



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

Case Reference	:	BIR/31UC/LIS/2014/0010 BIR/31UC/LAC/2014/0005 BIR/31UC/LLC/2014/0005
Property	:	9 Bridgeland Road, Loughborough, Leicestershire, LE11 1GE
Applicant	:	Montague Weston Investments plc
Applicant's Representative	:	Mr Jonathan Newman Counsel Instructed by Glamorgan Law LLP
Respondent	:	Mr D A Simmons and Mrs A R Simmons
Type of Application	:	Application under Section 27A (and 19) of the Landlord & Tenant Act 1985 for determination of the liability to pay and reasonableness of service charges; an application under Section 20C of the Landlord & Tenant Act 1985 and an Application under Schedule 11 of the Commonhold & Leasehold Reform Act 2002 for a determination as to the liability to pay and reasonableness of a variable administration charge
Tribunal Members	:	Mr G S Freckelton FRICS (Chairman) Judge S McClure Mr P Hawksworth LLB
Date and venue of Hearing	:	18th December 2014 at Loughborough
Date of Decision	:	23 January 2015

DECISION

1. BACKGROUND

- 1.1 Application BIR/31UC/LIS/2014/0010 is an Application under Section 27A (and 19) of the Landlord & Tenant Act 1985 (“the Act”). This Application is dated 4th April 2014 and was received by the Tribunal on the same day.
- 1.2 Application BIR/31UC/LLC/2014/0005 is an Application under Section 20C of the Act and was submitted by the Respondent on 8th July 2014. This was received by the Tribunal on 10th July 2014.
- 1.3 Application BIR/31UC/LAC/2014/0005 is an Application under Schedule 11 of the Commonhold & Leasehold Reform Act 2002 and was submitted by the Applicant and dated 4th August 2014. It was received by the Tribunal on 12th August 2014.
- 1.4 Following the Application under Section 27A (and 19) of the Act, the Tribunal issued Directions on 10th June 2014. The Directions included directions in respect of the Application under Schedule 11 of the Commonhold & Leasehold Reform Act 2002, which the Applicants had stated they intended to submit.
- 1.5 Following receipt of the Application under Section 20C of the Act, the Tribunal issued Directions on 16th July 2014.
- 1.6 Following receipt of the Directions, various submissions were made by both the Applicant and the Respondent.

2. THE LEASE

- 2.1 The property is held under a Lease dated 12th April 2007 between Derwent Housing Association Ltd, Born Property Trading Ltd and Mr Dean Alan Simmons and Mrs Angela Ruth Simmons.
- 2.2 The Lease is for a term of 99 years from 12th April 2007.
- 2.3 Clause 2 of the lease details the tenants’ covenants. Clause 5 details the work undertaken by the landlord to maintain the common parts. Clause 2.3 provides for the service charge to be paid and the Fourth Schedule details the breakdown of those service charges.

3. THE LEGAL FRAMEWORK

- 3.1 Under Section 27A of the Landlord & Tenant Act 1985, the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:-
- (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
- 3.2 Section 19 the 1985 Act provides that service charges must be reasonable for them to be payable.

“Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:*

and the amount payable shall be limited accordingly.”

- 3.3 A charge is only payable by the Lessee if the terms of the Lease permit the Lessor to charge for the specific service. The general rule is that service clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41). It was also stated in Gilje above “The Lease moreover, was drafted or proffered by the Landlord. It falls to be construed contra proferentum”.
- 3.4 If the Lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.
- 3.5 The construction of the Lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2 EGLR 100).

3.6 Administration charges are dealt with under Schedule 11 of the Commonhold & 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.*
- (2) *But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.*
- (3) *In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—*
- (a) *specified in his lease, nor*
 - (b) *calculated in accordance with a formula specified in his lease.*
- (4) *An order amending sub-paragraph (1) may be made by the appropriate national authority.*

Reasonableness of administration charges

2A 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.*
- (2) *If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.*
- (3) *The variation specified in the order may be—*
 - (a) *the variation specified in the application, or*
 - (b) *such other variation as the tribunal thinks fit.*
- (4) *The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.*
- (5) *The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.*
- (6) *Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.*

Notice in connection with demands for administration charges

- 4(1) *A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.*
- (2) *The appropriate national authority 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 an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.*

Liability to pay administration charges

- 5(1) *An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) *Sub-paragraph (1) applies whether or not any payment has been made.*
- (3) *The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.*
- (4) *No application under sub-paragraph (1) may be made in respect of a matter which—*
- (a) has been agreed or admitted by the tenant,*
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
 - (c) has been the subject of determination by a court, or*
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*
- (6) *An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*
- (a) in a particular manner, or*
 - (b) on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).*

4. THE PROPERTY INSPECTION

- 4.1 The Tribunal inspected the property prior to the Hearing in the presence of Mr D A Simmons (“the Respondent”) and Mr J Newman, Counsel for the Applicant.
- 4.2 The property comprises of an end townhouse built over three floors. The Tribunal did not inspect the property internally but understands it comprises of lounge, kitchen, six bedrooms and two bathrooms. There are small areas of garden to both the front and rear of the block and a car parking area located to the rear. These areas are maintained by the Applicant Freeholder and form part of the service charge.
- 4.3 The property is purpose built of brick construction surmounted by a pitched tiled roof. The Tribunal understands that it was completed around 2007.
- 4.4 The Tribunal understands that the service charges in respect of this development are split between the five townhouses in the block.

