificates and all invoices outstanding which we do urgently request you bring your account up to date"
36. The Tribunal noted that this was the letter with enclosures that the parties agreed was served on 10th May 2018.
37. Taking into account the importance of the issue to both parties and that the Respondent believed she could obtain cogent evidence of service of the letter dated 30th June 2017, the Tribunal gave directions to enable the additional evidence to be adduced by the Respondent and for the Applicant to respond.
38. The evidence adduced by the Respondent was a copy of the photograph already submitted and a statement by Mr Bowles, a member of the Respondent's staff which said that on 28th June 2016, a Mr Paul Smalley and he hand delivered a letter to 20, 137 Danvers Road, Leicester LE3 2AB. He said they knocked on the door, there was no answer and so they took a photograph of Mr Smalley posting the letter through the door.
39. The Applicant replied questioning the veracity of the photograph as part of the information about the image had been blocked. She said it was questionable as to when the photograph had actually been taken. She also said that it was not clear what was contained in the letter.
40. In addition, the Applicant said that no evidence of posting or delivery has been provided for the disputed demands after 28th June 2016.

Section 47 of the 1987 Act Issue

41. With regard to the Landlord's name not appearing on demands and so not being compliant with section 47 of the Landlord and Tenant Act 1987, the Respondent referred to the Budgets, Certificates and covering letters dated

30th June 2017, 16th April 2018, 24th July 2019 and 20th April 2020. She pointed out that the Managing Agents TJD Trade Ltd or Self-Funding Ltd were identified together with their addresses on the Budgets and Certificates and that the covering letters states “On behalf of J Marks c/o TJD Trade Ltd Manton Lane, Bedford MK41 7TL” (30th June 2017) or “On behalf of J Marks c/o Self-Funding Ltd Manton Lane, Bedford MK41 7TL” (16th July 2018). It was noted that the Budgets and Certificates did not refer to the Respondent and covering letters of 24th July 2019 and 20th April 2020 also did not refer to the Respondent.

42. The Tribunal informed the parties that the name of the landlord needs to be stated on demands together with an address for service of any documents or notice.
43. The Tribunal also informed the parties that if the demand was not compliant by reason of sections 47 or 48 of the Landlord and Tenant act 1987, the Act allowed the defect to be remedied by re-serving the Notice correctly although the Service Charge would not be payable until a compliant demand was served.
44. The Tribunal also stated it had been held by case law that, as the legislation provided a means of validating demands that were non-compliant with section 47, section 20B of the Landlord and Tenant 1985 would not apply. A tenant, in this case the Applicant, would still be liable for the Service Charge even if there was more than 18 months between the service of the defective demand and the re-service of the compliant demand. Under section 20B(1) of the Landlord and Tenant Act 1985 a tenant is not liable for the amount of service charge incurred more than 18 months prior to the demand, if no earlier demand or notification under section 20B(2) had been served at all.

Tribunal’s Decision re Payability of Demands

Section 20B of the 1985 Act Issue Decision

45. Firstly, the Tribunal considered the disputed demands and whether section 20B of the Landlord and Tenant Act 1985 was applicable. The issue regarding the disputed demands is whether they had been served. Service is deemed sufficient if the Demand is sent to the recipient’s correct address in the ordinary course of post or is delivered by hand. Service does not require proof of receipt although whether the Demand was sent is put in issue if it is submitted that it has not been received.
46. The burden of proof in determining whether or not the Demand was sent to the recipient’s correct address in the ordinary course of post is on the Respondent and the standard of proof is the balance of probabilities. The Tribunal therefore considered whether on the balance of probabilities the Demands were served by being sent to the Applicant’s address in the ordinary course of post.
47. The Tribunal considered each of the disputed demands in turn.

a) *Demand with Certificate for the year ending 31st March 2016*

48. With regard to the year ending 31st March 2016 the Applicant conceded that the Budget £946.80 was received on 18th March 2015. She said that the Certificate for £963.41 was not received until 10th May 2018.

49. The Tribunal found that based on the evidence of the photograph and the statement by Mr Bowles, on the balance of probabilities, the document served by hand on 28th June 2016 was the Certificate regarding the balancing payment for the year ending 31st March 2016. If the document was a Demand, then the timing of the delivery meant that it could not be a later Demand. If it were some other documents, the Service Charge costs for that year would still be payable when properly demanded by virtue of the Budget Demand for that year which the Applicant conceded was delivered.

50. The Tribunal therefore determined that the reasonable costs incurred for the year ending 31st March 2016 were payable when properly demanded.

b) *Demand with Budget for the year ending 31st March 2017*

51. With regard to the year ending 31st March 2017, the Demand for the Budget of £967.70, which the Respondent said was sent on or around 26th March 2016, no evidence of delivery was provided nor was there a copy of a covering letter, nor was there in the Bundle a copy of the Summary of Rights and Obligations in the page after, which were provided in respect of some other Demands. The Tribunal was of the opinion that although the Budget was prepared it may not have been sent.

c) *Demand with Certificate for the year ending 31st March 2017*

52. With regard to the year ending 31st March 2017 the Demand with Certificate of actual costs of £991.35, which the Respondent said was sent on or about 30th June 2017, a copy of a covering letter dated 30th June 2017 was provided. The addressee of the letter was the Applicant at the correct address. Also, the letter, which is quoted above referred to “Certificates” and the two that would have been available as at that date would have been for the years ending 30th March 2016 and 2017. In addition, in the Bundle there was a copy of the Summary of Rights and Obligations on the page following. The Tribunal could see no reason why the letter with the enclosures referred to would not have been sent to the Applicant in the normal course of post. The Tribunal therefore found on the balance of probabilities that it had been served. The copy of the Certificate for the year ending 31st March 2017 which was provided, listed the heads of expenditure, the cost incurred under each head, the total and the proportion payable by the Applicant.

53. The Tribunal therefore determined that the reasonable costs incurred for the year ending 31st March 2017 were payable when properly demanded.

d) Demand with Budget for the year ending 31st March 2018

54. With regard to the year ending 31st March 2018, the Demand with Budget for £997.38, which the Respondent said was sent on or about 26th March 2017, no evidence of delivery was provided nor was there a copy of a covering letter, nor was there in the Bundle a copy of the Summary of Rights and Obligations in the page after, which were provided in respect of some other Demands. The Tribunal was of the opinion that although the Budget was prepared it may not have been sent.

e) Demand with Certificate for the year ending 31st March 2018

55. With regard to the year ending 31st March 2018, the Demand with Certificate of actual costs of £1,064.62, which the Respondent said was sent on or about 16th April 2018, the Applicant agreed was received on 10th May 2018.

56. The Tribunal therefore determined that the reasonable costs incurred for the year ending 31st March 2017 were payable when properly demanded.

Summary

57. The document that is critical to the issue of payability is the Certificate for the year ending 31st March 2017 which the Tribunal found had been served, the evidence of the Certificate being corroborated by the copy of the covering letter. Why the Applicant did not receive them is a matter of conjecture. Unfortunately, there was no post book or receipts for 'signed for' delivery to be decide the point unequivocally.

58. Having found that the Demands for the costs to be incurred and incurred for the year ending 31st March 2016 and the Demands for the costs incurred for year ending 31st March 2017 and 2018 were served, the Tribunal determined that section 20B of the 1985 Act did not apply and all the reasonable costs incurred for those years were payable.

