FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/34UF/LSC/2021/0006**
Property	**:**	**Flat 3, 35, The Old School House, Holley Road, Northampton NN1 4QL**
Applicant	**:**	**Yordanos Mehbratu**
Representative	**:**	**BA Williams Solicitors**
Respondent	**:**	**Clayson Country Homes Limited**
Representative	**:**	**Roythornes Limited, Solicitors** **Richard Clarke of Counsel**
Freeholder	**:**	**Long Term Reversions (Torquay) Limited**
Type of Application	**:**	**1) to determine the reasonableness and payability of the Service Charges (section 27A Landlord and tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002)** **2) to determine whether the landlord's costs arising from the of proceedings should be limited in relation to the service charge (section 20C of the Landlord and Tenant Act 1985)**
Tribunal	**:**	**Judge J R Morris** **Mrs S Redmond BSc Econ, MRICS**
Date of Application	**:**	**23rd January 2021**
Date of Directions	**:**	**8th June 2021**
Date of Hearing	**:**	**14th September 2021**
Date of Decision	**:**	**23rd September 2021**

DECISION

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 that when properly demanded in accordance with the legislation the Service Charge is payable under the Lease and legislation

2. The Tribunal determines that the apportionment of the Service Charge by the Respondent is reasonable.

3. The Tribunal determines that the works carried out are within the Respondent's obligations and the cost of the works is payable by the Applicant under the lease.

4. The Tribunal determines that the costs incurred and to be incurred for all the Years in Issue are as set out in the tables below:

Service Charge excluding Reserve Fund								
Year ending 30th April	Cleaning	Electricity	Management & Accountancy	Bank Charges & Interest	Repairs & Renewals	Health & Safety	Total	41.6%
	£	£	£	£	£	£	£	
2012	0	134	-233	42	270	0	213	88.61
2013	60	197	400	57	239	0	953	396.45
2014	30	182	400	51	39	0	702	292.03
2015	253	213	400	47	64	100	1,077	448.03

2016	280	144	580	45	276*	25	1,250	520.00
2017	261	314	580	51	288	100	1,494	621.50
2018	393	100	580	48	100	135	1,266	526.66
2019	347	174	580	54	428	0	1,483	616.93
2020	255	284	580	81	111	0	1,211	503.78
2021	500	131	580	87	514	0	1,712	712.19
	2,379	1,873	4,447	563	2,979	360	11,361	
41.6%							4,726.18	4,726.18
2016	Qualifying Works				650			250
Total determined Reasonable & Payable by the Applicant								4,976.18

*Excluding Qualifying Works

Reserve Fund				
Year ending 30th April	Service Charge Collected	Costs Incurred	Surplus & Reserve	Reserve Accrued
	£	£	£	£
2012	2,390	397	1,993	-1,956 = 37
2013	2,070	1,053	1,017	1,054
2014	2,100	802	1,298	2,352
2015	2,100	1,177	923	3,275
2016	2,140	2,020	120	3,395
2017	2,460	1,614	846	4,241
2018	2,460	1,386	1,074	5,315
2019	2,460	1,603	857	6,172
2020	2,460	1,331	1,129	7,301
2021	2,460	1,823	637	7,938

5. The Tribunal does not make 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 Applicant.

6. The Tribunal does not make an order to reimburse the Applicant's Tribunal Application and Hearing Fees.

Reasons

7. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and reasonable.

8. The original application was made against Long Term Reversions (Torquay) Limited but it was clarified following a telephone case management conference held on 12 April 2021 that the correct Respondent in respect of the Service Charges is in fact Clayson Country Homes Limited, the original lessor. The application originally sought to challenge service charges going back to 2008 but that has now been limited to 2012 by a letter from the applicant's solicitors dated 30 April 2021 but received on 24 May 2021. Therefore, the period in issue is 2012 – 2021 ("the Years in Issue").

9. The Application has been made on the basis that no service charge demands or other supporting information has been provided to justify the claims and therefore the claim is expressed only in general terms for the years in dispute at this stage.

10. The Applicant also seeks an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985. She does not seek an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of the litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

11. Directions were issued in respect of this Application on 8th June 2021.

The Law

12. The Law relating to these proceedings is set out in Annexe 2 and should be read in conjunction with this Decision and Reasons.

Description

13. The Tribunal did not inspect the Estate in which the Properties are situated due to Government restrictions and sets out the following description based upon the Statements of Case, photographs, the Lease and the Internet.

14. The Property is situated in a three-storey building ("the Building") and adjacent to the Building is a house ("the House") that has a pedestrian access off Holly Road and a vehicular access off the lane that runs to the rear of the houses along Holly Road. The House is a two-storey structure to the front of the Building and is freehold. To the rear of and attached to the House is the Building. On the ground floor of the Building are three garages and on each of the two upper floors are flats, one on each floor. Access to the two flats is via a common entrance on the ground floor from which rise stairs to a landing on each floor, off which is the entrance to each flat.

15. The Building is Leasehold and is subject to a Service Charge. Two of the garages on the ground floor are part of the demise of the flats, one to each flat. The third garage is demised under a lease to the freehold house.

16. The freehold house is 1, 35 Holly Road. The first floor flat is 2, 35 Holly Road and the second floor flat is 3, 35 Holly Road ("the Property"). All three pay a Service Charge for the maintenance of the Building apportioned according to the services provided under the terms of the Lease.

17. The Building is of brick elevations under a tile roof. Originally of Victorian construction refurbished, modernised and converted into its present form around 2006.

The Leases

18. The freehold of the Estate was originally held by Clayson Country Homes Limited who developed the site as set out in the Description and granted

leases to the two flats together with a garage each on or about 21st April 2006. It also sold the freehold of the House and a leasehold interest in the remaining garage and accessway on 16th May 2006 which is registered at HM Land Registry under NN265011.

19. Clayson Country Homes Limited sold the freehold to Long Term Reversions (Torquay) Limited on 17th February 2012 registered under title number NN94995 at HM Land Registry on 24th February 2012. On 17th February 2012 Long Term Reversions (Torquay) Limited granted a lease of the Common Parts under its previous company name between 19th July 1999 and 9th January 2018 of Ground Rent (Regis) Limited to Clayson Lofts Company Limited, which is a nominee company of Clayson Country Homes Limited. The purpose of this latter Lease is for Clayson Lofts Company Limited to manage the Common Parts as defined in the leases to the flats, referred to therein as the Apartment Leases. Clayson Country Homes Limited does not trade and the sole shareholder is Colin Clayson. It is a holding company and Clayson Lofts Company Limited is its subsidiary The two companies are hereafter referred to collectively as the Respondent.

20. A copy of the Apartment Lease relating to the Property was provided, dated 21 April 2006 between Clayson Country Homes Limited (1) and Oliver Roger Coles and Helen Coles (2). The Leasehold Interest in the Property was assigned to the Applicant on or around 30 May 2008.

21. A copy of the Lease relating to the Common Parts was provided dated 17th February 2012 Ground Rent (Regis) Limited (1) and Clayson Lofts Company Limited (2). The term is from the date of the Lease to 4th March 3005. Under the Lease Clayson Lofts Company Limited is the Manager and covenants to carry out the obligations in the Apartment Leases except to insure the Estate, Building and the Common Parts. The Lease in effect makes Clayson Lofts Company Limited the Management Company. In recent years the Respondent has referred to itself in the accounts as Holly Road Management Company.

