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H M COURTS and TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an application under Section 27A of the Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (Service Charges and Administration Charges)

Case No: CHI/29UD/LIS/2013/0015

Property: **15 Lydford Court, Clifton Walk, Dartford, Kent DA2 6RZ**

Between:

BOW ARROW MANAGEMENT COMPANY LTD
(the Applicant/Landlord)
and

MAUREEN NWANDO CHUKWURAH
(the Respondent/Tenant)

Members of the Tribunal:	Mr MA Loveday BA(Hons) MCIArb	Lawyer/Chairman
	Mr Richard Athow FRICS MRIPM	Valuer Member
	Mr Peter Gammon MBE BA	Lay Member

Date of the Decision: 5 June 2013

BACKGROUND

1. This is a determination of liability to pay certain charges in relation to a lease of a flat at 15 Lydford Court, Clifton Walk, Dartford, Kent DA2 6RZ. The applicant is the freehold owner and the respondent is the management company to whom charges are payable under the lease.

2. On or about 2 October 2012, the applicant issued a claim for payment in Northampton County Court under claim no.2YM56300 supported by detailed Particulars of Claim. The claim sought payment of a sum of £2,865.31 as follows:

Details of demand	Date of demand	Due date	amount
Arrears from previous period	01/01/11	01/01/11	£1,279.74
Charge for year 2011	01/01/11	01/01/11	£673.57
Payment received	16/02/11	16/02/11	£-70.00
Agents fee	01/01/11	01/01/12	£60.00
Claimant's Solicitors Legal Costs incurred in enforcing the terms of the lease	02/10/12	02/10/12	£922.00

3. On 26 November 2012, the respondent filed a Defence disputing liability on various grounds. The matter was then transferred to Dartford County Court. On 5 February 2013, DJ Glover ordered that "the questions of the amount if any of the service charges [sic] recoverable by the Claimant from the Defendant and the validity of the Claimant's demands for payment shall be referred to the Residential Property Tribunal (LVT) for determination". In fact, it is clear that some of the charges in dispute are technically "administration charge[s]" under the Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The Tribunal gave directions on 6 February 2013 and the matter was listed for hearing on 1 May 2013. At the hearing itself, the applicant appeared by Mr Dickon Edwards of counsel and the respondent appeared in person.

THE LEASE

4. By a lease dated 23 July 1991, the premises were demised for a term of 99 years from 1 September 1989. The parties to the lease were Rialto Group plc (as freeholder), the applicant (as management company) and the respondent's predecessor in title Lee Batchelor (as lessee). The lease included the following covenants:
   a. By clause 5.1:2 the lessee covenanted with the freeholder "to pay the Service Charge in accordance with the Fifth Schedule hereto".
   b. By clause 5.9 the lessee covenanted with the freeholder "to pay to the landlord on an indemnity basis all costs fees charges disbursements and expenses (including but without prejudice to the generality of the above

those payable to counsel solicitors surveyors and bailiffs) properly and reasonably incurred by the Landlord in relation to or incidental to:
5.9:3... the necessary or attempted recovery of arrears of rent or other sums due form the Tenant."

c. By clause 8.2 of the Fifth Schedule the tenant agreed to pay in advance each year an interim service charge.
d. By clause 8.3 of the Fifth Schedule the tenant agreed that within 21 days of service on it of certified annual accounts of annual expenditure, the tenant would "pay to the [management] Company or the [management] Company shall allow to the Tenant against the next payment of the Service Charge the balance by which the Service Charge Percentage respectively exceeds or falls short of the total sums paid by the Tenant to the Company pursuant to clause 8.2 of this Schedule during the said period".

The service charge accounting year was effectively the calendar year: see Fifth Schedule clauses 2.1, 3 and 4.

INSPECTION

5. The premises comprise a modern development of flats in a number of blocks c.2000 with estate roads. Lydford Court is a 3 storey block in brick with a pitched tile roof and timber framed windows. The block is surrounded by gardens laid mainly to grass and shrubs. On the day of inspection, the grounds were generally tidy and well kept, although there was dog mess just outside the entrance to the block. The steps to the main entrance showed open jointed brickwork and loose treads. The front light above the entrance canopy to Flat 15 could not be operated from the switch just inside the main door. There were no material internal common parts to the block. The Tribunal was shown a plastic contractor's basket adjacent to the flank wall to the block and three concrete slabs laid against the wall. The slabs had been removed from an area around a drain and had evidently been there for some time. A plastic bag had been stuffed into a hole in the wall around the drain.