5. THE PARTIES’ EVIDENCE AND SUBMISSIONS

Service Charges

- 5.1 Counsel for the Applicant submitted that as far as the Applicant was concerned, there were no disputes on reasonableness in respect of the service charges but only on the compliance of the demands issued.
- 5.2 On behalf of the Applicant it was stated that Clause 2.3 of the Lease provided for service charges to be paid and the Fourth Schedule of the Lease detailed the breakdown of those service charges.
- 5.3 It was further submitted for the Applicant that it had purchased the property in 2009 at which time, there were arrears of service charges amounting to £1,950.00, plus a contribution towards the valuation survey of £34.99. Mr Newman confirmed that this amount was made up of £1,535.70 being the arrears for the quarters commencing 11th April 2007. In addition to this, two further quarters commencing 1st May 2009 and 1st August 2009 in the sums of £207.40 each were also due making a total due of £1,950.50, rounded down to £1,950.00.
- 5.4 The Respondent submitted that the invoices he had received from the previous freeholders’ Managing Agents were invalid as they did not contain the Tenant’s Statement of Rights and did not indicate the name and address of the landlord.
- 5.5 The Applicant submitted that when Evtol Estates Ltd took over as Managing Agents, they issued a demand for the arrears dated 2nd October 2009. Mr Evans from Evtol Estates Ltd, in his evidence asserted that a Statement of Rights was always included with the letter and invoice.

- 5.6 The Tribunal noted that there was no copy of either the invoice, which it was alleged was attached to the letter, or the Statement of Rights which it was also alleged was attached to the letter provided in the Applicant's bundle although copies of the Tenant's Statement of Rights in respect of service charges were provided elsewhere in the Applicant's bundle. The Applicant was directed to provide a copy of the invoice to the Respondent and to the Tribunal within 7 days and further directions were issued accordingly. The Respondent was also directed to make any further submissions following receipt of the invoice within 14 days of receiving same.
- 5.7 Mr Newman submitted that under Section 20B of the Act, even if the original demands for service charge payments issued by the previous Managing Agents were not compliant, then the new freeholder could submit invoices for payments which were within 18 months of the date of a valid service charge demand. The invoice of 2nd October 2009 was therefore sufficient for this purpose.
- 5.8 The Respondent submitted that he had received a letter confirming that Evtol Estates Ltd represented the new freeholder but there was no confirmation of assignment of arrears.
- 5.9 Mr Evans, as managing agent for the Applicant, was called to give evidence and confirmed that he had received an email dated 18th February 2009 from Robert Limbert of Eddisons confirming that there was an assignment of arrears. This email was not included in the bundle and the Tribunal issued further directions to provide copies of same to the Respondent and to the Tribunal within 7 days. The Respondent was then given 14 days to make any further submissions on the contents of the email. The Tribunal were concerned that the existence of the email did not constitute proof of a formal assignment of the arrears. However, the Tribunal determined that the demand issued by Evtol Estates Ltd on 2nd October 2009 was a compliant demand and on the balance of probabilities included a Statement of Tenant's Rights.
- 5.10 The Respondent submitted that in order for service charges to be payable, the Applicant should have supplied to each leaseholder a regular statement of account normally within 6 months of the accounting period for which they cover as prescribed by Chapter 5, Section 152, Section 21a of the Commonhold & Leasehold Reform Act 2002. The Respondent submitted that the Act stated that "*a tenant may withhold payment of service charge if Section 21 as above is not adhered to*". The Applicant submitted that the correct provision was Section 21a of the Landlord and Tenant Act 1985, introduced by Section 152 of the Commonhold & Leasehold Reform Act 2002, and further submitted that Section 21a was not yet in force as it had not been implemented and as such, the Tribunal did not have jurisdiction on this point. The Tribunal agreed with the Applicant and determined that failure to provide a regular statement of account did not in itself invalidate a service charge demand.