22. The relevant provision of the Management Lease is:

23. Clause 4 The Manager covenants with the Landlord as follows:
    4.1 that it has assumed responsibility for carrying out the Landlord's obligations contained in the Apartment Leases except the obligations to insure the Estate, the Building, and the Common Parts as referred to in paragraph 13 of Part II of the Fourth Schedule of the Apartment Leases

24. The relevant provisions of the Apartment Lease are:

25. Clause 1 Definitions
    "Common parts" are defined as "all parts of the Estate including the Footpath, Pedestrian Accessways (and lighting thereof) and Main Structure not comprised in the Leases".

26. First Schedule
    Part II Definition of Main Structure
    There shall be included in the Main Structure

(a) The foundation of the building
(b) The eternal walls of the building (excluding any items fixed thereto as mentioned in paragraph (3) of Part I hereof) and any rendering tiling or other fixings and finishes upon the exterior thereof;
(c) The whole of the external and boundary walls of the flats in the building (excluding any items fixed thereto as mentioned in paragraph (3) of Part I hereof)
(d) Any joists, floor slabs and steel supports (whether lateral or vertical) and the internal structure of any loadbearing supporting or retaining floor walls beams columns or ceilings of the Building and all other similar structural parts thereof;

(e) The roofs and any roof space of the building…
(f) All communal windows and doors; and
(g) Service Channels and Service Installations within any part of the Estate or Building used in Common.

27. Third Schedule
The Applicant covenants
1. To pay to the Landlord the maintenance charge… in the manner herein provided without any deduction (whether by way of set-off, lien charge or otherwise) whatsoever.

28. Fourth Schedule, Part II
The Respondent covenant to observe and perform the covenants on behalf of the Landlord.

5. "Repair"
To keep the Common Parts and Service Installations within them in a good state of repair and condition

6. "Painting"
To paint and treat (as appropriate) as often as necessary …such of the Common Parts as are unusually painted and treated and the exterior of the doors door frames within the Common Parts

7. "Cleaning"
To keep the Common Parts clean and tidy

8. "Lamps"
To maintain in proper working order any lamps provided for the illumination of the Common Parts

29. Fifth Schedule Part I

1. The Landlord shall as soon as practicable after the 1st day of January in each year acting reasonably prepare estimates of the sums to be spent by it on the matters specified in this Schedule (Estimated Management Costs") for such year in respect of expenditure by the Landlord relating to the Building and the Common Parts and shall forthwith thereafter notify the Buyer of such Estimated Management Charge

2. The Buyer shall monthly and within 15 working days of the demand therefore pay to the Landlord the Maintenance Charge.

3. The Landlord shall in respect of each calendar year keep designated accounts of the sums spent by it on the matters specified in Part II of this Schedule and Part II of the Fourth Schedule ("Actual Management Costs") and shall as soon as reasonably practical after the end of each calendar year notify the Buyer of the Actual Management Costs incurred during such year and the amount of the Estimated Management Costs for the current year notified to the Buyer in accordance with paragraph 1 hereof shall be amended (whether by addition or subtraction) to take into account of any excess or deficiency in the Actual Management Costs incurred in the preceding year.

30. Fifth Schedule Part II
Expenditure to be recovered by means of the Maintenance Charge

1. "Covenants"
The proper sums spent by the Landlord on and incidental to the observance and performance of the covenants on the part of the Landlord contained in Part II of the Fourth Schedule and of this Schedule…

2. Sundry Fees
All proper fees charges expenses salaries wages and commissions paid to any Auditor Accountant Surveyor Valuer Architect Solicitor or any other agent contractor or employee whom the Landlord may properly employ in connection with the carrying out of its obligations under this Lease and the Leases including the costs of and incidental to the preparation of the estimates notices and accounts referred to in Part I of this Schedule

4. "Maintenance"
All proper sums paid by the Landlord for the repair and maintenance decoration cleaning lighting and managing of all parts of the Estate not comprised in the Leases… whether or not the Landlord is liable to incur the same under its covenants herein contained.

8. "Reserve Fund"
Such sum as the Landlord shall properly determine as reasonably desirable to be set aside in any year towards a reserve fund to make provision for expected future items of substantial capital expenditure on items referred to in paragraphs 1 – 7 of this part of this Schedule…

9. "Maintenance Charge Trust Account"
All sums paid by way of Maintenance Charge and not immediately expended and any sums retained by the Landlord by way of Reserve Fund shall be credited to an account separate from the Landlords' own money and shall be held by the landlord upon trusts during the term of

this Lease for the persons who from time to time shall be the tenants of a Dwelling…

31. Sixth Schedule
    8.1 The Maintenance Charge shall be payable from the date hereof (i.e. 21 April 2006).

32. For convenience the Apartment Lease is referred to as the Lease and the Lease relating to the Common Parts is referred to as the Management Lease.

Issues

33. On reading the Applicant's Statement of Case the Tribunal identified the following as being in issue for the Years in Issue:
    1. Whether the Service Charge is payable under the Lease and legislation;
    2. Whether the Service Charge is correctly apportioned;
    3. Whether the works are within the landlord's obligations and the cost of the works is payable by the Applicant Tenant under the lease;
    4. Whether the Service Charge is reasonable;
    5. Whether an order under section 20C of the 1985 Act should be made;
    6. Whether an order for reimbursement of application/ hearing fees should be made.

Hearing

34. A Hearing was held by video conferencing on 14th September 2021 which was attended by Mr Kelvin Josef of BA Williams, Solicitors, for the Applicant and Mr Richard Clarke of Counsel, representing the Respondent.

1. Payability

35. The Applicant submitted that the service charge demands served on the Applicant for the Years in Issue were not accompanied by a Summary of Tenant's Rights and Obligations as required by Section 21B of the Landlord and Tenant Act 1985 (as amended by section 153 of the Commonhold and Leasehold Reform Act 2002) and no evidence has been adduced to show otherwise.

36. The Respondent said that the Applicant is notified of her share of the service charge apportionment every time she receives the end of year accounts.

37. The Respondent set out the history to the Service Charge being paid by instalments as follows.

38. The Applicant was first notified by letter on 20th June 2008 of her service charge each month and was advised that payment would commence on 30th June 2008. At that time service charges for the building were £1,440 and the Applicant's share was £600 per year. In the same correspondence the Applicant was informed that the Management Company was running at a loss and that management would be handed over to the leaseholders in the near future. This is supported by an earlier letter dated 4th March 2008 from the

Respondent to the previous leaseholder owners of the Property. A copy of this letter and the letter to the Applicant dated 20th June were provided in the Bundle and marked as A1 and A2.

39. The Respondent said that by letters dated 25th July, 27th August, and 4th November 2008 the Applicant was advised that she had fallen into arrears and should contact the Respondent as a matter of urgency. The Applicant's Service Charge at that time was still £50 per month. Copies of the letters were provided in the Bundle and marked as B1, B2 and B3.

40. On 25th September 2008 the Applicant was notified in writing of the Respondent invitation that she attends a meeting to discuss a way forward regarding the arrears on the service charges. The Respondent explained that it was open to ideas from the leaseholders to self-manage the building or purchase the freehold. No response was received and a chaser letter was sent to the Applicant on 10th October 2008. Copies of the letters were provided in the Bundle and marked as C1 and C2.

41. It appears that the other two leasehold proprietors of the building attended a meeting to discuss the Service Charges in general and increasing the amount paid by each leaseholder. The Applicant was informed of this by letter dated 12th January 2009. There is no reference to the Applicant attending the meeting in the letter but the letter does comply with the Paragraph 1 of Part 1 of the Fifth Schedule of the Apartment Lease. A copy of the letter was provided in the Bundle and marked as D1.