6. Internally, Flat 15 comprised a small bathroom/WC, bedsitting room with a kitchen area. The solid partition in the main room had evidently been replaced at some stage with a plasterboard partition and the ceiling made good – albeit the decorative works to the ceiling were poor.

7. To the rear of the block, the Tribunal was shown a parking space (no.224). About 200m from the block was an estate road with a hammerhead turn which had no road markings.

THE STATUTORY PROVISIONS

8. The general jurisdiction of the Tribunal is under s.27A of the Landlord and Tenant Act ("LTA 1985"):

> **"27A. Liability to pay service charges: jurisdiction**
> (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
> (a) the person by whom it is payable,
> (b) the person to whom it is payable,
> (c) the amount which is payable,
> (d) the date at or by which it is payable, and
> (e) the manner in which it is payable.
> (2) Subsection (1) applies whether or not any payment has been made.
> (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
> (a) the person by whom it would be payable,
> (b) the person to whom it would be payable,
> (c) the amount which would be payable,
> (d) the date at or by which it would be payable, and
> (e) the manner in which it would be payable.
> (4) No application under subsection (1) or (3) may be made in respect of a matter which—
> (a) has been agreed or admitted by the tenant,
> ..."

9. "Service charges" are in turn defined by s.18 of the Act:

> **"18. Meaning of "service charge" and "relevant costs"**
> — (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
> (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and
> (b) the whole or part of which varies or may vary according to the relevant costs.
> (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
> (3) For this purpose—

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

10. LTA 1985 s.21B states:

"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."

11. Administration charges are dealt with in Schedule 11 to the Commonhold and Leasehold Reform Act 2002:

"1(1)In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b)for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

Reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that-
(a) any administration charge specified in the lease is unreasonable, or
(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable."

12. Section 3 of the Landlord and Tenant Act 1987 ("LTA 1987") contains provisions in respect of the assignment of reversions.

"3.— Duty to inform tenant of assignment of landlord's interest.
(1) If the interest of the landlord under a tenancy of premises which consist of or include a dwelling is assigned, the new landlord shall give notice in writing of the assignment, and of his name and address, to the tenant not later than the next day on which rent is payable under the tenancy or, if that is within two months of the assignment, the end of that period of two months.
...
(3) A person who is the new landlord under a tenancy falling within subsection (1) and who fails, without reasonable excuse, to give the notice required by that subsection, commits a summary offence and is liable on conviction to a fine not exceeding level 4 on the standard scale."

THE ISSUES

13. At a late stage (24 April 2013), the respondent produced a lengthy Statement of Case and supporting documents which raised a number of issues, including (i) the quality of works and services provided by the applicant on the estate and (ii) the reasonableness of various charges. Mr Edwards objected to these matters being raised, and both sides made submissions about the scope of the issues to be decided by the Tribunal.

14. Mr Edwards referred to the Particulars of Claim and the Defence filed in the County Court, and to the case of ***Staunton v Taylor*** [2010] UKUT 270 (LC), where the President dealt with transfers of claims to the LVT under paragraph 3 of Schedule 12 to the 2002 Act. In that case, the President (at paragraph 21) held that the LVT is "limited by the terms of the parties' pleadings" in the court in the same way as the court itself. Mr Edwards carefully analysed the Defence, and submitted that the only issues raised in the Defence were (i) liability for an additional charge of £146.85 payable in 2009 (ii) liability for an additional charge of £174.88 payable in 2010 and (iii) the issue of whether service charges demands were in proper form.

15. At the start of her submissions, the Tribunal asked the respondent if she agreed that these three matters were the only matters properly in dispute. The respondent answered that she wished to contest other elements of the service charges as well, as appeared in her Statement of Case. The respondent submitted that there were three reasons why the Tribunal had a general jurisdiction to consider matters not raised in the Defence in the County Court. First, the directions given by District Judge on transfer stated that the LVT was expressly seized with the question of "the amount if any of the service charges recoverable by the Claimant", and this was expressed in the widest possible terms. Secondly, LTA 1985 s.27A gives the Tribunal an unfettered power to determined liability for service charges. Thirdly, the decision in ***Staunton*** was inconsistent with a more recent decision or decisions of this tribunal. The respondent had not been prepared for the legal argument, so she was unable to give the reference for that decision or decisions which she had seen on the LEASE website. However, the gist of the decision(s) was that where the lessee had been unable to plead a proper Defence in the County Court (because, for example, a bundle of documents was not produced by the lessor until the date of the LVT hearing), the LVT could properly consider new defences not pleaded in the court.