Section 47 of the 1987 Act Issue Decision

59. Secondly, the Tribunal considered the statutory provisions regarding service charge demands.

60. Under section 21B of the Landlord and Tenant Act 1985 a service charge demand must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. In respect of the Demands which the Applicant conceded it was not disputed that they were accompanied by the required Summary of the Rights and Obligations. The Tribunal also found that the Bundle the Certificates for the years ending 31st March 2017 and 2018 had on the page following, a copy of the Summary of the Rights and Obligations. Therefore, the Demands which were conceded or which were found to be served were found to be compliant with section 21B.

61. Under section 47 of the Landlord and Tenant Act 1987 a demand must state the name of the current Landlord and under section 48 of the 1987 Act a

demand must provide the Leaseholders with a correct address for service of notices. If any of these requirements are not met then the demand is not payable until it is subsequently served in compliance with the legislation.

62. The Tribunal found that all the Budgets and Certificates had the name and address of the Managing Agent where notices could be served. However, they did not have the name of the Respondent Landlord. Of the four covering letters that were provided only two of the covering letters had the name of the Landlord. The letter dated 30th June 2017 which the Tribunal found related to the Demand for the balancing payment for the year ending 31st March 2017 and the letter dated 16th July 2018 which the Tribunal found related to the Demand for the balancing payment for the year ending 31st March 2018.
63. The Tribunal determined that these Demands were compliant with section 47 and 48 of the 1987 Act.
64. However, the Tribunal found that the Budgets, Certificates and the covering letters of 24th July 2019 and 20th April 2020 referred to the Respondent as Landlord and therefore the Demands were not compliant and the Service Charge costs to which they related would not be payable until they were reserved.
65. The Respondent requested in her representations that interest be charged on any arrears at a rate of 4% per annum. This is a contractual sum specified in the Lease and is not within the jurisdiction of the Tribunal.

Reasonableness of Service Charges

66. The Applicant provided a Statement of Case in which she said that about 20 years ago Nottingham Community Housing Association (NCHA) built 20 residential flats at the end of a cul de sac on Danvers Road, Leicester (the "Danvers Road Estate"). She said that she moved into a ground floor flat in 2007/2008 and on 27th July 2009 bought the flat on a shared equity basis. The equity share purchased was 50% with rent payable on the remaining. In February 2011, without her knowledge NCHA sold the freehold of the development to Jo Marks, the Respondent. She said that the Respondent had a Management Company trading as Self-Funding Ltd. After her purchase of the share the Applicant said that there was a lot of confusion as Self-Funding Ltd was under the impression that she was a tenant on a short lease ("Tenants") and not a part owner i.e., a long leaseholder ("Leaseholder"). She subsequently found that she was the only Leaseholder and that all the other occupiers of Danvers Road were Tenants.
67. Ongoing issues resulted in the Applicant making an application to the Tribunal in 2012. A hearing took place on 18 December 2012 to resolve a service charge and rent dispute. A decision was made in Jan 2013 and the issue was resolved up to 2012/13. Following the resolution of that dispute, she was not sent service charge statements or certificates either by post or email for 2013/14 and 2014/15 and was not able to access receipts. Her first contact regarding a Service Charge Budget was on 18th March 2015. The Applicant provided a list of events during the disputed period the main items of which

were the references to the Budgets and Certificates of Actual Service Charge Costs. She said that she disputed service charges from 2015 to the present.

68. The Respondent provided four sets of documents.
69. The first were the Budgets which were sent out at the beginning of the year and secondly the Certificates which were sent out at the end of the year after the accounts had been drawn up. The Certificates record the actual costs for the year and any balancing payment debited or credited. If debited then a demand was included with the Certificate for the shortfall. The issue regarding the receipt of these two sets of documents by the Applicant and the payability of the Service Charge is dealt with above.
70. The third set of documents are the Accounts for the Actual Costs incurred for years ending 31st March 2016, 2017, 2018 2019 and 2020 and the estimated charge for the costs to be incurred of the year ending 31st March 2021. These are set out by the Tribunal in the tables below. The Tribunal has also included at the end of the table the amount apportioned to the Property of: the actual charge, the budgeted charge and the balancing payment or credit.
71. The accountants in drawing up the Accounts for the Actual Costs for each year have included under the main Service Charge heads of expenditure the constituent items of those costs. The Tribunal found that the main heads of expenditure were Management, Bank Charges, Accountancy, Equipment, Health & Safety, Ground Maintenance, Cleaning, Electricity, General Repairs Maintenance and Site Manager Costs and these are shown in bold. Under the head of expenditure of Grounds Maintenance, the Tribunal has included the costs of Equipment and Health and Safety as it found that they were costs incurred in carrying out the Ground Maintenance work.
72. It was recognised by the tribunal in January 2013 that the constituent costs of the Management head of expenditure would not normally be itemised and would appear just as the “Management Fee”. In response the Respondent produced a fourth document referred to as the Schedule of each year which is more like a Service Charge Account.
73. The tables are as follows:

Actual costs for year ending 31st March	2016	2017	2018	2019	2020
Expenditure	£	£	£	£	£
Buildings Insurance	1,005.30	735.00	937.80	1,105.92	1,599.01
Telephone	120.00	120.00	120.00	120.00	120.00
Internet	60.00	60.00	60.00	60.00	60.00
Office Costs	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
Rates	75.00	75.00	75.00	75.00	75.00

Electricity	60.00	60.00	60.00	60.00	60.00
Bookkeeping	889.62	889.62	889.62	889.62	889.62
Staff Costs	2,463.55	2,463.55	2,463.55	2,463.55	2,463.55
Subtotal	5,168.17	5,168.17	5,168.17	5,168.17	5,168.17
Less Landlord Subsidy	-1,968.17	-1,768.17	-1,568.17	-1,368.17	-1,168.17
Total Management Costs	3,200.00	3,400.00	3,600.00	3,800.00	4,000.00
Bank Charges	39.00	39.00	39.00	39.00	39.00
Accounts	650.00	650.00	650.00	700.00	700.00
Budget Certification	150.00	150.00	150.00	150.00	150.00
Total Accountancy Costs	800.00	800.00	800.00	850.00	850.00
Equipment	2,191.00	1,601.00	1,805.00	1,512.72	3,312.72
Health & Safety	552.00	570.00	600.00	600.00	615.00
Landscaping/ Gardening	3,284.74	3,284.74	3,284.74	3,284.74	3,284.74
Hedge trimming/ strimming	2,560.00	2,560.00	2,560.00	2,560.00	2,560.00
Trailer	500.00	500.00	500.00	500.00	500.00
Vehicle	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00
Vehicle Fuel	150.00	150.00	150.00	150.00	150.00
Mobile	120.00	120.00	120.00	120.00	120.00
Sub-Total Grounds Maintenance Costs	8,414.74	8,414.74	8,414.74	8,414.74	8,414.74
Cleaning	1,400.00	1,400.00	1,400.00	1,400.00	1,400.00
Litter clearance	353.60	353.60	353.60	353.60	353.60
External Bin store cleaning	353.60	353.60	353.60	353.60	353.60
Mobile lone worker	120.00	120.00	120.00	120.00	120.00
Miscellaneous	158.06	158.06	158.06	183.06	223.06
Sub-Total Cleaning Costs	2,385.26	2,385.26	2,385.26	2,410.26	2,450.26