42. The Applicant acknowledged receipt of this letter and notification of increase in service charge during a telephone call on 26th January 2009. The Applicant called the Respondent office to inform them that she has been made redundant and would be sending a cheque for £50 and would call again in two weeks to access the situation as stated in the manuscript file note on document marked D1.

43. It appears that the service charge increased to £75 per month and not £85 per month as expressed in the letter dated 12th January 2009. This is evidenced in the Service Charge accounts and the Applicant's service charge remained at £75 between 2011 to 2016.

44. A letter to the Applicant dated 25th February 2016 explains that the Service Charge would increase by 10% from 1st March 2016. An explanation was provided for the increase in compliance with Part 1 paragraph 1 of the Fifth Schedule of the Apartment Lease. A copy of the notification of increase was provided in the Bundle and marked as D2.

45. The Respondent said that the Applicant's share of the Service Charge is £85 per month (£1,020.00 per year) and has been at all times since 2016.

46. The Respondent said that as there has been no change in the amount of Service Charge payable by the Applicant since the notification of increase in 2016, and due to end of year accounts provided each year to the Applicant, the Applicant has been made aware of the service charge in accordance with the

Apartment Lease provisions; if necessary, estimates and the proper sums spent by the Respondent on and incidental to the observance and performance of the covenants on the part of the Respondent contained in Part II of the Fourth Schedule and Schedule 5 has been provided.

47. The Respondent said that the Applicant is provided with end-of-year accounts and a Summary of Tenant's Rights and Obligations is provided when payment is late or the standing order/direct debit has not been paid to the Respondent at the date and time due. A recent example was provided in the Bundle and marked as E1 – E3.

48. It was added that under the terms of the Apartment Lease, the Applicant must pay to the Landlord the Maintenance Charge on the days and in the manner herein provided without any deduction (whether by way of set-off, lien charge or otherwise) whatsoever. The service charges are payable monthly and within fifteen working days of the demand. The Applicant's Service Charge was £75 per month in 2011 to 2016, after which it went up to £85 and has remained at this level since then.

49. Counsel for the Respondent stated that the monthly on-account service charge payment made by the Tenants has, by keeping services in-house, been kept static for long periods without any shortfalls in the amount collected. In those circumstances, it was not necessary for the Landlord to serve end of year Service Charge demands. Counsel referred to *Gilje v Charlegrove Securities Ltd* [2003] EWHC 1284 (Ch), where the payments on account covered the entirety of the amounts subsequently incurred, and there was nothing left to demand [21]-[24].

50. Counsel submitted that this approach is permissible under paragraph 8.1 of Schedule 6, paragraph 2 of Part I of the Fifth Schedule and paragraph 1 of the Third Schedule. The Applicant has been notified of the monthly amount required, and of increases to it and has been provided with end of year accounts specifying the Actual Management Charges which, being in surplus, did not necessitate any further demands.

51. The Respondent accepts that the Tenants have not, at the beginning of each year, been notified of the 'Estimated Management Costs', and that the accounts have been provided for the year to 30th April rather than by calendar year. It is submitted that this does not affect the validity of the payments required or made.

52. A summary of rights and obligations has been provided to tenants "when payment is late or the standing order/direct debit has not been paid". There is also evidence of a statement of rights and obligations being provided on 12 July 2019 with the 30 April 2019 accounts.

53. In reply the Applicant's Representative said that the Respondent was making Service Charge demands when it set and increased the monthly charge by letters and emails which were not compliant with the Apartment Lease or legislation.

54. In addition, although the Apartment Lease required the Respondent to prepare an estimate, the Maintenance Charge was payable by the Applicant in arrears, as the past tense was used throughout the definition of Maintenance Charge. The monthly payments should have been set, demanded and paid in arrears over the succeeding year, not on account for the preceding year. By setting a monthly Service Charge payment in 2008, 2011 and 2018 it was in effect being demanded in advance contrary to the Apartment Lease.

55. The Applicant's Representative recognised that there were omissions in Part I of the Fifth Schedule which sets out how the Service Charge is to be assessed and paid. In particular that if the monthly payments were based upon the estimated or in the absence of an estimated charge the Actual Maintenance Charge then he submitted that this put a greater emphasis on the costs being reasonable.

Decision re Payability

56. The Tribunal considered all the evidence and submissions made.

57. A Service Charge Demand must be compliant with the lease and legislation.

58. Firstly, the Tribunal considered whether the Respondent was compliant with the Apartment Lease. The manner in which the Service Charge was to be assessed by the Landlord and paid by the Tenant are set out in Part I of the Fifth Schedule.

59. The provisions are that the Landlord shall prepare an estimate and serve it on the Tenant. It then says that within 15 days of a demand the Tenant must pay a monthly Maintenance Charge. At the end of the year an account of the Actual Management Costs must be prepared and served on the Tenant and the estimated charge shall be amended to take account of any excess or deficiency.

60. There are no provisions which require:
    - a demand may or must be made by the Landlord based upon the estimated charge;
    - a payment must be made by the Tenant on any particular date or that the monthly charge is for the preceding year on account or the succeeding year in arrears;
    - an adjustment is to be made whereby a surplus is to be credited against the Tenant's service charge liability for the succeeding year or that any surplus should be paid to the Tenant or retained for a reserve fund not that a debit is to be paid on demand.

61. The absence of such specific requirements leaves the Schedule paragraphs open to a relatively wide interpretation.

62. The Tribunal found that the Respondent's failure to provide an estimate at the beginning of the year did not prevent the monthly Service Charge from being payable. The estimate was not a condition precedent to payment of the monthly charge.

63. The Applicant's monthly charge was originally set in 2008 at £50.00 and later increased to £75.00 in 2011 and £85.00 in 2016. The requirement to pay £50.00 from 2008 and £85.00 from 2016 is supported by letters from the Respondent. No record of the requirement to pay £75.00 from 2011 was provided. Since the Fifth Schedule made no specific provision about the content of the Service Charge demand and only stated that it should be paid monthly within 15 days of demand the Tribunal found that it was compliant with the Apartment Lease.

64. The absence of a specific requirement that the Tenant should pay the Maintenance Charge in advance by monthly amounts based upon the estimate gave some support to the Applicant's contention that it should be paid monthly in arrears. However, equally well the lack of any provision as to how the monthly charge was to be assessed and paid did not prohibit the Respondent's interpretation. Paragraph 2 of Part I of the Fifth Schedule only states that payment shall be paid monthly, even the word "instalments" is omitted which might have indicated that it related to the annual estimate for the succeeding year or the actual charge for the preceding year.

65. The Tribunal took the view that provided the monthly amount was commensurate with the Maintenance Charge incurred it was compliant with the Lease.

66. Having determined that the monthly payments were compliant with the Lease the Tribunal considered the Respondent's submission that, other than the request for increases in the monthly payments in 2011 and 2016, it was not necessary for the Respondent to serve a demand as the payments made, whether on account or in arrears, covered all the costs. It was said that it was not necessary to serve an estimate as the account of the Actual Maintenance Charge served at the end of each year showed to the Applicant that the monthly charge, whether payable in advance or in arrears was sufficient to cover the costs incurred.

67. Section 20B of the Landlord and Tenant Act 1985 states that if a demand is served more than 18 months after a cost is incurred then the tenant is not liable. The reason being is that the Tenant will be taken unawares by the cost. If there was no need to serve a demand then a tenant was not disadvantaged by not being forewarned of a charge within a reasonable time i.e., 18 months. Therefore, secton 20B does not apply.

68. *Gilje v Charlegrove Securities Ltd* [2003] EWHC 1284 (Ch) supports this view with regard to payments on account but the Tribunal considers that it holds also for payments in arrears. In that case reference was made to section 19 (2) of the Landlord and Tenant Act 1985 which states:
"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."