16. On this question, the Tribunal considers that it is bound by the decision in ***Staunton*** and that it is limited by the pleadings in the County Court. No contrary authority was actually shown to the Tribunal (Mr Edwards stated that he was not aware of any later case law) and the Tribunal is not satisfied that this case can be distinguished from ***Staunton*** in the way suggested by the respondent. Cumbersome though the procedure may be, if the respondent wishes to amend her case to raise further objections to the charges, she must first apply to the county court to do so (at least under present procedures – this Tribunal makes no comment on what may be possible under the new First Tier Tribunal procedures that apply from 1 July 2013). The order of 5 February 2013 must be read in the light of this. The "questions" of the "amount if any of the service charges" were questions raised by the parties in their statements of case before the court. Similarly, s.27A does confer a wide power to determine liability for service charges, but the questions it must determine are always subject to any Statements of Case that have already been filed. They are also subject to any agreement between the parties: see for example LTA 1985 s.27A(4). In short, the only issues that are open to the Tribunal to decide are those raised by the respondent in her Defence filed at the County Court.

17. What, therefore, were the issues raised in the Defence dated 22 November 2012? In essence, the Tribunal accepts Mr Edwards's submissions that only three matters are in dispute:

a. As to the "arrears from previous period" in the claim, the Defence accepts that at the start of the 2010 service charge year there was a liability for arrears of £792.08, and that in 2010 a further £695.15 became payable together with administration costs of £17.63. The Defence refers to payments of £400 paid by the respondent, and this produces a balance of £1,104.86 (a figure which twice appears in the Defence). The difference between this figure and the £1,279.74 sought in the Particulars of Claim for "arrears from previous period" amounts to £174.88. This difference corresponds to a figure for "extra charges" shown on the respondent's statement of account for 2010. The first issue therefore concerns the "extra charges" of £174.88 in 2010.
b. As to the "charge for year 2011" and "Payment received" in the claim, the Defence accepts that the "service charges for year 2011" were £673.57 less "payments received" of £70. These are the same figures given in the claim. There is no dispute about them.
c. The Defence plainly disputes liability for all the charges on the basis that the demands "were not made in a prescribed form as set within the Act". This is the second issue.
d. The Defence refers to charges of £696.08 alleged to be payable in 2012 (less payments of £580 said to have been made by the respondent). However, the 2012 service charges formed no part of the claim.
e. The Defence does not refer to the claim for "agents fees" of £60 (01.01.12) and the solicitor's legal costs of £922.00. However, Mr Edwards accepted that these issues were not before the Tribunal.

Finally, the applicant referred to a figure of £146.88. The figure of £146.88 corresponds to "extra charges" which appear in the 2009 service charge statement. It should be said that the Defence does not appear to expressly raise any issue about liability for any sum of £146.88. However, both parties addressed the Tribunal on the point, and the applicant accepted that this sum was also in issue. The third issue is therefore the "extra charges" of £146.88 for 2009.

THE APPLICANT'S CASE

18. The applicant relied on a Statement of Case dated 16 April 2013 and on a witness statement of its property manager, Mr Tony Lewis, of the managing agents Carringtons Residential Management Ltd dated 16 April 2013. Mr Lewis gave oral evidence at the hearing and was cross-examined by the respondent.

19. Mr Lewis produced copies of statements of account relating to the subject premises for the 2007-13 accounting years. In 2007, there were charges (including both service charges and administration charges) of £651, against which the lessee paid £541.08. The arrears allegedly accrued as follows:

Year	Charge for year	Administration costs	Extra charges	Payments made	Balance
2007	£651.00	£15.00	£0.00	£541.08	£124.91
2008	£658.00	£17.63	£0.00	£324.00	£476.54
2009	£683.10	£17.25	£146.88	£531.69	£792.08
2010	£695.15	£17.63	£174.88	£400.00	£1,279.74
2011	£673.57	£0	£-364.45	£70.00	£1,518.86
2012	£696.08	£18.00	£69.00	£580.00	£1,712.94

20. It appears that the service charge elements of these charges were in each case interim charges under clause 8.2 of the lease payable in advance on 1 January in each year.