Gross Grounds & Cleaning Costs	10,800.00	10,800.00	10,800.00	10,825.00	10,865.00
Less Landlord Subsidy	-3,000.00	-3,000.00	-3,000.00	-3,000.00	-3,000.00
Net Grounds & Cleaning Costs	7,800.00	7,800.00	7,800.00	7,825.00	7,865.00
Communal Electricity	677.00	705.97	905.62	1,326.02	1,434.12
General Repairs Maintenance	1,823.00	1,685.00	2,150.00	1,075.00	1,075.00
Site Manager Cost	8,179.50	8,179.50	8,179.49	8,243.59	8,307.69
Site Manager Travel	1,600.00	1,612.75	1,628.46	1,639.07	1,655.84
Mobile/Internet /Misc.	161.50	207.90	357.00	181.50	289.95
Fuel	240.00	240.00	240.00	240.00	240.00
Subtotal	10,181.00	10,240.15	10,404.94	10,304.16	10,493.48
Landlord Subsidy	-9,000.00	-7,750.00	-7,750.00	-7,750.00	-7,375.00
Total Site Manager Costs	1,181.00	2,490.15	2,654.95	2,554.16	3,118.48
Total	19,268.30	19,826.92	21,292.37	20,687.82	23,908.33
Proportion per flat 5%	963.41	991.35	1,064.62	1,034.39	1,195.42
Budget per flat	946.80	967.70	997.38	1,052.29	1,115.50
Balancing Payment per flat	16.61	23.65	67.24	-17.90	79.92

Service Charge Budget for year ending 31st March 2021		
Anticipated Expenditure	Estimated Cost £	Apportionment to Flat 5% £
Buildings Insurance	2,000.00	100.00
Estate Management & finance accountancy fee	8,500.00	412.50
Health & Safety	615.00	30.75
Communal Area Cleaning & Gardening	8,061.63	403.08
Communal Electricity	1,500.00	75.00

General Repairs & Maintenance	1,200.00	60.00
Administration Costs	3,243.99	162.20
Total Annual Charge	24,870.62	1,243.53
Monthly charge		103.63

74. The Tribunal noted that the heads of expenditure were the same for each year and therefore it was appropriate to consider the costs item by item rather than year by year as the issues raised by the Applicant applied the same to each year.

Buildings Insurance

Applicant

75. The Applicant stated that at the previous case in January 2013 the Respondent had been advised to consider obtaining a competitive quote for the specific site in future years. The Applicant said that she was aware that the Managing Agent had a portfolio of at least 70 properties. She sought reassurance that the insurance premium was based upon the value of individual developments i.e., Danvers Road and not a general premium which covered all the Respondent's holdings.

Respondent

76. The Respondent said that in 2012 the Respondent had two sites which were jointly insured. A previous Tribunal determined that that was unsatisfactory and the future quotations should be separately obtained. The Respondent did this and a group discount was given.
77. Employer Liability has not been recharged and this is confirmed in a letter dated 9th April 2021 (Copy provided) from the brokers, Towergate. The Employer liability would be £140.00 per annum which the Respondent pays.
78. The Respondent confirmed that the insurance premium only applies to the Danvers Road Estate and that the recent increase is a reflection of the industry. Towergate check the pricing annually. The premium also benefits from reductions due to annual payment being made at the beginning of the year in one sum and not by instalments.
79. At the hearing the Respondent said that she had Director's Insurance but this was not charged to the Respondent. She said that the Broker handled claims. She acknowledged that in the year ending 31st March 2017 there had been a mistake when the premium payable by her Northampton site was charged to the Danvers Road Estate. Although they are insured with the same company the Danvers Road Estate and Northampton sites are under separate schedules for each site. The error was corrected to the Applicant's advantage in that the Danvers Road Estate paid the cheaper premium and the Respondent paid the overcharge on the Northampton site. The excess is £500.00.

Management

Applicant

80. The Applicant referred to the Accounts of the Actual Costs and the Service Charge Schedules and submitted that the Management Fee included many items that she should not have to pay for such as telephone and internet and that a reasonable charge would be £75.00 per flat per annum.
81. At the hearing the Applicant questioned the standard of management.
82. She said with regard to waste management that every year there was a charge for general waste which was due to large items being left in the bin stores which overflowed. She referred the Tribunal to photographs of the bin enclosures full of items that had been fly tipped and an email exchange on 9th February 2020 and what she felt was an ineffectual email to Tenants dated 21st August 2020 regarding fines for fly tipping. She said this was due to poor management particularly since the occupiers were the Respondent's Tenants and not those of a Leaseholder. She said that when residents left for work or to shop on their way, they would take their rubbish to the bin. Although there were two bin stores, that which residents appeared to find most convenient as they left the site was the one nearest the Applicant's front door. The bins are insufficient for the quantity of waste causing them to overflow and for rubbish to end up on the Applicant's door step.
83. The Applicant said that her experiences with the Managing Agent had "not been the best". She referred the Tribunal to an email exchange on 10th March 2019 following a leak from the flat above when yellow water was pouring down inside the walls of her flat. She said that there was a lack of urgency in dealing with the leak.
84. The Applicant added that there were incidents of unsocial behaviour when bottles had been thrown at her front door but that when she had raised the issue with the Managing agent her phone calls were not taken seriously.
85. She said that the car park lights had been off for months and that the litter in car park had only been cleared once since she had been working from home in 2020. The windows had never been cleaned.
86. Also, she said that due to the poor overseeing of the gardening work the bushes around the doors and windows were allowed to become overgrown. She said that these were thorn bushes and this had led to the postman refusing to deliver her mail because he could not put the letters into the letterbox without being scratched. The Applicant referred the Tribunal to an email dated 10th June 2019 and photograph of an envelope indicating that a letter had not been delivered on the due date of 8th June due to "overgrown thorns". She added that this might have been a reason why she did not receive Service Charge correspondence between 2015 and 2018. She referred to other photographs showing the hedge growth to be extending around the doors and windows.

Respondent

87. The Respondent said that in 2012 the previous tribunal explained that bookkeeping, telephone answering, organising contractors arranging insurance and administration tasks should all be included in the management fee which was set at £150.00 for 2012 rising to £155.00 in 2013. The Certified Accounts of the Actual Service Charge Costs set out the costs incurred although these are not charged individually to the Applicant. But their itemisation illustrates that the Management Fee paid by the Applicant does not cover all the costs incurred by the Management company in managing the Estate. The amounts itemised for the back office are the amounts apportioned to the Danvers Road Estate.
88. The Management Charge has only increased in line with the Tribunal's decision in 2012 as follows:

Management Fee Year	Per annum £	Per flat £
Tribunal 2011/12	3,000.00	150.00
Tribunal 2012/13	3,100.00	155.00
2013/14	3,200.00	160.00
2014/2015	3,200.00	160.00
2015/2016	3,200.00	160.00
2016/2017	3,400.00	170.00
2017/2018	3,600.00	180.00
2018/2019	3,800.00	190.00
2019/2020	4,000.00	200.00
2020/2021	4,000.00	200.00

89. Since 2013 costs have increased and the Respondent has had to subsidise the office administration.
90. The Tribunal noted that there was a deduction against the costs of the heads of expenditure of Management, Grounds Maintenance and Cleaning and Site Manager. In response to the Tribunal's questions the Respondent said that the costs incurred to maintain the site were higher than that which the previous tribunal determined to be reasonable.
91. To meet the costs and standards which the previous tribunal determined reasonable it was too expensive to use external contractors and therefore the Respondent maintained the site through her Management Company, Self-Funding Limited. Employing her own office, grounds cleaning and maintenance staff and site manager through the Management Company.
92. There were insufficient funds in the accounts so far as the one Leaseholder, who is the Applicant, was concerned, to pay staff and therefore the Respondent said that she had to make up the difference from her own money.
93. The Tribunal recognised that the situation of having 19 flats funding the maintenance of the building through rents and one flat paying a service charge

meant that an entire regime was required for just one flat. The Tribunal appreciated that the Building might be managed and maintained differently where all the flats are let on short term rents than when they are let on long leases. Legislation requires the funds for the Leaseholder to be kept in a separate trust account together with other provisions regarding qualifying works and agreements as well as those imposed on both parties under the Lease. Any reserve fund must also be kept in a separate trust account.