- 5.11 Mr Newman submitted that there was a further balance of £34.99 in respect of an insurance valuation completed on 1st June 2009. The Respondent confirmed his agreement that this was reasonable although the demand was not compliant.
- 5.12 Mr Newman submitted that there was an insurance premium contribution due for 2010 of £169.00. The Respondent confirmed his agreement that this amount was reasonable although the demand was not compliant.
- 5.13 Mr Newman submitted that the maintenance fees for 2011 due on 7th December 2010 in the sum of £480.00 were reasonable. The Respondent submitted that he disputed the demand on the basis that the demand for payment was not compliant as there was no Summary of Tenant's Rights included with it. Mr Newman said that his instructions were that demands were sent and that a Summary of Tenant's Rights was attached. During later cross-examination of Mr Evans, it was explained to the Tribunal by Mr Evans that he printed all documents to be sent to the leaseholders together with the envelopes. Mr Evans said that he checked the names and addresses on the notices and the envelopes. They were then passed to Mrs Evans, who also gave evidence to the Tribunal, and stated that she put the information into the envelope, which was provided by Mr Evans together with a copy of the Summary of Tenants' Rights. Mrs Evans said she then checked the letters and envelopes to ensure that the addresses and names matched, arranged for the envelopes to be stamped, sealed and returned to Mr Evans.
- 5.14 It was further stated by Mr and Mrs Evans that proof of posting was obtained for items sent and evidence of this was given to the Tribunal.
- 5.15 The Tribunal then considered the question of maintenance charges for 2011 demanded on 7th December 2010 in the sum of £480.00. Mr Newman submitted that these were reasonable and the Respondent did not dispute their reasonableness, although he maintained that the demand was not correctly issued as it was not compliant.
- 5.16 The Tribunal determined that on the balance of probability, a Summary of Tenant's Rights was included with the demand and also determined that the demand did comply with the necessary statutory requirements.
- 5.17 Mr Newman, on behalf of the Applicant, submitted that the insurance premium contribution for 2012 demanded on 19th March 2012 in the sum of £190.75 was reasonable. This amount was not disputed by the Respondent, although he submitted that the demand was not compliant.

- 5.18 Mr Newman further submitted that the demand for maintenance fees for 2013 issued on 7th December 2012 in the sum of £530.00 was reasonable. The Respondent submitted that the demand was not a proper demand and not compliant but no further evidence was submitted to the Tribunal to support this.

Administration Charges

- 5.19 The Tribunal asked Mr Evans as the Applicant's Managing Agent, to explain the basis on which his charges were made for managing the property. Mr Evans confirmed that he charged a minimal amount for day to day management but then charged tenants for any additional work, which applied only to their individual properties. Mr Evans had provided within the Applicant's bundle a schedule of charges, which he submitted had been sent to all the leaseholders. The Respondent submitted that he had not received details of the Schedule of Charges before seeing the Applicant's bundle.
- 5.20 The Tribunal noted that there was a copy of the Summary of Tenant's Rights in respect of service charges included within the Applicant's bundle. The Tribunal asked Mrs Evans if she recognised the Summary of Tenant's Rights and if it was placed in every envelope. Mrs Evans stated that the Summary of Tenant's Rights in respect of service charges was placed in every envelope and the Tribunal determined, on the balance of probability, that the Summary of Tenant's Rights in respect of service charges was included with service charge demands as the majority of letters and demands issued by Mr Evans' office were for service charges.
- 5.21 The Tribunal returned to the question of the Summary of Tenant's Rights in respect of administration charges and it was stated by Mr and Mrs Evans that sometimes these were printed on separate sheets of paper and sometimes they were printed double sided with the Summary of Tenant's Rights in respect of service charges. It appeared to the Tribunal that these were not at any time printed on the reverse side of the demand for payment and as such, it could not be shown that the Summary of Tenant's Rights in respect of administration charges was always sent out. It was subsequently the Respondent's submission that he had never received a Summary of Tenant's Rights in respect of administration charge demands.
- 5.22 The Tribunal questioned Mr and Mrs Evans regarding the Summary of Tenant's Rights issued in respect of administration charges as a copy of same was not included within the Applicant's bundle. Mr Evans stated that he carried out most of the collating but the notices were then put together by Mrs Evans. Mrs Evans stated that she put in each envelope exactly what Mr Evans instructed her to do and it was confirmed that Mrs Evans was the only member of staff putting together the tenant demands for postage.