21. These charges were supported by demands for payment for the 2009-13 service charge years each of which was headed "Invoice for Service Charge". The copies of the demands for payment did not bear accurate dates, having been automatically "re-dated" to various dates in 2013 by the managing agents' management software.

22. Mr Lewis confirmed that the 2010 demands were sent to the respondent on 7 January 2010 and that the 2011 demands were sent to the respondent on 11 January 2011. He referred to covering letters of those dates in the bundle. He also confirmed that a summary of rights and obligations in prescribed form "would have been sent" to the respondent accompanying the demands. Again, he referred to copies of these summaries in the bundle. In each case the summary was a separate sheet attached to the demand. However, the agents did not keep paper copies of the demands or summaries in their files. The copies produced had been printed from the computer records.

23. In relation to the "extra charge" of £174.88, this was a charge for collecting arrears from the respondent. The applicant had employed a firm of external debt collectors called "Property Debt Collection" to collect arrears of service charge. The firm levied a fixed initial charge for any reference of a debt to them, and this is what the charge was for. The applicant did not have a copy of any invoice from PDC at the hearing. The charge was added to the respondent's account as a result of persistent arrears in 2010. The 2009 charge of £146.88

was essentially the same fee. In fact, the applicant had now stopped employing PDC and referred arrears to the applicant's solicitors instead.

24. In cross-examination, Mr Lewis accepted that there were no copy letters in the bundle chasing arrears from the respondent and no letters from the debt collecting firm either. However, Mr Lewis rejected the suggestion that this meant there had been no correspondence with the respondent chasing the arrears. The agents had tried to collect the arrears themselves, although there were no copies of these letters before the Tribunal. The agents had a strict three stage debt collection process. There were two standard reminder letters and a third "final reminder". If this did not lead to payment, the account would be passed to PDC (or more recently to the solicitors). In response to a question from the Tribunal, Mr Lewis stated that where there was a telephone number on file, the agents would also try to call the debtor at the very start of the process. The respondent put to Mr Lewis that in February 2011, she made a payment of £70, and that she made four payments amounting to £580 between February and June 2012. Mr Lewis accepted that these payments were shown on the service charge statements, but he still considered it was reasonable for the account to have been transferred to PDC. The history of the account was not satisfactory, even if the respondent was (by early 2012) paying her service charges and reducing her arrears. At this point, Mr Lewis handed up a computer screen print to show that the "PDC cost" of £146.88 was incurred on 20 October 2009 and that the "PDC fees" of £174.88 were incurred on 27 August 2010. The respondent did not object to this document going before the tribunal. In response to letters from the Tribunal, Mr Lewis accepted that the same procedure was adopted for arrears irrespective of the balance on the service chare account. The respondent put to Mr Lewis that the account had not been passed to debt collectors at all, but he denied this was the case. It was also put to Mr Lewis that the agents had orally agreed to an arrangement whereby the respondent would pay her arrears over time, but Mr Lewis stated he had no knowledge of this. He accepted that an agreement could have been reached, but normally this would be put in writing. He accepted that the screen print in relation to the PDC fees had been overlooked before the date of the hearing. When instructing the debt collectors, the agents would normally write a letter to the firm about the tenant, but he did not have a copy.

25. In re-examination, Mr Lewis was unable to say whether PDC's fees were the same in 2010 and 2011, but they charged a flat fee in each case to include some initial work to collect the debt.

26. In closing, Mr Edwards made observations on the documents produced by the respondent. As far as the form of demands was concerned, the Defence referred to the "Landlord and Tenant Act s3", which was presumably a reference to LTA 1987 s.3. Part I of the 1987 Act provided a right of first refusal, and did not give any defence to a claim for payment under the lease. Mr Edwards accepted that the Defence also mentioned a failure to make service charge demands in "prescribed form as set down within the Act", and that this might be taken to refer to LTA 1985 s.21B. As to s.21B, the documents produced by the respondent put the matter beyond doubt. The staple mark on the demand dated 7 January 2010 suggested that there was a summary of rights and obligations attached. The demand dated 10 January 2011 was unequivocal. The latter was a demand for payment of the service charges which appeared in the County Court claim. In any event, any defect in the demand for the 2010 service charge demand was "cured" by the later demand in proper form: see LTA 1985 s.21B.