69. Secondly, the Tribunal considered the statutory provisions regarding service charge demands. Under section 47 of the Landlord and Tenant Act 1987 ("the

1987 Act") the demand must state the name and address of the current Landlord under section 48 of the 1987 Act and provide the Leaseholders with a correct address for service of notices. In addition, under section 21B of the Landlord and Tenant Act 1985 ("the 1985 Act") a service charge demand must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. If any of these requirements are not met then under the respective sections a demand is not payable until a compliant demand is served whereupon the service charge becomes payable. The 18-month restriction of section 20B of the 1985 Act does not apply, as sections 47 and 48 of the 1987 Act and Section 21B of the 1985 Act have their own sanction of non-payability until the requirements are met.

70. The only demands that were served were to increase the monthly charge in 2011 and 2016. These do not appear to have been compliant with legislation. Failure to comply with legislation does not mean that the Applicant is not liable only that payment is postponed until the demands are served in accordance with the legislation whereupon they will become payable.

71. The Tribunal noted that the accounts for the Actual Maintenance Charge and letters to the Applicant referred variously to Holly Road Management Company, Clayson Holly Road Management Company and 35, Holly Road Management Company. Under sections 47 and 48 of the 1987 Act the Respondent must give the name of the Landlord and the address for Service. From the information provided the Landlord of the demised parts of the Building is Long Term Reversions (Torquay) Limited, which receives the rents. The Landlord of the Common Parts of the Building is Clayson Country Homes Limited through its nominee company Clayson Lofts Company Limited. There is a reference to cheques for the Service Charge being made payable to Clayson Holly Road Management Company which presumably is the particular name of the relevant client trust account. No evidence was adduced to show that there was any transfer to this company. In the absence of such evidence the Landlord is taken to be Clayson Country Homes Limited and an address for service must be provided.

72. The Tribunal determines that when properly demanded in accordance with the legislation the Service Charge is payable under the Lease and legislation.

2. Apportionment

73. In the Applicant's Statement of Case, it was submitted that the Respondent had not apportioned the Service Charge in accordance with the Lease. She referred to the Definition of Maintenance Charges in Clause 1 of the Lease which states:
"Maintenance Charges" means 4/9 of the sum spent by the landlord concerning the landlord's insurance obligations and maintenance of the Main structure, and 1/3 of the sum spent by the landlord concerning maintenance of the external Common Parts (but not the Main Structure) and ½ of the sum spent by the landlord concerning maintenance of the internal Common Parts (but not the Main Structure) and in relation to the same the matters specified and so far as the same relates the matters specified in Part 11 of the Fifth

Schedule as estimated or adjusted in accordance with Part 1 of the Fifth Schedule."

74. The Applicant said that the Respondent has failed to account for how the Service Charge costs charged are apportioned in accordance with the definition of "Maintenance Charges" in the Lease, i.e.
4/9 for Insurance and the maintenance of the Main Structure and
1/3 for the maintenance of the external Common Parts
½ for the maintenance of the internal Common Parts.

75. The Respondent stated that the Building comprises two flats in the building which share an entrance and a house which has its own entrance. On the ground floor of the building are three garages. All of these are held leasehold. The two flats, one which includes the Property, held by the Applicant pay 41.6% each towards the Service Charge.

76. The House is held freehold with a requirement to pay 17.08% towards the Service Charge for the upkeep of the Common Parts and, because of its leasehold garage, to contribute toward a sinking fund for roof repairs. This attracts a lesser cost at service charge.

77. The Applicant's Representative stated that what was stated in the Lease should be applied.

78. Counsel for the Respondent said that the Respondent had taken a pragmatic approach to the apportionment. He said that although on the face of it the apportionment in the Apartment lease appeared fair and that certain costs clearly fell into one of the three categories, nevertheless there were difficulties in identifying into which category others fell. It was submitted that overall, the modified apportionment was fair and reasonable to all Tenants and reflected the Apartment Lease Apportionment. He added it was accepted that the percentage of 41.6% adopted by the Respondent is more than the 33.33% which, in percentage terms, would be the Applicant's apportionment under the Lease for clearing and weeding the External Common Parts. Nevertheless, it is less than the 44.44% which, in percentage terms, would be the Applicant's apportionment under the Lease for the work carried out on the Main Structure or 50% which, in percentage terms, would be the Applicant's apportionment under the Lease for cleaning the Internal Common Parts.

79. The Tribunal noted that the parties had applied the percentage apportionment since 2008 and each believed it to correspond to the Apartment Lease. The Tribunal suggested to the parties that an estoppel by convention might operate. Counsel for the Respondent said that he thought it might apply and the Respondent would plead it.

Decision re Apportionment

80. The Tribunal found that to apply the apportionment as stated in the Apartment Lease would require the heads of expenditure of the Service Charge and the individual costs under them to be classified within the three

categories of Main Structure, External Common Parts and Internal Common Parts.

81. Only the Main Structure is defined in the Apartment Lease under Part II of the First Schedule. This includes all external walls and finishes, all internal loadbearing walls joists and ceilings, roofs, communal windows and doors and installations.

82. With this in mind the Tribunal found that the only services to be allocated to the category of Internal Common Parts were Cleaning and internal decorating under repairs, one half of the cost of which would be apportioned to the Property. The only services to be allocated to the category of External Common Parts were sweeping the alleyway and spraying weedkiller, one third of the cost of which would be apportioned to the Property.

83. All other services were within the category of Main Structure. This included electricity and all repairs to the electrical installation including Health and Safety under paragraph (g) of Part II of the First Schedule.

84. The Management, Accountancy and Bank Charges were predominantly attributable to either the Main Structure or Internal Common Parts as work carried out on the External Common Parts was significantly less.

85. The Tribunal identified the cost of sweeping the alleyway and spraying weedkiller under the repairs and cleaning head of expenditure and apportioned a third of the cost to the Property. It also noted the costs of cleaning under its own head of expenditure and apportioned a half of the cost to the Property. In doing so it re-allocated the costs relating to the repair of the consumer box to the Repairs head of expenditure. It also noted the cost of internal decorating and apportioned a half of the cost to the Property.

86. All other costs were identified by the Tribunal as being within the category of Main Structure and the Tribunal apportioned 4/9^{ths} of the cost to the Property.

87. The Tribunal's calculations were not precise but general, with the intention of determining whether there was any manifest unfairness in the Respondent applying an apportionment of 41.6% for the Applicant's share as compared with apportioning strictly in accordance Apartment Lease.

88. The Tribunal found that the Applicant's proportion of the Service Charge over all the Years in Issue was more when calculated strictly in accordance with the Lease compared with the apportionment applied by the Respondent.

89. The Tribunal decided that it was not in the interests of justice for it to re-calculate the apportionment for the following reasons:
    1) The Tribunal found from its own general assessment that the difference between the Respondent's percentage apportionment across all categories was not sufficiently great to justify a detailed forensic analysis to re-calculate the Service Charge for all the Years in Issue by either the Tribunal or the Respondent.

2) The Tribunal should not make a decision on a matter which would affect the Tenant of 2, 35 Holly Road and the Freeholder of 1, 35 Holly Road when they are not parties to these proceedings and so have not been able to make representations.
3) The apportionment is of long standing and has been accepted by all parties whether erroneously or by tacit agreement. If erroneously an estoppel by convention may have arisen.