94. With regard to the issues raised by the Applicant the Respondent said that waste management was an ongoing problem, that the site was open and therefore it was difficult to prevent fly tipping. The Managing Agent sent around warnings to Tenant regarding the prohibition against fly tipping and its penalties and that there was a Council service to remove bulky items as stated in the email dated 21st August 2020.
95. With regard to the leak the Respondent said that it had been repaired and the damage to the Applicant's flat had been remedied. She said that antisocial behaviour was dealt with by the Site Manager when it arose. There had been problems prior to 2013 with regard to grounds maintenance and this had been addressed by the Respondent engaging her own gardeners to achieve a better standard. The only alternative would be to remove all the bushes and shrubs around the Buildings.

Bank Charges

Applicant

96. The Applicant submitted that she should not have to pay bank charges.

Respondent

97. The Respondent said that the charge of £3.25 is 50% of the monthly charge in respect of one of the two accounts, totalling £39.00 per annum or £1.95 per flat.
98. The Respondent also pays a transaction fee but this is not charged. The Applicant's Lease says that she must pay the Service Charge by Direct Debit but since 2015 she has paid directly into the account incurring a transaction charge of 40 pence which is £4.80 per annum. If it were by Direct Debit this charge would be avoided.

Accountancy

Applicant

99. The Applicant submitted that a reasonable charge for accountancy should be £20.00 which equates to £400.00 per annum.

Respondent

100. The Respondent said that external accountants were used to produce the Budgets and to provide the Service Charge Schedules and the end of year Accounts of the Actual Costs. The Accountancy costs are £650.00 to £700.00 for preparing the accounts and £150.00 for certification. The total cost to the Service Charge is £800.00 for 2015, 2016 and 2017 and £850.00 for 2018 and 2019. The Respondent said that she considered the rates to be competitive.

Grounds Maintenance, Equipment, Health & Safety

101. The Tribunal noted from the Accounts for the Actual Costs and the Statements of Case that the Respondent employed her own grounds maintenance staff, who used hired equipment and were supplied with safety equipment. Although these were all separate heads of expenditure in the Accounts for the Actual Costs the Tribunal was of the opinion that as they were all linked to the same service of Grounds Maintenance the reasonableness of the costs incurred should be considered together.

102. The total cost of employing direct labour is set out in the table below:

Actual costs for year ending 31st March	2016	2017	2018	2019	2020
Gardening Expenditure	£	£	£	£	£
Equipment	2,191.00	1,601.00	1,805.00	1,512.72	3,312.72
Health & Safety	570.00	570.00	600.00	600.00	615.00
Labour	8,414.74	8,414.74	8,414.74	8,414.74	8,414.74
Sub-Total	11,157.74	10,585.74	10,819.74	10,527.46	12,342.46
Less Subsidy	-3,000.00	-3,000.00	-3,000.00	-3,000.00	-3,000.00
Sub-Total	8,157.74	7,585.74	7,819.74	7,527.46	9,342.46
Fuel	260.00	260.00	260.00	260.00	260.00
Additives	36.00	36.00	36.00	36.00	36.00
Weedkiller	80.00	80.00	80.00	80.00	80.00
Waste Disposal	466.00	480.00	570.00	525.00	510.00
Total	8,999.74	8,441.74	8,765.74	8,428.46	10,228.46

103. The Applicant made the following points in her written Statement of Case which was confirmed at the hearing.

Applicant re Garden Maintenance

104. The Applicant questioned whether the cost of gardening was solely for Danvers Road and asked for receipts. She said that the average cost of gardening is £20.00 to £30.00 per hour. Based on the total cost and a rate of £30.00 per hour the gardener is spending 110 hours on gardening a year which is an average of 9 hours per month which increases to 20 hours when hedge trimming it taken into account. The Applicant said that this was the case and the cost is excessive. She was of the opinion that the cost should be

no more than £720.00 per annum for gardening based on 2 hours each month at £30.00 an hour equating to £36.00 per annum for the Property.

105. The Applicant said the average cost for hedge trimming is £15.00 to £20.00 per hour. There are not that many hedges that need frequent trimming. Based on the total cost and at a rate of £20.00 per hour, the gardener spends 128 hours a year trimming hedges which is an average of 11 hours a month. She said that this was highly unlikely and that monthly visits were not being made. She said that she would expect an average of an hour a month which over 12 months would be £480.00 per annum equating to either £12 or £24 per flat.
106. The Applicant also questioned the standard of gardening submitting that any improvement since 2013 was not justified by the cost and that there were still problems, referring to the growth of thorn bush around her front door which precluded the postman from delivering her mail.
107. At the Hearing the Applicant said that for the past year there had only been two people on site. The one was the gardener and the other was the cleaner who she now believes to be the site manager.
108. The Respondent replied that due to staff having to isolate during the pandemic a certain amount of cover had to be provided. The site manager would fill in as the second gardener to cover the health and safety issues and also did cleaning where required. The gardener, cleaner and site manager had also ensured that one or other was available for emergencies. If one was off then the other would cover.

Applicant re Equipment

109. The Applicant submitted that contractors should provide their own equipment and that this would be all in the price of the work and not a separate item.
110. The Applicant submitted that it was for the contractor to provide their own trailer and vehicles including fuel which should be within the cost of the service. With regard to the trailer a charge of £20.00 per day with one visit a month giving an annual cost of £240.00 per annum might be reasonable. With regard to the vehicle the cost equates to about £150.00 per month. There are two gardeners who attend the Development who travel together but it is not clear how the cost is calculated and whether the Landlord's subsidy is intended to cover the trailer and vehicle costs.

Applicant re Health & Safety

111. The Applicant submitted that the contractor employed should be responsible for providing safety equipment and liable for its cost.

Respondent re Grounds Maintenance, Equipment and Health & Safety

112. The Respondent addressed the issues regarding Grounds Maintenance, Equipment and Health & Safety together at the hearing referring to the point

she made in her Statement of Case. The points made in the written Statement of Case and at the hearing are summarised below.

113. The Respondent said that in 2012 the cost of employing contractors was £6,415 for cleaning, gardening and waste management. The previous tribunal considered that the cost was too high taking into account the standard of work and reduced the cost to £2,000 for external gardening and £1,200 for internal cleaning, totalling £3,200 for 2011/2012.
114. The Respondent referred to the previous contractor's comments made to the Respondent and to the previous tribunal regarding the costs incurred to maintain the Estate.
115. The previous contractor had said that the hedges have to be constantly trimmed to keep their level below the windows and to ensure the hedges do not interfere with parking. The hedges are yew, laurel and privet. Laurel and privet grow up to 60 cm a year and Yew 40 cm a year. Trimming requires commercial equipment due to the size and number of hedges. This equipment requires regular maintenance. In addition, a leaf blower was more cost effective than sweeping.
116. The contractor also said that the Estate would benefit from fortnightly visits and for health and safety reasons required two persons when operating the hedge trimming equipment. Two people were also required as there were no rest or toilet facilities on the estate and therefore one person had to be present to safeguard machinery if the other person needed to leave the site. In addition, mobile phones need to be provided for lone working.
117. The contractor concluded that the 2012 rates did not cover the costs.
118. The Respondent said that following complaints made regarding the standard of service in 2012 it was clear that more hours were required to carry out the gardening work. The Respondent identified that the most cost-effective way of achieving better management and service levels would be by engaging direct labour. However, this would also mean paying National insurance, pensions and holiday pay as well as supplying machinery and tools to carry out the work which would be more than £10,000.00.
119. Therefore, as a result of the previous tribunal's comments the Respondent decided to purchase or hire equipment and engage direct labour.
120. The equipment costs were set out in a table as follows:

Equipment		2015/16	2016/17	2017/18	2018/19	2019/20
	Days	£	£	£	£	£
Hedge Trimmer @ 26.25 per day	16	420.00	420.00	420.00	420.00	420.00
Hege Trimmer extra days	8					210.00
Lawnmower @	16	420.00	420.00	420.00	420.00	420.00

£26.25 per day						
Strimmer @	16	448.00	448.00	448.00	448.00	448.00
£28 per day						
Leaf Blower @	26	682.50	682.50	682.50	682.50	682.50
£26.25 per day						
Protective Equipment		145.00				1,132.22
Miscellaneous		75.00				
Sub Total		2,191.00	1,970.50	1,970.50	1,970.50	3,312.72
Servicing Discount			-369.50	-165.50	-457.78	
Total		2,191.00	1,601.00	1,805.00	1,512.72	3,312.72

121. The Respondent said that she had links with TJD Trade Ltd who purchased all the equipment, of a leaf blower, 2 strimmers, 2 lawnmowers, 2 hedge trimmers and hand tools and garden tools. It also includes a trailer for removal of the Garden Waste which is provided as a charge of £41.67 per month. Garden Waste has to be removed by a trailer and costs £30 to £35 per load and requires an additional 1 hour after leaving the estate. It was said that a trailer was a necessity due to the quantity of waste removed.

122. The Tribunal noted the cost of disposal of Green Waste at the Recycling Centre which was included under the Repair and Maintenance head of expenditure as follows:

	Green Waste Cost
Year	£
2016	466.00
2017	480.00
2018	570.00
2019	525.00
2020	510.00

123. TJD Trade Ltd purchased the equipment and pays for servicing and repairs and charges out to the Managing Company at a day rate.

The Equipment is charged out as follows:

Leaf Blower £35.00 per day – most visits

Strimmer £35.00 per day - most visits in the growing season

Lawnmower £35.00 per day – approximately 16 days a year

Hedge trimmer £35.00 per day – approximately 16 days a year

124. The charges include a profit element to TJD Trade Ltd although there is a 25% discount to the Respondent on external daily rates. In addition, links to other hire companies were provided to show that the hire by TJD Trade Ltd was competitive.

125. A monthly allowance is made for the use of a commercial vehicle of £150.00 per month.

126. The Respondent said that she engaged staff through the Management Company and set out the labour costs as follows (pay slips were provided):

Hourly rate	NI	Pension 5%	Holiday Pay	Total Hourly Cost	Daily Rate
£	£	£		£	£
10.00	1.38	0.50	1.28	13.16	105.28
11.00	1.52	0.55	1.41	14.48	115.81
12.00	1.66	0.60	1.54	15.79	126.34
13.00	1.79	0.65	1.66	17.11	136.86
14.00	1.93	0.70	1.79	18.42	147.39

127. In addition, a Mobile phone contribution is paid of £10.00 per month for lone working.
128. The Estate is visited once a fortnight by the operatives and checked weekly by the Site Manager to ensure that the work has been done to the required standard.
129. The Respondent said that because it employs direct labour it has to provide safety equipment. Boots and protective clothing to use with all commercial machinery was bought in previous years and therefore their cost is not included in the years in issue.
130. The Respondent said the Health & Safety head of expenditure covered the annual risk assessments which are required by the insurance. The insurance company visits the site to ensure that the Estate is fully compliant and this has ensured that the insurance premiums have remained low.
131. The alternative to these arrangements and costs was to return to employing contractors which would be more expensive.
132. At the hearing, in answer to the points raised by the Applicant the Respondent said that the work force is shared with the Northampton Site but the costs incurred for each site are only charged to that site. Neither one subsidises the other.
133. In response to the Tribunal's questions the Respondent said:
- a) The hedge trimming has to be carried out regularly for much of the year because if the hedges are allowed to grow, they obscure the windows. She said that the maintenance of the site had been improved but at a cost of £8,414.74 per annum. She submitted that the only way of reducing the costs would be to remove the mature hedges and grass and simply patio everywhere or to reduce the number of attendances which will result in the Applicant complaining.

- b) An alternative quotation had been obtained which did include equipment, operatives and green waste disposal but at a cost of £40.00 an hour for 4 hours every fortnight.
- c) It was understood that the usual manner of working was that each task was carried out fortnightly on alternate weeks, for example, hedge trimming one week and mowing and strimming the next.

Cleaning

Applicant

Internal Cleaning

- 134. The Applicant said that she did not have access to the entrances, staircases and landings and so could not speak for the quality of cleaning. She said she had seen the man she understood to be the site manager with a vacuum cleaner a few times and assumed he was carrying out the cleaning.
- 135. She said she would like to see receipts from a contractor or such person who carried out this work. If the cost were £10 to £15 per hour and the work was to take 4 hours (2 hours bi-weekly) this would be £480.00 to £720.00 per annum which is £24 to £36 per annum per flat.

External Cleaning

- 136. The Applicant stated that none of the windows had been cleaned although this was a service that was provided by NCHA at a charge of £10.00 per month.
- 137. She said that the litter pick related to gardening and so should be included in that cost. If there is a litter issue, she felt that it should be dealt with through management. The cleaning of the external bin store is much the same as the litter pick i.e., cleaning up the external area. Overall, she said that it was part of waste disposal for which there was a charge under General Repairs and Maintenance.

Respondent

Internal Cleaning

- 138. The Respondent said that the communal entrances stairwells and corridors in the Blocks are carpeted and need cleaning regularly and are professionally cleaned following the winter. The windows and doors are also cleaned.
- 139. The cleaners attend fortnightly and the work is assessed at 4 hours a clean at £13.16 per hour. Additional cleaning for 2.5 hours is required during the winter due for example to snow to reduce the damage to the carpets.

External Cleaning

140. The Respondent said that the external areas that are cleaned are the 3 bin stores. General and recycling bins are provided and waste collected by the Council. However, if the wrong waste is put into a bin the council will reject the whole contents of the bin. If this occurs the cleaners have to sort the waste, not to do so could mean waste is left and may attract vermin. Large items are sometimes left in the bin area and these have to be removed and taken to a recycling site. This task is very time consuming and not at all pleasant.
141. One hour per fortnight is allowed for litter picking.

Electricity

Applicant

142. The Applicant submitted that a reasonable price of electricity is £18.00 per annum.
143. The Respondent said there are three blocks each with their own communal meter. The communal supply is to the external lighting and the lighting to the internal hallways and corridors. There are also power sockets for cleaning and to be used for outside power for garden power tools and equipment and cleaning equipment.
144. The Respondent said that following the previous tribunal in 2012 the Respondent identified the exact locations of the meters which have since been read regularly. Invoices for electricity were provided. Some invoices were re-billed following up-dated readings and accruals have been reversed. The external lights are on timers and are altered as the clocks alter each year to save electricity.
145. The Respondent said that a broker checks pricing and finds the best deals. The contracted rates are 0.1486p per unit with a standing charge of 0.94p per day. She said there was a billing issue where the supplier billed out of contract rates. This was queried and a credit given. Details of the figures were provided.