- 5.23 Mr Newman suggested to the Respondent that he had actually received the service charge demands from Mr Hopwood (the previous Managing Agent) and that they contained a Summary of the Tenant's Rights. The Respondent stated that no summary of rights was attached to Mr Hopwood's service charge demands.
- 5.24 Mr Newman, for the Applicant, submitted to the Respondent that the letter of 2nd October 2009 had included a statement of arrears. The Respondent stated that he did not have a copy, although he conceded that it appeared to have been sent to the correct address. The Respondent however stated that he could not confirm it was delivered.
- 5.25 Mr Newman suggested that the letter dated 12th October 2009 from the Respondent to Evtol Estates Ltd did not mention that enclosures were not included with the letter from Evtol Estates Ltd dated 2nd October 2009. The Respondent stated that he was away at the time and that the property was tenanted in 2009.
- 5.26 Mr Newman submitted that the defence of the Respondent appeared to be that service charge demands were not served correctly, although in 2009 that had not been raised and the Respondent now appeared to concede that demands were valid.
- 5.27 Mr Newman further submitted that the Statements of Accounts were valid but the Respondent stated that he did not believe they were valid and as such, was able to withhold payments.
- 5.28 The Tribunal then commenced a scrutiny of the Scott Schedule provided for the years in dispute going through the items in dispute one item at a time and Mr Evans explained on behalf of the Applicant what the item related to and how the charge in question had been calculated and the Respondent then responded with his comments and confirmed whether the item in question was still disputed or not.
- 5.29 The Applicant submitted that the sum of £25.00 for general correspondence issued on 4th November 2009 was reasonable, although the invoice did not detail the nature of that correspondence. Mr Evans also confirmed that if a leaseholder was not in arrears, then all correspondence was free but that if leaseholders were in arrears, they were charged for every letter.
- 5.30 The Respondent said that he disputed the administration charges in general because, he maintained, that they were not properly demanded and were, therefore, not due. The Respondent further stated that it was not possible for the Respondent to differentiate between service charges and administration charges and that Schedules sent showed combined arrears. The Respondent submitted that they should have been invoiced separately so he was aware of what he was being asked to pay. In this case, the invoice sent on 4th November 2009 for £25.00 did not state that it was for an administration charge and as such, was invalid.

- 5.31 Mr Newman said that according to the Applicant, administration charges had arisen as a result of service charges not being paid and, it therefore followed that if service charges were accepted as being due then administration charges must also be due. It was further submitted that pursuant to Schedule 13d, Paragraph 11 of the Commonhold & Leasehold Reform Act, the service charges were variable and as they were not specified in the Lease or calculated by reference to a formula contained in the Lease, they were payable on the basis that they were reasonable.
- 5.32 The Respondent submitted that demands for payment should include the address of the landlord and must enclose a Summary of Tenant's Rights. The Respondent further submitted that the Summary of Tenant's Rights was not included and Mr Evans, when giving evidence for the Applicant, conceded that a copy of the Summary of Tenant's Rights in respect of administration charges had not been included within the Applicant's bundle. It was stated on behalf of the Applicant that there was no prescribed format for invoices for either administration or service charges except that they should be clear and easily understood as recommended in the RICS Service Charge Residential Management Code.
- 5.33 Mr Newman also submitted that the question of reasonableness in respect of the individual items had not been previously questioned by the Respondent and that it would not be reasonable for the Applicant to comment on individual items at the Hearing without having first had the opportunity of investigating exactly what work was undertaken.
- 5.34 The Tribunal, therefore, issued further directions allowing the Applicant to respond to the Respondents' submission in relation to any item which the Respondent thought was unreasonable. The Respondent confirmed that in his opinion the invoice for £25.00 issued on 4th November 2009 was unreasonable.
- 5.35 Mr Evans stated that the invoice for £75.00 demanded on 2nd December 2009 for issuing notices was reasonable. The Tribunal accepted as a general principle that the Respondent did not agree that any of the administration charges demanded were fair for the reasons previously stated in paragraph 5.32. However, having accepted that general submission, the Tribunal asked the Respondent to confirm whether, if the Tribunal found that any or all of the administration charges were payable, if the Respondent considered them to be reasonable. The Respondent confirmed that in his opinion the invoice for £75.00 was not reasonable.
- 5.36 Mr Evans stated that the invoice submitted on 12th December 2009 for £50.00 for dealing with the bank was reasonable. The Respondent confirmed that if the Tribunal found the administration charge should be paid, that it was also reasonable.