90. The Tribunal considered the statement of the law in *Mears Ltd v Shoreline Housing Partnership Ltd [2015] EWHC 1396 (TCC)*, by Akenhead J at paragraph 49:

> *49.* From the cases, one can conclude that the relevant law on estoppel by convention is:
>
> (a) An estoppel by convention can arise when parties to a contract act on an assumed state of facts or law. A concluded agreement is not required but a concluded agreement can be a "convention".
>
> (b) The assumption must be shared by them or at least it must be an assumption made by one party and acquiesced in by the other. The assumption must be communicated between the parties in question.
>
> (c) At least the party claiming the benefit of the convention must have relied upon the common assumption, albeit it will almost invariably be the case that both parties will have relied upon it. There is nothing prescriptive in the use of "reliance" in this context: acting upon or being influenced by would do equally well.
>
> (d) A key element of an effective estoppel by convention will be unconscionability or unjustness on the part of the person said to be estopped to assert the true legal or factual position. I am not convinced that "detrimental reliance" represents an exhaustive or limiting requirement of estoppel by convention although it will almost invariably be the case that where there is detrimental reliance by the party claiming the benefit of the convention it will be unconscionable and unjust on the other party to seek to go behind the convention. In my view, it is enough that the party claiming benefit of the convention has been materially influenced by the convention; in that context, Goff J at first instance in the *Amalgamated Investment and Property Co Ltd v Texas Commerce International Bank Ltd* [1982] 1 QB 84 case described that this is what is needed and Lord Denning talks in these terms.
>
> (e) Whilst estoppel cannot be used as a sword as opposed to a shield, analysis is required to ascertain whether it is being used as a sword. In this context, the position of the party claiming the benefit of the estoppel as claimant or indeed as defendant is not determinative or does not even raise some sort of presumption one way or the other. While a party cannot in terms found a cause of action on an estoppel, it may, as a result of being able to rely on an estoppel, succeed on a cause of action on which,

without being able to rely on the estoppel, it would necessarily have failed.

(f) The estoppel by convention can come to an end and will not apply to future dealings once the common assumption is revealed to be erroneous.

91. In applying the principles to the present case, the Tribunal found that the Tenants had been served with an account of the Actual Maintenance Charge each year and both Respondent and Tenants, including the Applicant assumed it to be correct. The Tribunal is of the opinion that it would be unconscionable or unjust on the part of the Applicant to now insist on the strict application of the apportionment retrospectively.

92. Taking into account that now the apportionment applied by the Respondent is erroneous the parties should consider varying the Apartment Lease.

93. The Tribunal determines that the apportionment of the Service Charge by the Respondent is reasonable.

3. Chargeability to the Tenant of Landlord's Works under the Lease

94. The Applicant said that the Service Charge does not allow a charge to be made for renewal or for bank charges under the Apartment Lease.

95. The Applicant stated that Parts I and II to the Fourth Schedule of the Lease itemise the services that can be charged to the Applicant and include:

- Painting,
- Cleaning,
- Lamps,
- Maintenance,
- Aerials,
- Building insurance.

96. The Applicant stated for the years in issue she had been charged for items for which the Respondent was not entitled to charge under the Lease. In particular under Paragraph 4 of Part 2 of the Fifth Schedule of the Lease the Respondent could only charge for Maintenance which was defined as:
"All proper sums paid for by the Landlord for the repair maintenance decoration cleaning lighting and managing of all parts of the Estate not comprised in the Leases (excluding any payable which remains unsold by the Landlord) whether or not the Landlord under its covenants herein contained"

97. She said that the definition omitted renewal and therefore any cost that included renewal could not be included in the Service Charge. In addition, there was no mention of Bank Charges and for the same reason these were not claimable by the Respondent.

98. The Respondent stated that the income and expenditure accounts set out only what it is entitled to recover by way of service charges under the Lease. The Respondent agreed that "renewal" is not expressly referenced in Part 2 of the

Fifth Schedule of the Lease; however, the Respondent contends that "repairs and renewals" is an accounting term in common usage. If, for example, a door handle was replaced, it could be described as a renewal rather than a repair. In any event, whether renewal or repair, the services fall within paragraph 4 of Part II of the Fifth Schedule.

99. Counsel for the Respondent referred the Tribunal to paragraph 5 of Part II of the Fourth Schedule which sets out the Landlord's obligations and requires the Landlord "to keep the Common Parts and the Service Installations within them in a good state of repair and condition" which must include renewal when an item passes a certain point of disrepair.

100. The Applicant did not draw attention to any particular repair cost which referred to replacement or renewal rather than repair. The Tribunal examined the schedule of repairs provided and noted the following electrical works:

- 9th July 2018 a repair was carried out on the external entrance lights at a cost of £67.20.
- 29th August 2018 all components of the external light system were replaced at a cost of £268.80.
- 7th July 2020 repairs to faulty lights were carried out at a cost of £490.80;
- 31st July 2020 the consumer box residual circuit breaker with overcurrent protection (RCBOs) were installed at a cost of £179.65 and £137.90.

101. Counsel said that he had been told that in the course of carrying out the repair on 9th July 2018 it was found that the external light system was defective and not up to current regulations, it therefore had to be replaced. Similarly, the works in July 2020 were to bring the electric circuit up to current standards.

102. Counsel stated that the Respondent is entitled to claim Bank Charges. He referred the Tribunal firstly to paragraph 2 of Part II of the Fifth Schedule stating that this included "all proper fees charges expenses salaries wages and commissions paid to any auditor accountant surveyor valuer architect solicitor or any other agent contractor or employee who the Landlord may properly employ in connection with the carrying out of its obligations under this Lease and the Leases including the costs of and incidental to the preparation of the estimates notices and accounts referred to in Part I of this schedule".

103. He added that paragraph 9 of the Schedule required the Respondent to pay the Maintenance Charge and the Reserve Fund into the Maintenance Charge Trust Account. As this was a covenant under the Lease, he said that paragraph 1 of the Part II of the Fifth Schedule entitled the Respondent to claim "sums spent incidental to the observance and performance of the covenants".

104. The Applicant's Representative said that he considered it a stretch to use paragraph 2, 9 and 1 to cover the costs of Bank Charges. He said that if the drafter of the Apartment Lease had intended the Respondent to claim Bank Charges the Lease would have stated as much.

Decision Re Chargeability to the Tenant of Landlord's Works

105. With regard to the extent to which the Respondent may charge for renewals the Tribunal referred to *Quick v Taff Ely BC* [1986] in which it was held that where a lease requires a landlord to repair and enables the landlord to claim the cost of repair against the tenant the property must be in disrepair for the cost to be charged. If it is in disrepair then the landlord is under an obligation to make a repair which may involve a replacement or renewal.

106. Any covenant to repair will require some renewal. Whether any repair amounts to a renewal is a matter of fact and degree. The circumstances to be taken into account are listed by Nicholls J in *Holding and Management ltd v property Holding and investment Trust plc* [1990] and include:

- the nature of the building;
- the nature and extent of the defect and whether it is a subordinate part of the whole;
- current building practice; and
- the likelihood of a recurrence if one remedy rather than another is adopted.

107. In the absence of evidence identifying a renewal which did not involve a repair. The Tribunal determined that the works carried out by the Respondent were within the terms of the Apartment Lease.

108. The Tribunal accepted that paragraphs 1, 2 and 9 of Part II of the Fifth Schedule authorised the Landlord and hence the Respondent to include the cost of running the Maintenance Charge Trust Account to the Service Charge.

109. The Tribunal determined that the works carried out are within the Respondent's obligations and the cost of the works is payable by the Applicant under the lease.