General Repairs Maintenance

Applicant

146. The Applicant submitted that she required receipts for the work. She questioned the standard of general works with regard to waste management

Respondent

147. The Respondent said that this head of expenditure included fuel, waste collection, weedkiller and general repairs. The fuel is for the strimmer, hedge trimmer, leaf blower plus additives and costs £260.00 a year plus £36.00 per year for two stroke additives. Weedkiller costs £80.00 a season. The Waste and General Repairs costs are set out in the table below:

	General Waste Cost	Green Waste Cost
Year	£	£
2016	145.00	466.00
2017	175.00	480.00
2018	255.00	570.00
2019	125.00	525.00
2020	75.00	510.00

148. The General Waste is not general household waste but rubbish and second-hand furniture such as old divan beds, mattresses and sofas discarded by the bin stores or over flowing bins which the Council refused to empty.
149. The Green waste is the cost of one 1 tonne hippo bags of garden waste at a cost of £30 to £35 at the recycling site.
150. A schedule of General Repairs was provided as follows:

General Repairs	Description	Cost
Date		£
2016 Service Charge year		
05/05/2015	Bait boxes	99.95
05/05/2015	Bait	10.95
27/10/2015	Repair front doors and replace closers 131 & 139	196.00
09/11/2015	Graffiti clearance	219.00
14/01/2016	Removal of debris	50.00
14/01/2016	Gutter clearance	260.00
Total		835.90
2017 Service Charge year		
14/01/2016	Fence repair	283.00
14/01/2016	Bait	12.00
20/04/2016	Henry Hoover	99.00
10/05/2016	Gutter clearance	260.00
Total		654.00
2018 Service Charge year		
10/01/2017	Stairwell lights 2 new switches	80.00
10/01/2017	Car Park lights 2 new sensors	145.00
01/02/2017	Cement holes	15.00
01/02/2017	Bait	10.95
21/04/2017	Replace damaged entrance door	136.00
21/04/2017	Gutter clearance	260.00
26/06/2017	Replace washing lines	62.00

29/11/2017	Emergency lighting	240.05
Total		949.00
2019 Service Charge year		
01/02/2018	Bait	11.00
17/05/2018	Fence repair	225.00
17/05/2018	Gutter clearance	260.00
Total		496.00
2020 Service Charge year		
29/05/2019	Gutter clearance	260.00
12/03/2020	Sanitisation materials	121.99
--/02/2020	Bait	10.95
Total		392.94

151. The Respondent said that the costs in the Schedule are for materials and the Site Manager carried out the work as part of his role.

Site Manager Costs

Applicant

152. The Applicant said that the cost of the Site Manager should be included in the Management Charge. At the hearing she added that only two persons were employed on the site. One was the site manager who was also the cleaner and the other was the gardener. She said that she had only seen one person carrying out gardening work and the only person she had seen carrying out cleaning work was the site manager.

Respondent

153. The Respondent said the Site Manager administers the Estate and ensures it is well managed by monitoring staff performance. The work includes the management of pest control, painting and general repairs to include re-painting entrance doors, and communal skirting boards and woodwork and dealing with lighting issues and maintenance. The Site Manager carries out the work so the General Repair costs are for materials.
154. The Respondent has largely paid for these costs and the Applicant has benefited enormously from the level of service she has received for many years.
155. The Respondent said that she had largely paid for the cost of the Site Manager. He had re-baited vermin boxes to save having external contractors. The Site Manager splits his time between Danvers Road and another site the Respondent owns. A contribution is paid for the Site Managers travel between sites in the form of an allowance for fuel and insurance. A contribution is also paid towards the cost of a mobile phone. The total cost of the Site Manager attributed to Danvers Road is just under £10,000 although the Respondent

has subsidised this by £9,000.00 in 2016 and £7,750.00 per annum in 2017 to 2020.

156. The Respondent said that a cleaner, and two gardeners were employed in addition to the Site Manager although during the pandemic the Site Manager had covered and assisted where necessary when the cleaner or gardeners had to isolate.

Decision re Reasonableness of the Service Charge Costs Incurred

157. The Tribunal considered all the evidence adduced and submissions made by both the Parties. The Tribunal considered the Management Fees following the Site Manager charge at the end of this section as there were several related points.

Insurance

158. The Tribunal was satisfied that the Insurance was obtained specifically for the Danvers Road Estate through a reputable broker who under the terms of its accreditation would be required to go into the market place to obtain appropriate cover. The Applicant had not sought to obtain any alternative premium quotations to challenge that secured for the Respondent. Therefore, in the absence of evidence to the contrary the Tribunal found that in the knowledge and experience of its members the charges were reasonable.

Bank Charges

159. The Tribunal found that the parties had in effect made a separate agreement outside the Lease for the payment of the Service Charge. Under the agreement, the Applicant paid the monthly instalments by her preferred method of Standing Order as opposed to Direct Debit which was required by the Lease for which the Respondent made a charge of £39.00 per annum.
160. As this was outside the Lease the Tribunal determined that it had no jurisdiction as to its reasonableness. This charge has been omitted from the determination.

Accountancy Costs

161. The Applicant did not provide any alternative quotations for Accountancy charges. In the absence of evidence to the contrary the Tribunal found that in the knowledge and experience of its members the charges were reasonable.

Grounds Maintenance, Equipment, Health & Safety

162. The Applicant did not provide any alternative quotations for Gardening charges, although submitted that the charge would be less if a contractor rather than direct labour were employed. The Tribunal noted that the costs of employing direct labour included providing equipment to carry out the work including transport, together with safety equipment. There were also the costs of overheads such as maintenance of the equipment, fuel and disposal costs

for green waste. In addition, there was the cost of employing the labour and ancillary matters such as phones.

163. In response to the Tribunal's questions the Respondent said that an alternative quotation had been obtained which did include equipment, operatives and green waste disposal at a cost of £40.00 an hour for 4 hours every fortnight.
164. The Respondent had indicated in her evidence that due to the hedges the growing season was 16 fortnights/visits per annum. The remaining 10 weeks would require less work and fewer visits. How the work was managed was a matter for the individual contractor but a charge based on 26 visits of 4 hours at £40.00 per hour is £4,160.00 plus VAT of £832.00 which totals £4,992.00, say £5,000.00 per annum. In the Tribunal's knowledge and experience this is commensurate with contractor's charges for similar areas of grounds at other properties.
165. The Tribunal therefore determines that the reasonable charge for Gardening for each of the years in issue is £5,000.00 per annum.

Cleaning

166. The Applicant did not provide any alternative quotations for cleaning charges.
167. A charge of £1,400.00 plus an additional charge of £353.60 for bin store cleaning and a further charge of £353.60 for litter clearance totalled £2,117.10 per annum. The Tribunal considered that this overall figure for cleaning three entrances, and three storey stairwells and landings and cleaning the bin stores and surrounding area was reasonable and in the Tribunal's knowledge and experience commensurate with cleaning contractor's charges. The charge for the mobile phone was not considered reasonable nor was the miscellaneous charges. A contractor's charge would include all necessary materials.
168. The Tribunal therefore determines that the reasonable charge for Cleaning for each of the years in issue is £2,107.20 per annum.

Electricity

169. The Tribunal considered the evidence in respect of the charge for Electricity. In particular it noted that the Respondent used a broker to obtain best value and adjusted the timers to reduce waste. The Tribunal examined the invoices and found that actual readings were obtained regularly. In its knowledge and experience and in the absence of evidence to the contrary it found them to be reasonable.
170. The Tribunal therefore determines that the charges for Electricity are reasonable for the years in issue and payable by the Applicant to the Respondent.