27. As the "extra charges", Mr Edwards accepted that it was open to the Tribunal to consider whether the charges were "reasonable". However, it was somewhat peculiar for the lessee to argue that the charges were unreasonable when she was constantly in arrears. The use of the debt collection agency had been effective, since the arrears had reduced – although there was of course no evidence of what PDC did for their money. Mr Lewis gave his view as an experienced property manager that it was appropriate to incur these costs. It could not be unreasonable to do so if there were arrears.

28. As to the other arguments raised by the respondent, the main contention was that the only issues that were covered by the Defence were the "extra charges" and the form of the demands. Many of the matters raised in the Statement of Case did not in any event relate to the managing agents or the applicant. In any event, some of the points were plainly wrong. For example, the respondent herself had produced a copy of minutes of a residents meeting on 7 March 2012 where the previous managing agents had explained that the estate roads had been adopted by the local authority.

THE RESPONDENT'S CASE

29. The respondent submitted that the "extra charges" of £174.88 and £146.88 were not "reasonable". There was no information about how the sums were applied, and the first time the debt collection agency had been mentioned to her was on the morning of the hearing. She had not received any correspondence from PDC. The agents were well aware that she had been struggling financially, and it was unreasonable to have passed the account on to a debt collection agency. She did

not in any event believe that the account had in fact been passed onto the agency since she had continued to pay instalments to the applicant.

30. As far as the demands for payment was concerned, the respondent submitted that the applicant had failed to comply with LTA 1987 s.3 when it acquired the freehold although she was not entirely sure that this was the provision that she relied upon. In any event, the respondent submitted that demands for payment were on at least one occasion not accompanied by any summary of rights and obligations. When asked by the Tribunal whether she had retained copies of these demands, the respondent handed up copies of demands for payment from her own records dated 7 January 2010 and 10 January 2011. The former had no summary of rights and obligations attached to it, although there was a staple mark in the top corner suggesting that at some stage a document had been attached. The latter had a summary of rights and obligations attached in proper form. Unsurprisingly, Mr Edwards did not object to these demands being put in evidence, and he did not seek to cross examine the respondent on the two documents.

31. The respondent briefly addressed the Tribunal on the various other objections to relevant costs set out in her Statement of Case, on the basis that her submission succeeded about the issues properly open to the Tribunal. In each case, the respondent submitted that relevant costs were not reasonably incurred under LTA 1985 s.19. Summarising the matters not dealt with above:
    a. Cleaning. The property had its own front door and nobody cleaned it apart from the respondent. As to estate maintenance, she referred to a letter from Dartford BC dated 22 November 2012 which stated that they had been responsible for street cleansing of the estate roads since their adoption. She was being charged for services that were not provided by the applicant.
    b. Management. The applicant's management was poor. She referred in some detail to an incident where her sister's Land Rover had been impounded by the DVLA after it had been parked on the hammerhead referred to above without tax. In essence, the applicant had failed to stop other people using the parking space allocated to the flat (space no.224) and had failed to inform residents that the estate roads had been adopted by the local authority.
    c. Maintenance. This was poor. The respondent's front door light had not worked since September 2012 and the front door step was loose.
    d. Works to the flat. There had been structural problems with the property, as a result of which the applicant had carried out works.

Those works (to the internal partition and ceiling) were poor. The WC seat and bath had been defective since the works were carried out.

REASONS

32. For the reasons given above, the Tribunal limits its findings to the issues raised in the County Court Defence dated 26 November 2012. It does not therefore make any findings in respect of the reasonableness of service charges or administration charges.

33. Demands for payment. Turning first to the form of demand for payment. The respondent acts in person, and she evidently had some difficulty in identifying the actual provisions she relied upon. Mr Edwards did not adopt a strict 'pleading' approach to the point, and he quite properly allowed the respondent a degree of latitude when it came to identifying specific statutory provisions.

34. The Tribunal is satisfied that LTA 1987 s.3 does not provide any answer to the claim. The sanctions for non-compliance with s.3 do not include any suspension of liability to pay a service charge or an administration charge. The position can be contrasted with s.47 and 48 of the same Act, which do contain suspensory provisions in the event of failure to supply information to the lessee.