4. Reasonableness of Service Charge

110. The Applicant submitted that the Service Charges are excessive and therefore unreasonable and the Respondent has failed to provide evidence of the charges incurred by way of invoices or paid invoices. The Respondent said that the Lease does not provide for an account of expenses incurred by the Respondent to be provided to the Applicant by way of invoices or paid invoices.

111. Copies of the Accounts of the Actual Service Charge costs were provided and are set out in the table below:

Year ending 30th April	Cleaning	Electricity	Management & Accountancy	Bank Charges & Interest	Repairs & Renewals	Health & Safety	Total	41.6%
	£	£	£	£	£	£	£	
2012	0	134	-233	42	270	0	213	88.61
2013	60	197	500	57	239	0	1,053	438.05
2014	30	182	500	51	39	0	802	333.63
2015	253	213	500	47	64	100	1,177	489.63
2016	280	144	600	45	926	25	2,020	840.32
2017	261	314	600	51	288	100	1,614	671.42
2018	393	100	610	48	100	135	1,386	576.58
2019	347	174	600	54	428	0	1,603	666.85
2020	255	284	600	81	111	0	1,331	553.70
2021	500	131	600	87	514	0	1,823	758.37
	2,379	1,873	4,877	563	2,979	360	13,022	
41.6%							5,417.16	5,417.16

112. The Reserve Fund is created from the surplus payments each year

Year ending 30th April	Service Charge Collected	Costs Incurred	Surplus & Reserve	Reserve Accrued
	£	£	£	£
2012	2,390	397	1,993	-1,956 = 37
2013	2,070	1,053	1,017	1,054
2014	2,100	802	1,298	2,352
2015	2,100	1,177	923	3,275
2016	2,140	2,020	120	3,395
2017	2,460	1,614	846	4,241
2018	2,460	1,386	1,074	5,315
2019	2,460	1,603	857	6,172
2020	2,460	1,331	1,129	7,301
2021	2,460	1,823	637	7,938

Cleaning

113. The Applicant Tenant disputed the amounted collected by the Landlord for cleaning. The Tenant contended that the Landlord had failed and ignored requests to provide the invoice and contract of service with the cleaning company. She said the landlord also failed to provide the Tenant with a copy of the contract entered into with any cleaner at all. In addition, the Tenant stated that the amount charged for cleaning the common area parts of the Building shared by the three flats was unreasonable with three flats.

114. The Applicant submitted that reasonable charges for the years in issue were as follows:
2013 £150.00
2014 £150.00
2015 £150.00
2016 £200.00
2017 £200.00
2018 £290.00
2019 £225.00
2020 £245.00
2021 £245.00

115. The Respondent said that the Cleaning is done by Clayson Country Homes' staff so there are no external invoices but provided a Schedule which itemised the days and the cleaning which took place together with the costs for each visit. The Respondent said that the Applicant had never asked to see the records for the Cleaning. The Respondent said that Cleaning is done every 4 – 6 weeks and the cost of the employee plus his van each time is approximately £45 inclusive of VAT. Any materials are charged separately. There is a Tenant who has two dogs which creates additional cleaning.

Electricity

116. The Applicant disputes that the cost of the electricity incurred by the landlord is reasonably incurred. The Applicant submitted that the electricity consumption of the common area of the building is significant less than the cost incurred by the Respondent. The Applicant further submitted that the Respondent has failed to provide any invoice or bill from the electricity provider as of proof of incurring the cost. The Applicant considers that the cost of electricity for the period under dispute should not exceed £125.

117. The Respondent said the electricity charges are incurred through a separate meter for the common areas and that the invoices were available for viewing at their offices. At no time during the last eleven years has the Applicant asked to see any invoices of any kind or queried any of the costs. The Respondent provided a Schedule which itemised the costs for the Years in Issue. It was submitted that the costs were reasonable.

Management Charges and Accountancy

118. The Applicant stated that the Respondent had failed to provide any invoices, for the cost of Management and Accountancy or a copy of the management agreement or the contract of service with the accountancy company. The Applicant submitted that the cost of Management and Accountancy is unreasonable. The Applicant further submitted that the Respondent could procure these services at a significantly reduced cost. The Applicant submitted that that reasonable charges for the years in issue were as follows:
2013 £250.00
2014 £250.00
2015 £250.00
2016 £290.00

2017 £300.00
2018 £300.00
2019 £290.00
2020 £300.00
2021 £300.00

119. The Respondent stated that the Management Charges and Accountancy include collecting the income, chasing underpayments paying bills organising work and repairs and preparing accounts. The Respondent submitted that the Management Charge and Accountancy charges were reasonable.

120. The Respondent said that £610 per annum is reasonable for 2018 especially when the extra time is taken into account involved in recouping the underpaid service charges from the Applicant's mortgage company in June 2018 and again in 2016 and 2015.

121. The Respondent said that the Applicant had not supplied any alternative quotations to show that the management and accountancy work could be carried out at a reduced cost taking into consideration the fact that she has no idea of what work is done.

122. In answer to the Tribunal's questions Counsel for the Respondent said that it was not known what the split was between the Management Charge and the Accountancy Fee.

Bank Charges & Interest

123. The Applicant said that she considered the Bank Charges and Interest unreasonable and disputed their cost as being significantly high. The Applicant also asked for an explanation for why interest is being paid at all. The Applicant said that the Respondent had failed to provide the Bank Statements for the Accounts.

124. The Respondent said that it holds the funds in a client account for which the bank makes a charge. Interest is payable when the account is overdrawn and is a reasonable amount when compared with what the Applicant might pay on a similar sum on her own account. The Respondent provided a Schedule of the Bank Charges and copies of the bank statements for the account.

125. At the hearing Counsel for the Respondent informed the Tribunal that only the Bank Charges are incurred. No interest is charged.

Repairs & Renewals

126. The Applicant disputed that there were any costs for Repairs and Renewals. She said she is not aware of any specific repairs or renewals for the period under dispute. The Respondent has failed to provide any invoice as proof of incurring the costs and has also failed to provide the Applicant with the contract entered into with the repairs and renewal contractor or company.

127. The Applicant conceded that subject to inspecting the invoice for the work the charge of £450 was reasonable for 2016.

128. In reply the Respondent said that invoices have always been available for inspection. The Applicant has never seen these therefore without knowing the details of the work done on the attached Schedule the Respondent said that it did not understand how the Applicant could decide on a reasonable cost for that period.

129. The Respondent provided a Schedule of the repairs and renewals for the years in Issue. The Schedule referred to repairs to the entrance door, replacement of light bulbs, electrical repairs, the most expensive of which have been referred to previously, and the spraying of weeds in the alleyway also referred to in the Lease as the Footpath and Pedestrian Accessway.

130. The Respondent said that the invoices have been available for inspection and/or query. At no point has the Applicant approached the Respondent with any queries or requests to see any supporting documentation.

131. The Applicant said that the Respondent conceded that the painting of the communal areas and external doors carried out in 2015 were Qualifying Works but had not provided any evidence of the section 20 consultation for these works. The Applicant therefore submitted that the costs of these works should be capped at the £250.00 threshold for each Tenant.

132. The Respondent said the painting of the communal areas and external doors in 2015 at the cost of £650 was shared between the flats and therefore it was believed it did not amount to £250 per tenant. At the hearing Counsel for the Respondent acknowledged that the cost was over the threshold of £250.00 per tenant as a result of which the consultation procedure under secton 20 should have taken place. He said that there was no evidence that the procedure had been followed and therefore the apportioned charge of £270.40 was capped at £250.00.

Qualifying Long Term Agreements

133. The Applicant submitted that the Respondent had failed to comply with the section 20 consultation procedure before entering into Qualifying Long-term Agreements.