- 5.37 Mr Evans stated that the administration charge of £15.00 invoiced on 3rd February 2010 for checking arrears was reasonable. Mr Evans confirmed that the work included checking the arrears and any arrangement with the tenant for payment and then sending a statement letter to the tenant. The Respondent confirmed that this amount was reasonable.
- 5.38 The Respondent submitted that the sum of £25.00 invoiced on 5th February 2010 for completing an interest calculation was reasonable. However, it was confirmed by Mr Evans that it had been decided not to charge interest until the final outcome was known so that interest could be applied to the amount determined by the Tribunal and subsequently by the court. The Respondent submitted that the amount charged was unreasonable.
- 5.39 Mr Evans stated that the sum of £15.00 invoiced on 2nd March 2010 for checking the arrears was reasonable. This was agreed by the Respondent.
- 5.40 Mr Evans stated that the sum of £15.00 invoiced on 6th May 2010 for checking the arrears was reasonable. This was agreed by the Respondent.
- 5.41 Mr Evans stated that the sum of £15.00 invoiced on 18th July 2010 for checking the arrears was reasonable. This was agreed by the Respondent.
- 5.42 Mr Evans stated that the sum of £15.00 invoiced on 18th August 2010 for checking the arrears was reasonable. This was agreed by the Respondent but he queried why it was necessary for this check to be carried out only a month after the check on 18th July 2010.
- 5.43 Mr Evans stated that the invoice of £25.00 submitted on 18th August 2010 in respect of correspondence with solicitors was reasonable. The Respondent agreed that this sum was reasonable for the work undertaken.
- 5.44 Mr Evans stated that the invoice for £25.00 issued on 18th August 2010 for general correspondence was reasonable. The Respondent submitted that the charge was unreasonable as there was no indication of exactly what work was undertaken.
- 5.45 Mr Evans told the Tribunal that the invoice for £60.00 submitted on 15th December 2010 was for checking arrears, which included £15.00 standard fee for confirming the arrears and a further £45.00 for dealing with solicitors was reasonable. The Respondent confirmed his opinion that the charge of £15.00 was reasonable but that £45.00 for writing to solicitors was unreasonable.

- 5.46 The sum of £15.00 invoiced on 21st February 2011 for checking the arrears was now agreed by the Respondent as was the sum of £15.00 invoiced on 4th May 2011 for checking the arrears and the administration charge of £30.00 invoiced on 4th May 2011.
- 5.47 Mr Evans submitted that the charge of £125.00 for preparing an interest calculation on 4th May 2011 was reasonable. The Tribunal asked the Applicant to explain why the invoice for the interest calculation on 5th February 2010 was £25.00 whereas this was £125.00. Mr Evans said that this calculation was more difficult as the arrears were higher and now had to be carried out in respect of three accounts being the service charge account, insurance account and ground rent account. He confirmed that the actual interest payment was not charged pending the final determination of the Tribunal and County Court. The Respondent submitted that the charge was unreasonable.
- 5.49 The sum of £15.00 invoiced on 20th June 2011 for checking the arrears was agreed by the Respondent.
- 5.50 Mr Evans stated that the administration charge of £50.00 invoiced on 19th October 2011 for discussions with solicitors regarding the proceedings was reasonable. Following those discussions, it had been decided not to continue with bankruptcy proceedings against the Respondent. The Respondent submitted that in his opinion the amount was unreasonable.
- 5.51 With regard to the administration charge of £25.00 submitted on 19th October 2011 for dealing with correspondence with solicitors the Respondent agreed that the sum was reasonable.
- 5.52 The sum of £15.00 invoiced on 26th January 2012 for checking the arrears was agreed by the Respondent as was the sum of £15.00 invoiced on 23rd February 2012 for checking the arrears.
- 5.53 Mr Evans contended that the sum of £15.00 invoiced on 29th October 2012 for checking the arrears was reasonable. This was agreed by the Respondent but he queried whether the checks were carried out too frequently.
- 5.54 Mr Evans stated that the administration charge of £35.00 invoiced on 29th October 2012 in respect of a letter to the Respondent and to the mortgage advisers was reasonable. The Respondent submitted that the charge of £35.00 was unreasonable but that £25.00 would be a reasonable sum.

6. FURTHER CONSIDERATION OF THE WITNESS STATEMENTS & CLOSING REMARKS

6.1 The Tribunal then further considered the witness statement provided by Mr Evans and following questioning by Mr Newman Mr Evans stated: -

- (a) That Mr Hopwood, the previous Managing Agent had confirmed to Mr Evans that he (Mr Hopwood) had complied with the requirements of the Act and that he had been instructed by Morris Properties (the previous freeholder) to collect the service charges. Mr Hopwood had confirmed to Mr Evans that he had served the correct documents with the service charge demands.
- (b) That in his opinion the email of 18th February 2009 confirmed that there was an assignment of arrears. The total arrears for the various properties purchased by the Applicants was approximately £250,000. These arrears had been passed to the purchaser as the amount of arrears had an effect on the purchase price. It was subsequently agreed that the purchaser could collect arrears after 1st April 2009 and that the vendors (Morris Properties) would collect arrears up to 31st March 2009.
- (c) That a Summary of Tenant's Rights was submitted with letters and invoices by way of a standard bundle sent to leaseholders. Invoices and formal demands were sent for ground rents and administration charges.
- (d) That the demand for arrears was submitted in accordance with the invoice, which would be provided to the Respondent and the Tribunal in accordance with the Tribunal's further directions.
- (e) That other demands were all accompanied by a Summary of Tenant's Rights, which were placed in the envelope for posting. Mr Evans produced the bundles and Mrs Evans put them in the envelope and then checked that everything was correctly placed in each envelope, sealed the envelopes and arranged for posting together with proof of posting from the Post Office.
- (f) That the copy of the Summary of Tenant's Rights included within the bundle was sent with the various invoices to the leaseholders.
- (g) That copies of the annual accounts were prepared by an accountant and that copies of these annual statements were sent to all leaseholders by email.
- (h) That the Respondent had never previously requested a certificate from an accountant as opposed to the accounts, which had been submitted.