35. However, the more relevant provision is LTA 1985 s.21B. Both parties dealt in some detail with the question of whether the material demands were accompanied by the summary of rights and obligations. In essence, this is a question of fact.

36. The Tribunal accepts that the demand dated 10 January 2011 was accompanied by a proper summary of rights and obligations. There can really be no doubt at all on the point, given the emergence at a late stage of a copy (from the respondent's own files) of the actual demand received. As to the 2010 demand, the evidence that this was accompanied by a summary is less conclusive. Mr Lewis produced a printed copy of a computer generated demand for payment. To this copy was then added a copy of a summary of rights and obligations. This was not really evidence that a summary accompanied the demand. Against this was the copy of the demand produced by the respondent from her files. There was a staple mark, but that is neutral on what had been attached to the demand. On balance the Tribunal finds that the demand dated 7 January 2010 was not accompanied by a summary of rights and obligations.

37. However, the Tribunal accepts that the absence of a summary from the 2010 demand does not provide a defence to the claim. The County court claim is based

on the demand dated 10 January 2011 and that demand satisfies s.21B. In this sense, Mr Edwards is right that the 2011 demand in proper form "cured" any defect in the 2010 demand.

38. In short, there is no reason why the form of demand for payment provides a defence to the applicant's claim.

39. Extra charges. As explained above, it is far from clear that the Defence dealt with both the "extra charges" of £146.88 and £174.88. However, the parties dealt with both charges, which related to fees paid to the debt collection agency PDC.

40. Such a charge is payable under clause 5.9 of the lease. It is not a "service charge" within the definition given in LTA 1985 s.18. It falls to be considered as a "variable administration charge" under paragraph 2 of Schedule 11 to 2002 Act and it is payable to the "amount of the charge is reasonable". The test of reasonableness is plainly different to the test for whether a charge is reasonably incurred under s.18(1). However, the Tribunal does not accept the applicant's submission that an administration charge will always be reasonable to incur an administration fee to recover service charge arrears. Whether the amount of a charge is "reasonable" will depend on a number of factors, including for example whether the cost is proportionate and the Tribunal must also have regard to the conduct of the lessee and lessor.

41. As to the 2009 charge, the Tribunal notes that the evidence from the applicant's screen print that the 2009 "PDC fees" of £146.88 were incurred on 20 October 2009. At that stage, the 2009 service charge year was three quarters complete. The statement of account suggests that there had been arrears of £476.54 carried over from the previous year, that there were additional 'in year' charges of £683.10 and that that the respondent had made three payments in January, April and October 2009 amounting to £531.69. The latter payment was made on 9 October, only a matter of days before PDC was instructed. The Tribunal does accept the evidence of Mr Lewis that (i) the agents had sent reminders to the respondent and (ii) that the applicant did in fact incur costs on instructing PDC. However, the Tribunal considers it was not reasonable to incur a charge of £146.88 to instruct a debt collection agency in October 2009, when the respondent had paid the previous year's arrears, she had paid something towards the current year's charges (including a very recent payment of £214), and the fee charged by PDC was one third of the debt which remained.

42. As to the other "extra charge", the screen print suggests this was incurred earlier in the next service charge year in August 2010. By that stage, the opening balance on the account had increased to £792.08 and there were additional 'in-

year' charges of £695.15. In the early part of 2010, the respondent made efforts to pay off the arrears (whether by arrangement with the respondent or not). There were four standing order payments of £100 in February, March, April and June 2010. However, by August 2010, these efforts to pay the arrears ceased and the last payment had been received two months before. The Tribunal finds that in such circumstances it was reasonable for the applicant to incur costs of £174.88 to recover a sum of over £1,000 due from the respondent.

43. It follows that the Tribunal finds that the respondent is not liable to pay to the applicant the variable administration charge of £146.88, but that she is liable to pay the variable administration charge of £174.88.

CONCLUSIONS

44. For the reasons given above, the Tribunal determines under LTA 1985 s.27A and Schedule 11 to the 2002 Act 2002 that the respondent's liability is as follows:

a.	Arrears (01.01.11): £1,279.74 less £146.88 =	£1,132.86
b.	Charge for year 2011 (01.01.11):	£673.57
c.	Payment received (16.02.11):	-£70

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MA Loveday BA(Hons) MCIArb
Chairman
5 June 2013