134. The Respondent said that the work had been done using in-house staff therefore no Qualifying Long-term Agreements have been entered into which needed to be notified to the tenants. It was noted that the agreement between Clayson Country Home Company limited and Clayson Loft Company Limited was an exempt agreement under Regulation 3 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987).

Health & Safety

135. No objections were raised or evidence adduced by the Applicant to challenge the costs incurred under the head of expenditure of Health and Safety.

Reserve Fund

136. The Respondent stated that the Service Charges paid on account by the Tenants of 35 Holly Road have, in all years, exceeded the total incurred service charge, with the surplus being used to accumulate a sinking fund for future works to the roof in accordance with paragraph 4 of Part II of the Fifth Schedule.

137. The balance of the funds is held in a trust account in compliance with paragraph 9 of Part II of the Fifth Schedule. The sum is to cover potential repair costs to the roof, which is over fifteen years old. The layout of the individual flats means that the main roof repair would benefit the Applicant and the other leaseholder paying the same proportion of service charge. The third property has its own entrance and basically its own roof. The third property does have an interest in the joint roof because of its leased garage.

General

138. The Applicant said that Section 19 (1) (a) and (b) of the Landlord and Tenant Act 1985 states that service charges are payable "only to the extent that they are reasonably incurred" and carried out to a "reasonable standard". She submitted that the Respondent has failed to provide any evidence in the documents marked A1 – E3 appended to its Statement of Case that were relevant to the Application or discharged its burden of proof that the Applicant is liable for the costs incurred by the Respondent.

139. The Applicant submitted that the Respondent is in breach of the Lease and that the Service Charges are unreasonable and the Respondent is not entitled to recover them from the Applicant. If the Tribunal considers that the Respondent is entitled to recover the services charges, then they should be reduced by 50% for the Years in Issue.

140. In particular, at the hearing the Applicant's Representative said that the costs were unreasonably high because, according to the Respondent the work was carried out in-house, therefore the costs should be significantly lower than could be obtained by independent contractors.

141. The Applicant conceded that "the Lease does not provide for an account of expenses incurred by the Respondent to be provided to the Applicant by way of invoices or paid invoices". However, she said that under section 22 of the Landlord and Tenant Act 1985 she is entitled to inspect documents relating to all the service charges documents including time sheets and contracts of service.

142. The Respondent said it has claimed the same service charge from the Applicant since 2016. The Respondent is only able to keep the service charge costs at its current amount due to keeping services in-house. All maintenance operatives or contractors used by the Respondent have been tried and tested, deemed good quality and value for money hence why the leaseholders have not seen a major increase in service charges for almost 10 years.

143. The Respondent rejected the Applicant's claim that the charges levied in respect of service charge are unreasonable and excessive. The costs are reasonably incurred. The decision to charge these costs was transparent with the works awarded to the Respondent's in-house team. The question is not whether there is a cheaper way to get these works done, but whether the decisions taken by the Respondent were reasonable as held in *Regent Management Ltd -v- Jones* [2011] UKUT 369(LC), at [35]:

> "The LVT expressed itself as not convinced by the argument that it is just as reasonable to charge the signage within the service charge as it is to levy higher penalties against parking offenders". That appears to be saying that some other approach would be more reasonable than the approach taken by the Management Company. What it does not say is that the approach taken by the Management Company was unreasonable. If the LVT meant what it said, it went wrong in law. The test is whether the service charge that was made was a reasonable one, not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem of management. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages; others another. The LVT may have its own view. If the choice had been left to the LVT, it might not have chosen what the Management Company chose - that does not necessarily make what the Management Company chose unreasonably."

144. The quality of the works is reasonable (s.19(1)(b) LTA 1985) and there is no basis for any reduction - see generally *York Brook Investments Ltd -v- Batten* [1985] EGLR 100.

Decision re Reasonableness

145. The Tribunal considered all the evidence and submission made by the parties.

Cleaning

146. The Tribunal examined the Schedule provided by the Respondent which itemised the days and the cleaning which took place together with the costs for each visit. The Applicant did not adduce any evidence of alternative quotations to support her contention that cleaning costs were unreasonable.

147. In the absence of evidence to the contrary the Tribunal used the knowledge and experience of its members and determined the cleaning costs for the years in issue to be reasonable and payable by the Applicant to the Respondent.

Electricity

148. No argument or submissions were made by the Applicant to show that any of the Electricity charges were unreasonable. The Tribunal examined the Schedule provided by the Respondent which itemised the electricity invoices for the Years in Issue. It noted that two of the charges for 2020 regarding the

installation of a consumer box had been mis-allocated to the Schedule and should have appeared in the Repairs Schedule. Apart from this, in absence of evidence to the contrary, the Tribunal determined the electricity costs for the Years in Issue to be reasonable and payable by the Applicant to the Respondent.

Management & Accountancy

149. The Tribunal considered the Management Fee and Accountancy Fee and the range of duties carried out in respect of these costs which include:
    - Maintaining records,
    - Arranging reports, surveys and risk assessments in accordance with statutory requirements,
    - Day to day book keeping and preparation of accounts,
    - Arranging and monitoring general repairs to the common parts,
    - Receiving and paying invoices,
    - Liaising with contractors, tradesmen etc.,
    - Estimating, preparing and serving service charge and ground rent invoices in accordance with statutory requirements,
    - Collecting service charges and ground rent and enforcing payment.

150. The Tribunal found that there would be savings in management time in procuring, supervising and paying contractors as much of the maintenance was carried out by operatives employed directly by the Respondent. There would also be savings in accountancy costs as the book keeping collation of receipts etc would be carried out within the same organisation that produced the end of year accounts.

151. In addition, the Respondent has not prepared an estimate and the collection of the Service Charge is not arduous in that there are only three Tenants and payment is monthly.

152. The Tribunal therefore determined that in the knowledge and experience of its members the reasonable Management and Accountancy Fees for the Years in Issue are:

2013 £400.00
2014 £400.00
2015 £400.00
2016 £580.00
2017 £580.00
2018 £580.00
2019 £580.00
2020 £580.00
2021 £590.00

Bank Charges

153. The Tribunal found that the Respondent was entitled under the Apartment Lease to include the Bank Charges within the Service Charge. The Tribunal took account of the Schedule of Charges and the evidence of the statements of

account and determined the Bank Charges for the Years in Issue to be reasonable and payable by the Applicant to the Respondent.

Repairs and Renewals

154. The Tribunal examined the Schedule of Repairs provided by the Respondent. No evidence was adduced by the Applicant to show that work was not done or done to a reasonable standard. In the absence of evidence to the contrary the Tribunal used the knowledge and experience of its members and determined the repair costs for the Years in Issue to be reasonable and payable by the Applicant to the Respondent.

155. With regard to the painting of the communal areas and external doors carried out in 2015, these were Qualifying Works but no evidence of the section 20 consultation for these works was provided. In the absence of such evidence the Tribunal determined that the cost of these works should be capped at the £250.00 threshold.

Qualifying Long Term Agreements

156. The Tribunal found that the agreement between Clayson Country Home Company limited and Clayson Loft Company Limited was an exempt agreement under Regulation 3 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) therefore it was not a Qualifying Long-term Agreement.

Health & Safety

157. No objections were raised or evidence adduced by the Applicant to challenge the costs incurred under the head of expenditure of Health and Safety.