General Repairs & Maintenance

171. The Tribunal examined the constituent charges under the General Repairs and Maintenance head of expenditure.
172. The Tribunal considered the charge for disposal of General Waste. It appreciated the points made by the Applicant in her criticism of management in preventing fly tipping but it also understood the difficulties in maintaining an open site. From the emails between the Applicant and the Respondent's office it was clear that there had been an attempt to address the issue of fly tipping by Tenants. Overall, the annual charges for disposal of fly tipped items was not unreasonable.
173. The items of weedkiller, fuel, 2 stroke additive and green waste disposal have already been dealt with under the Gardening head of expenditure.
174. The Tribunal considered the schedule of general repairs. Although the Respondent said that these items were for materials and that labour was included in the cost of the Site Manager. On looking at the 700 till receipts provided the Tribunal could not find any that specifically corresponded to the items in the schedule. The majority of the receipts were for fuel with some for electrical items, locks and hasps and dress material, which was assumed to be a description for cleaning cloths. It was not clear what materials would be necessary for the annual charge of £260.00 for gutter clearance and this appeared to be a labour charge. However, other items were likely to relate to materials and not labour. These included: for 2016 bait and bait boxes and door closers (although it was not clear what 131 and 139 meant); for 2017 fence repairs and a vacuum cleaner; for 2018 light fittings, cement, bait, washing lines and a door; for 2019 fence repairs; and 2020 sanitisation materials and bait.
175. The Tribunal found that these items and their costs were, in its knowledge and experience, reasonable.

Site Manager Costs

176. The Site Manager appears to carry out the tasks that might be expected of a Managing Agent's property manager such as setting lights and reporting problems. In addition, he also undertakes occasional repair and maintenance works.
177. It appeared to the Tribunal that the Site Manager had a value to the Respondent in managing two sites where the flats are on short lets beyond that of providing a service to leaseholders such as the Applicant. This was evidenced by the willingness of the Respondent to subsidise the costs related to employing the Site Manager. To determine a reasonable charge for the Site Manager, the Tribunal had to assess the value of the service provided by the Site Manager to leaseholders.
178. In doing so the Tribunal disregarded the transport costs. It also disregarded the cover that was offered. Cleaning and gardening were being paid for

separately and the arranging of cover if an operative was unavailable would be included in the contract price.

179. The Tribunal found that the role undertaken by the Site Manager for leaseholders was threefold:
- a) the 'on site' property manager tasks that the Site Manager carried out, the Management Fees in this instance related primarily to the office work of the Managing Agent;
 - b) maintenance and repair work; and
 - c) the convenience of having a person 'on call'.
180. In making its determination the Tribunal took into account:
- a) the proportion of the Management Fee that a Managing Agent might attribute to on-site work which includes inspecting the property, arranging and monitoring general repairs to the common parts, liaising with contractors, tradesmen etc., communicating with tenants;
 - b) the maintenance and repair work carried out with reference to what was involved with reference to the materials listed in the General Repairs Schedule; and
 - c) the 24 hour 'on call' charges that are made by managing agents.
181. In the circumstances given the evidence that was adduced, the Tribunal used its knowledge and experience. In making its determination the Tribunal took into account the standard of onsite service, the maintenance of which was a responsibility of the Site Manager. This was not without criticism. The Tribunal accepted that there had been antisocial behaviour, that the car park lights had not been operating for some time and that cleaning and gardening had been variable, notwithstanding that in 2020 this was in part due to the restrictions resulting from the coronavirus. The Tribunal therefore determined that a reasonable annual charge as:
- | | |
|------|-----------|
| 2016 | £1,100.00 |
| 2017 | £1,150.00 |
| 2018 | £1,200.00 |
| 2019 | £1,250.00 |
| 2020 | £1,300.00 |

Management Fees

182. In determining a reasonable charge for the Management Fees, the Tribunal considered the work carried out by the Managing Agent. The duties of a managing agent may be classified generally into what are office and on-site work. The on-site work has been dealt with above with reference to the Site Manager.
183. Office work includes maintaining records, preparation of accounts, preparing and serving service charge and ground rent invoices, collecting service charges and ground rent and enforcing payment, setting budgets, sending out insurance demands, administering insurance claims, receiving and paying invoices and arranging reports, surveys and risk assessments, attending to correspondence.

184. As stated at the hearing the Tribunal considers the unit cost of management taking into account the services and their standard, as it is then able to compare management charges across the sector. The Tribunal noted that the accountants had broken down the fees to take account of the cost of telephones, internet etc. As the Respondent recognised this detail is for company account purposes. The Tribunal interest is in the cost of the service provided to the leaseholders.
185. The Tribunal considered the criticism made by the Applicant of the standard of management and noted that the demographics of the site meant that the Applicant's proximity made her more aware of fly tipping and litter problems than other residents. However, as stated above in respect of General Repairs and Maintenance, the Tribunal found that the management did address the problem of fly tipping by engaging with tenants and the bin stores were cleaned and litter cleared.
186. The issues regarding the oversight of gardening, cleaning and antisocial behaviour are on-site matters that have been considered with regard to the remuneration of the Site Manager.
187. Under the Lease the glass in the windows is demised and so cleaning is the responsibility of the Tenants.
188. The Tribunal noted the Applicant's complaint that she felt there was a lack of urgency in dealing with the leak in 2019. Nevertheless, overall, the Tribunal found that the standard of service was commensurate with the charge made.

Summary of Tribunal's Determination of Reasonableness of Service Charge for Costs Incurred

189. The Tribunal determines that the following Service Charge costs incurred to be reasonable and payable for the years ending 31st March as follows:

Actual costs for year ending 31st March	2016	2017	2018	2019	2020
Expenditure	£	£	£	£	£
Buildings Insurance	1,005.30	735.00	937.80	1,105.92	1,599.01
Management Fees					
Telephone	-	-	-	-	-
Internet	-	-	-	-	-
Office Costs	-	-	-	-	-
Rates	-	-	-	-	-
Electricity	-	-	-	-	-
Bookkeeping	-	-	-	-	-
Staff Costs	-	-	-	-	-
Subtotal	-	-	-	-	-

Less Landlord Subsidy	-	-	-	-	-
Total Management Costs	3,200.00	3,400.00	3,600.00	3,800.00	4,000.00
Bank Costs	-	-	-	-	-
Accounts	650.00	650.00	650.00	700.00	700.00
Budget Certification	150.00	150.00	150.00	150.00	150.00
Total Accountancy Costs	800.00	800.00	800.00	850.00	850.00
Equipment	-	-	-	-	-
Health & Safety	-	-	-	-	-
Landscaping/ Gardening /Hedge trimming/ strimming	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00
Trailer	-	-	-	-	-
Vehicle	-	-	-	-	-
Vehicle Fuel	-	-	-	-	-
Mobile	-	-	-	-	-
Total Grounds Maintenance Costs	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00
Cleaning	1,400.00	1,400.00	1,400.00	1,400.00	1,400.00
Litter clearance	353.60	353.60	353.60	353.60	353.60
External Bin store cleaning	353.60	353.60	353.60	353.60	353.60
Mobile lone worker	-	-	-	-	-
Miscellaneous	-	-	-	-	-
Total Cleaning Costs	2,107.20	2,107.20	2,107.20	2,107.20	2,107.20
Communal Electricity	677.00	705.97	905.62	1,326.02	1,434.12
General Waste	145.00	175.00	255.00	125.00	75.00
Repairs as per Schedule	835.90	654.00	949.00	496.00	392,94