- 6.2 Under questioning from the Respondent, Mr Evans stated that he had worked as a Managing Agent since the 1980s. The Respondent submitted that Mr Evans had not provided a copy of the assignment of arrears between Morris Properties and the Applicant and the only reference to an assignment had been the email of 18th February 2009, which had only been submitted to the Respondent and Tribunal at the Hearing.
- 6.3 The Respondent asked Mr Evans if the accounts were properly prepared and Mr Evans confirmed that the accounts were provided by a professional accountant as evidenced by the invoices for their preparation, which were included within the Hearing bundle.
- 6.4 Mr Newman asked Mr Evans if any complaints had been made from other tenants that items were missing from the bundles or that emails had not been received. Mr Evans stated that he had not received any further complaints.
- 6.5 The Respondent accepted that he had received a Summary of Tenant's Rights from Evtol Estates Ltd in respect of some service charge demands, although they were not always included. The Respondent further submitted that he had never received a Summary of Tenant's Rights in respect of the administration charge demands.
- 6.6 The Respondent submitted that he had not received copies of the accounts for the years 2009 – 2012, although they had been requested. The Respondent submitted that as there was no certificate provided by the accountant, the statements of account were invalid and as such, he was not required to make payment of service charges based on them.
- 6.7 The Tribunal determined that the statements of account provided by the Applicant were valid and conformed to the relevant legislation. It was not necessary for the accounts to contain an accountant's certificate and there was no evidence that the Respondent had requested a certificate be provided.
- 6.8 Mr Newman submitted that the evidence which had been heard supported the Applicant's case. In particular, the evidence from Mr Evans on the assignment meant that the invoice, which accompanied the letter of 2nd October 2009, was a valid invoice for arrears of service charges and was due for payment. Mr Newman further submitted that the Respondent was only complaining about the failures of the previous Managing Agent and was not complaining about Evtol Estates Ltd.
- 6.9 Mr Newman submitted that the evidence from Mr and Mrs Evans that the Summary of Tenant's Rights was included was credible and should be accepted as it had been shown that the Applicant's agents had a system within the office to ensure that Statements of Tenant's Rights were included.

- 6.10 Mr Newman submitted that the statements of accounts did comply with Section 21 of the Act and that proper account books were kept, and that the accounts were prepared by an accountant. There was no evidence submitted by the Respondent that he had requested a formal certificate.
- 6.11 The Respondent submitted that the service charge demands and documentation sent were not in the correct form and that there had been no challenge to his previous court defence. He further submitted that he had taken advice and acted on it in withholding payment of service charges.
- 6.12 The Respondent reiterated his submission that the Summary of Tenant's Rights was not included with any of the administration charge demands and in any event, not all of them were reasonable.

7. DETERMINATION

- 7.1 The Tribunal considered that there are two issues before it. The first issue is the liability to pay and reasonableness of service charges and variable administration charges, and the second issue is whether or not any or all of those charges are payable either because they have been demanded by way of a non-compliant demand or because the charge has been demanded more than 18 months later than it was due.
- 7.2 The Tribunal, therefore, determined to first consider the level of charges they considered reasonable if they were due. On the basis that charges were due, several service charges and administration charges had been agreed by the Respondent, and the Tribunal, therefore, considered those items which were in dispute. The Tribunal took into account the further submissions of the parties received in accordance with the further directions issued following the hearing.
- 7.3 In respect of arrears, the Tribunal determined that the email of 18th February 2009 did not constitute proof of a formal assignment of the arrears. However, the demand issued by Evtol Estates Ltd on 2nd October 2009 was a compliant demand.
- 7.4 With regard to the maintenance fees for 2011 demanded on 7th December 2010 in the sum of £480.00, the Tribunal determined that the sum of £480.00 was reasonable.
- 7.5 In respect of the demand for maintenance fee for 2013 issued on 7th December 2012 in the sum of £530.00, the Tribunal determined that the amount demanded was reasonable.
- 7.6 The Tribunal then considered the administration charge invoice for £25.00 issued on 4th November 2009 and having received further submissions, determined that the amount was reasonable.