Reserve Fund

158. The Tribunal found paragraph 4 of Part II of the Fifth Schedule did not prescribe a specific manner in which the Reserve Fund could be created other than that the Landlord could set aside money in any year. In addition, there was no requirement in the Apartment Lease to repay or credit the Service Charge surplus in any year to the Tenant. Therefore, the Respondent's decision to set aside the surplus for the Reserve was not contrary to the Lease. There was no evidence to show that the sum set aside was as a result a genuine pre-estimation following a survey of funds required for future works, which is part of good management. Nevertheless, in the Tribunal's knowledge and experience the sums accrued were determined to be reasonable.

Summary

159. For the above reasons the Tribunal determines that the costs incurred and to be incurred including the reserve fund for all the Years in Issue as set out in the tables below:

Year ending 30th April	Cleaning	Electricity	Management & Accountancy	Bank Charges & Interest	Repairs & Renewals	Health & Safety	Total	41.6%
	£	£	£	£	£	£	£	
2012	0	134	-233	42	270	0	213	88.61
2013	60	197	400	57	239	0	953	396.45
2014	30	182	400	51	39	0	702	292.03
2015	253	213	400	47	64	100	1,077	448.03
2016	280	144	580	45	276*	25	1,250	520.00
2017	261	314	580	51	288	100	1,494	621.50
2018	393	100	580	48	100	135	1,266	526.66
2019	347	174	580	54	428	0	1,483	616.93
2020	255	284	580	81	111	0	1,211	503.78
2021	500	131	580	87	514	0	1,712	712.19
	2,379	1,873	4,447	563	2,979	360	11,361	
41.6%							4,726.18	4,726.18
2016	Qualifying Works				650			250
Total determined Reasonable & Payable by the Applicant excluding Reserve Fund								4,976.18

*Excluding Qualifying Works

160. The Reserve Fund determined reasonable and payable:

Year ending 30th April	Service Charge Collected	Costs Incurred	Surplus & Reserve	Reserve Accrued
	£	£	£	£
2012	2,390	397	1,993	-1,956 = 37
2013	2,070	1,053	1,017	1,054
2014	2,100	802	1,298	2,352
2015	2,100	1,177	923	3,275
2016	2,140	2,020	120	3,395
2017	2,460	1,614	846	4,241
2018	2,460	1,386	1,074	5,315
2019	2,460	1,603	857	6,172
2020	2,460	1,331	1,129	7,301
2021	2,460	1,823	637	7,938

Representations in respect of Section 20C Application

161. 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 should not be regarded as

relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.

162. The Applicant's Representative said that the Application was against a background of an action that was being taken against the Applicant by the Respondent. The total amount claimed by the Respondent in this other action included the Service Charges which are the subject of these proceedings. The Applicant therefore felt bound to test the claim by applying to the Tribunal.

163. Counsel for the Respondent submitted that the Respondent was entitled to claim its costs through the Service Charge pursuant to paragraph 7 of Part II of Schedule 5 of the Apartment Lease.

164. He said that the Application was ill-conceived in that the Applicant had, at least initially, challenged all the costs back to 2008 without identifying any head of expenditure in particular or providing evidence of alternative costs but only stating that the services could have been provided more cheaply. The Applicant had not sought to inspect invoices or question the costs incurred until the Application.

165. In addition, Counsel said that other residents of the Building were not a party the application under section 20C and therefore the effect of the order would be to pass the all costs on to them who had had no part in the proceedings. He submitted that this would not be just and equitable.

Decision in respect of Section 20C Application

166. The Applicants applied for 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.

167. 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.

168. First the Tribunal considered whether the Respondent could claim its costs in respect of these proceedings through the Service Charge. The Tribunal found that under paragraph 7 of Part II of Schedule 5 of the Apartment Lease it could do so. In *Plantation Wharf Management Ltd v Fairman & Ors* [2019] UKUT 236 (LC) it was held that unless the Applicant had the authority of the other Tenants to apply for an order under section 20C it could only apply to the Applicant. The Tribunal found that the application under section 20C only applied to the Applicant.

169. Secondly the Tribunal considered whether to make an order under Section 20C of the Landlord and Tenant Act 1985. In deciding whether or not it is just

and equitable in the circumstances to grant an order the Tribunal considered the conduct of the parties and the outcome of the proceedings.

170. With regard to the conduct of the parties the Tribunal was critical of the Respondent in that it failed to comply with the Directions in not providing all the evidence of the Schedule of costs incurred and the invoices in a timely manner. Nevertheless, the Tribunal also found that the Applicant did not avail herself of the opportunity to inspect the relevant documents under section 22 of the Landlord and Tenant Act 1985 at the appropriate time and her objection to the Service Charge was latent.

171. With regard to the outcome the Tribunal found that it had determined predominantly in favour of the Respondent.

172. The Tribunal found that it would not be just and equitable to exempt the Applicant from paying a share of legal costs included in a Service Charge resulting from proceedings in which she was the only Tenant involved.

173. Therefore, the Tribunal does not make 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 Applicant.

Decision re Fees

174. The Applicant applied for the reimbursement of tribunal fees under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal found that the Applicant had made no inquiry about the Service Charges from 2008 until the date of the Application. The Tribunal found that the Applicant had had ample opportunity to question the payability, apportionment and reasonableness of the Service Charge over the previous 9 to 12 years and had only now done so in order to respond to another action. The Tribunal was of the opinion that if she had questioned the Service Charge earlier these proceedings would not have been necessary and in the present circumstances were a reasonable disbursement in respect of the Applicant's other case.

175. The Tribunal makes no order for reimbursement of fees under Rule 13(2) of the 2013 Rules.

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 and Commonhold and Leasehold Reform Act 2002.

2. Section 18 Landlord and Tenant Act 1985
   (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. Section 19 Landlord and Tenant Act 1985

(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. Section 20 Landlord and Tenant Act 1985

Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a)complied with in relation to the works or agreement, or

(b)dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

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

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

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

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

(a)an amount prescribed by, or determined in accordance with, the regulations, and

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

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

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise

exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

5. Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987)
Paragraph 3 Agreements that are not qualifying long term agreements
(1) An agreement is not a qualifying long term agreement —
(a) if it is a contract of employment; or
(b) if it is a management agreement made by a local housing authority and—
(i) a tenant management organisation; or
(ii) a body established under section 2 of the Local Government Act 2000 or section 1 of the Localism Act 2011;
(c) if the parties to the agreement are—
(i) a holding company and one or more of its subsidiaries; or
(ii) two or more subsidiaries of the same holding company;
(d) if—
(i) when the agreement is entered into, there are no tenants of the building or other premises to which the agreement relates; and
(ii) the agreement is for a term not exceeding five years.
(2) An agreement entered into, by or on behalf of the landlord or a superior landlord—
(a) before the coming into force of these Regulations; and
(b) for a term of more than twelve months,
is not a qualifying long term agreement, notwithstanding that more than twelve months of the term remain unexpired on the coming into force of these Regulations.
(3) An agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, which provides for the carrying out of qualifying works for which public notice has been given before the date on which these Regulations come into force, is not a qualifying long term agreement.
(4) In paragraph (1)—
"holding company" and "subsidiaries" have the same meaning as in the Companies Act 1985;
"management agreement" has the meaning given by section 27(2) of the Housing Act 1985; and
"tenant management organisation" has the meaning given by section 27AB(8) of the Housing Act 1985

6. The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount, which results in the relevant contribution of any tenant being more than £250. The provision limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a First-tier Tribunal.

The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants in which an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

Section 20ZA of the Act allows a Leasehold Valuation Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable, as follows –

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

7. 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.

8. 20C Landlord and Tenant Act 1985
Limitation of service charges: costs of proceedings.

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

10. Section 22 Request to inspect supporting accounts &c.

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

11. Section 27A Landlord and Tenant Act 1985

(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.

12. 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.

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.