Total General Repairs Maintenance	980.90	829.00	1,204.00	621.00	467.00
Site Manager Cost	1,100.00	1,150.00	1,200.00	1,250.00	1,300.00
Site Manager Travel	-	-	-	-	-
Mobile/Internet/Misc.	-	-	-	-	-
Fuel	-	-	-	-	-
Subtotal	-	-	-	-	-
Landlord Subsidy	-	-	-	-	-
Total Site Manager Costs	1,100.00	1,150.00	1,200.00	1,250.00	1,300.00
Total	14, 870.40	14,727.17	15,754.62	16,060.14	16,757.33
Proportion per flat 5%	743.52	736.35	787.73	803.00	837.86

190. The Tribunal determines the following Service Charge costs incurred to be reasonable and payable by the Applicant to the Respondent when properly demanded for the years ending 31st March:

2016 £743.52
2017 £736.35
2018 £787.73
2019 £803.00
2020 £837.86

Decision re Reasonableness of the Service Charge Costs to be Incurred

191. The Tribunal considered the estimated costs to be incurred for the year ending 31st March 2021 in the light of the Budget demanded by the Respondent and by reference to the Tribunal's determination of the costs incurred for the years in issue.

192. The Tribunal found that the heads of expenditure needed to be clarified showing Estate Management and Accountancy as individual items rather than a single item of Estate Management & Finance Accountancy Fee and Communal Area Cleaning and Gardening also to be shown as individual items. Administration Costs is in fact the cost of the Site Manager. The Tribunal determines that the following Service Charge costs incurred to be reasonable and payable for the anticipated costs to be incurred for the year ending 31st March 2021 as follows:

Service Charge Budget for year ending 31st March 2021		
Anticipated Expenditure	Estimated Cost	Apportionment to Flat 5%
	£	£

Buildings Insurance	2,000.00	100.00
Estate Management	4,000.00	200.00
Accountancy	850.00	42.50
Gardening	5,000.00	250.00
Communal Area Cleaning	2,200.00	110.00
Communal Electricity	1,500.00	75.00
General Repairs & Maintenance	1,200.00	60.00
Administration Costs	1,350.00	67.50
Total Annual Charge	18,100.00	905.00
Monthly charge		75.41

193. The Tribunal determines the estimated Service Charge costs to be incurred to be reasonable and payable by the Applicant to the Respondent when properly demanded for the year ending 31st March 2021 are £905.00.

Section 20C & Paragraph 5A of Schedule 11 Submissions

194. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs arising from the proceedings should be limited in relation to the service charge and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs.
195. At the hearing the Applicant stated that she did not want to come to the Tribunal but she was not getting the information she required. She had paid what she thought was a reasonable amount for service charges taking into account the services she was receiving. She said she would have paid any shortfall if she had received an account of the costs incurred together with invoices justifying it.
196. The Respondent said in written representations confirmed at the hearing that the Applicant had continued to pay the same amount since 2015. The Respondent said that she had chased arrears on 30th June 2017 and again on 16th April 2018 but had received no response. It was not until all past budgets and Certificates were served on 10th May 2018 that a reply was received stating that she would not pay more than she had been paying although no specific reasons were given as to why she considered the Service Charge was unreasonable. This reply was repeated following a further request for payment on 26th July 2019. On 15th December 2020 the Applicant said that she would not increase her payments unless invoices were provided. The Respondent said that the Applicant was invited to visit the offices to inspect the invoices as soon as the Covid 19 regulations allowed. No request to view the accounts and invoices had been made previously. The Applicant had been happy to deal with the Respondent's Customer Service Representative regarding any issues and no mention between January 2019 and December 2020 had she questioned the amount of the Service Charge. The Respondent said that she believed that the Applicant had only applied to the Tribunal with a view to settling the matter because she wanted to sell her flat and could not do so while there were outstanding Service Charge payments.

197. The Respondent said that as she owned the other 19 flats, if the cost of the proceedings were included in the service charge, she would be paying 95% in any event.

Decision re Section 20C & Paragraph 5A of Schedule 11

198. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.
199. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.
200. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from a tenant.
201. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicants.
202. The Tribunal examined the Lease. With regard to reclaiming costs through the Service Charge the Tribunal considered Clause 7 of the Lease which states:
- 7.5 The relevant expenditure to be included in the Service Charge Provision shall comprise all expenditure reasonably incurred by the landlord in connection with the repair management maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing:-
- 7.5.1. The costs of and incidental to the performance of the Landlord's covenants in clauses 4.2 and 4.4
- 7.5.3 All reasonable and proper fees and expenses payable to the Surveyor any solicitor accountant surveyor valuer architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection or rent (but not including fees charges or expenses in

connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work

203. Clause 4.2 relates to insurance relates to maintenance of the Building. The Tribunal was of the opinion that the wording of the Lease in these Clauses Lease did not make provision for the Respondent to reclaim the costs of these proceedings through the Service Charge.
204. With regard to individual liability Clause 3.9 which states that the Tenant is liable:

To pay all reasonable and proper costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Landlord for the purposes of or incidental to the preparation and service of a Notice under Section 146 or Section 147 of the Law of Property Act 1925...
205. The Tribunal found that Clause 3.9 did not cover these proceedings.
206. Notwithstanding there being no provision in a lease, for the avoidance of doubt, a tribunal is able to make an order under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act if it is satisfied that it is just and equitable to do so. In deciding whether or not to do so the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.
207. Services are provided and managed at the 95% of the occupiers of the Danvers Road Estate have short-term tenancy agreements which do not have variable service charges. In the Tribunal's knowledge and experience although there are similarities between the services, management, financing and accountability of short term lets compared with long term nevertheless there are significant differences. Whereas it is not for the Tribunal to detail these differences it should be recognised that having one half share leaseholder in a block of 20 flats has resulted in difficulties for both parties. In acknowledging this the Tribunal determines that both parties should pay their own costs of these proceedings and therefore makes Orders which will have that effect.
208. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
209. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996, Landlord and Tenant Act 1987 and Commonhold and Leasehold Reform Act 2002.

2. Landlord and Tenant Act 1985
Section 18
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period

3. Landlord and Tenant Act 1985
Section 19
 - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the 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.

4. Landlord and Tenant Act 1985
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 the demand for payment of the service charge 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.

5. Landlord and Tenant Act 1985
Section 21A Withholding of service charges
 - (1) A tenant may withhold payment of a service charge if—
 - (a) the landlord has not provided him with information or a report—
 - (i) at the time at which, or
 - (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
 - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.
 - (2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
 - (a) the service charges paid by him in the period to which the information or report concerned would or does relate, and
 - (b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.
 - (3) An amount may not be withheld under this section—
 - (a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or
 - (b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.
 - (4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.
 - (5) Where a tenant withholds a service charge under this section, any provisions of the tenancy 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.
6. Landlord and Tenant Act 1985
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.

7. Landlord and Tenant Act 1985

Section 27A

- (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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

8. Landlord and Tenant Act 1985

Section 20C 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 court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, 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.
- (2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

9. Commonhold and Leasehold Reform Act 2002

Paragraph 5A Schedule 11

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.

10. Landlord and Tenant Act 1987

Section 47 Landlord’s name and address to be contained in demands for rent etc.

- (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
 - (a) the name and address of the landlord, and
 - (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
- (2) Where—
 - (a) a tenant of any such premises is given such a demand, but
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1),
 then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge (“the

relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

- (3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.
- (4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

11. Landlord and Tenant Act 1987

Section 48 Notification by landlord of address for service of notices.

- (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
- (2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
- (3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.