- 7.7 With regard to the administration charge invoice for £75.00 demanded on 2nd December 2009, the Tribunal determined that the charge was reasonable for the work carried out.
- 7.8 The Tribunal then considered the administration charge invoice of £25.00 issued on 5th February 2010 for completing the interest calculation. The Tribunal determined that as interest was not charged at that time, it was not necessary to carry out an interest calculation and as such, the amount demanded of £25.00 was disallowed.
- 7.9 The administration charge invoice for £25.00 issued on 18th August 2010 for general correspondence was determined by the Tribunal to be reasonable for the work undertaken.
- 7.10 The Tribunal then considered the administration charge invoice for £60.00 issued on 15th December 2010 for checking arrears, which included £15.00 for confirming the arrears and a further £45.00 for dealing with solicitors. The Tribunal agreed with the Respondent that the sum of £15.00 was reasonable but that the additional sum of £45.00 was disallowed.
- 7.11 The Tribunal then considered the administration charge invoice submitted on 4th May 2011 for £125.00 for preparing the interest calculation. The Tribunal determined that as there was no intention to charge interest at the time the calculation was prepared, it was unreasonable to expect the Respondent to pay same and the Tribunal disallowed it.
- 7.12 With regard to the administration charge invoice of £50.00 issued on 19th October 2011, the Tribunal determined that the charge was reasonable.
- 7.13 The final item in dispute was the administration charge invoice for £35.00 issued on 29th October 2012. The Respondent submitted that £25.00 was reasonable and following consideration, the Tribunal agreed with the submission of the Applicant and determined that £35.00 was reasonable.
- 7.14 The Tribunal then considered whether or not the charges were payable having regard to the evidence submitted regarding the service charge demands and administration charge demands by both the Applicant and Respondent.

7.15 With regard to the Service Charge demands issued by Richard Hopwood (the previous Managing Agents) the Tribunal found that the Applicant had not satisfied the Tribunal that on a balance of probabilities they contained the required Summary of Rights required since 1st October 2007. The Tribunal noted that Mr Hopwood was not called to give evidence nor was there even a Witness Statement from him containing a statement of truth which would have provided some corroboration for what Mr Evans contended in this respect. Thus, the Tribunal concluded that the Respondents contentions in respect of demands issued by Mr Hopwood had not been rebutted.

7.16 The question then arose whether or not the right to recover could be preserved (as far as the Applicant was concerned) by the demand of 2nd October 2009. The Tribunal determined that the letter and accompanying invoice of 2nd October 2009, on a balance of probability did contain a Summary of Rights and thus were a compliant demand for payment of service charges.

7.17 However, the Applicant was only permitted to claim amounts which were due within 18 months of the date of the compliant demand. The Tribunal, therefore, determined that the earliest date that the arrears could be recovered from the Respondent was 2nd April 2008. The Tribunal calculated this to be the sum of £1,244.40 as opposed to the Applicant's demand of £1,950.00. The Tribunal arrived at this figure as follows:-

Service Charge due: 01/05/08-31/07/08	£207.40
01/08/08-31/10/08	£207.40
01/11/08-31/01/09	£207.40
01/02/09-30/04/09	£207.40
01/05/09-31/07/09	£207.40
<u>01/08/09-31/10/09</u>	<u>£207.40</u>
Total	£1244.40

7.18 In summary, the Tribunal determined that if the service charges and administration charges were found to be due the following amounts were payable.

Item No	Item	Date Work Done	Date Amount Demanded	Applicant's Submission of Amount Due	Respondent's Submission of Amount Due	Tribunal Determination
	Schedule of Service Charges 2009					
1	Insurance valuation survey contribution	1 st June 2009	1 st June 2009	£34.99	£34.99	£34.99
2	Previous agent's arrears	Before October 2009	2 nd October 2009	£1,950.00	NIL	£1,244.40
	Schedule of Service Charges 2010					
3	Insurance premium contribution 2010	2010	1 st March 2010	£169.00	£169.00	£169.00
4	Maintenance fees for 2011	2011	7 th December 2010	£480.00	£480.00, although the demand was incorrectly issued.	£480.00
	Schedule of Service Charges 2011					
5	Insurance premium contribution 2011	2011	17 th March 2011	£177.45	£177.45	£177.45
6	Maintenance fees for 2012	2012	7 th December 2011	£480.00	£480.00, although the demand was incorrectly issued.	£480.00
	Schedule of Service Charges 2012					
7	Insurance premium contribution 2012	2012	19 th March 2012	£190.75	£190.75	£190.75
8	Maintenance fees 2013	2013	7 th December 2012	£530.00	NIL	£530.00
	Schedule of Administration Charges					
9	Correspondence	4 th November 2009	4 th November 2009	£25.00	NIL	£25.00
10	Issuing notices, etc	2 nd December 2009	2 nd December 2009	£75.00	NIL	£75.00
11	Dealing with bank	12 th December 2009	12 th December 2009	£50.00	£50.00	£50.00
12	Checking arrears, etc	3 rd February 2010	3 rd February 2010	£15.00	£15.00	£15.00
13	Interest calculation	5 th February 2010	5 th February 2010	£25.00	NIL	NIL
14	Checking arrears, etc	2 nd March 2010	2 nd March 2010	£15.00	£15.00	£15.00
15	Checking arrears, etc	6 th May 2010	6 th May 2010	£15.00	£15.00	£15.00
16	Checking arrears, etc	18 th July 2010	18 th July 2010	£15.00	£15.00	£15.00
17	Checking arrears, etc	18 th August 2010	18 th August 2010	£15.00	£15.00	£15.00
18	Correspondence with solicitors	18 th August 2010	18 th August 2010	£25.00	£25.00	£25.00
19	Correspondence	18 th August 2010	18 th August 2010	£25.00	NIL	£25.00
20	Checking arrears, etc	15 th December 2010	15 th December 2010	£60.00	£15.00	£15.00
21	Checking arrears, etc	21 st February 2011	21 st February 2011	£15.00	£15.00	£15.00
22	Checking arrears, etc	4 th May 2011	4 th May 2011	£15.00	£15.00	£15.00
23	Issue default notice	4 th May 2011	4 th May 2011	£30.00	£15.00	£30.00
24	Interest calculation	4 th May 2011	4 th May 2011	£125.00	NIL	NIL
25	Checking arrears, etc	20 th June 2011	20 th June 2011	£15.00	£15.00	£15.00
26	Talk with solicitors	19 th October 2011	19 th October 2011	£50.00	NIL	£50.00
27	Correspondence with solicitors	19 th October 2011	19 th October 2011	£25.00	£25.00	£25.00
28	Checking arrears, etc	26 th January 2012	26 th January 2012	£15.00	£15.00	£15.00
29	Checking arrears, etc	23 rd February 2012	23 rd February 2012	£15.00	£15.00	£15.00
30	Checking arrears, etc	29 th October 2012	29 th October 2012	£15.00	£15.00	£15.00
31	Correspondence	29 th October 2012	29 th October 2012	£35.00	£25.00	£35.00

- 7.19 The Tribunal determined that the maintenance fees for 2011, 2012 and 2013 were also, on the balance of probability, properly demanded. There was evidence of a system within Evtol Estates Ltd office for ensuring that Summaries of Tenant's Rights were included with service charge demands and the Tribunal therefore determined the amounts of £480.00 for 2011, £480.00 for 2012 and £530.00 for 2013 were payable.
- 7.20 The Tribunal then considered the administration charges. The Tribunal was not convinced by the evidence of Mr and Mrs Evans regarding the inclusion of a Tenant's Summary of Rights being submitted with demands for administration charges. The Tribunal found, from the evidence, that the method of ensuring that Summaries of Tenant's Rights were included with demands for administration charges was haphazard. It had been confirmed that sometimes these were printed on separate sheets and that at other times they were printed on the reverse side of the Summary of Tenant's Rights in respect of service charges. On balance, the Tribunal preferred the evidence of the Respondent on this matter and disallowed all the administration charges claimed.
- 7.21 The Tribunal determined the following amounts were payable by the Respondent in respect of service charges due: -

Contribution to insurance valuation in 2009	£34.99
Arrears of service charges to 2009	£1,244.40
Insurance premium for 2010	£169.00
Maintenance fee for 2011	£480.00
Insurance premium for 2011	£177.45
Maintenance fee for 2012	£480.00
Insurance premium for 2012	£190.75
Maintenance fee for 2013	£530.00
Total Due	£3,306.59
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8. SECTION 20C APPLICATION

- 8.1 The Respondent submitted that in his opinion, none of the charges requested were valid and as such, he should not be responsible for paying the landlord's costs for the Hearing. The Respondent further submitted that there had been three previous attempts to resolve the issue without success and that the advice he had obtained was that he should not pay the service charge invoices. On this basis, he should not be expected to pay the landlord's costs for the hearing.

- 8.2 Mr Newman submitted that the Lease provided for costs to be paid by the tenant and that this was a contractual matter between the parties. As such, the Respondent could not rely on Section 20C of the Act as this would not prevent charges being made. Mr Newman conceded that charges must be reasonable, but that if the Tribunal found that service charges were payable, then the proceedings had been necessary and as such, if the cost of the Hearing had been caused by the Respondent's refusal to pay, it was unfair for an order to be made under Section 20C. Mr Newman further submitted that the Respondent had only agreed to pay the charge for the insurance premium at the Hearing and this was unreasonable.
- 8.3 Mr Newman also requested that an order be made for the Respondent to reimburse the Applicant with the application fee of £250.00 in respect of the Application under Section 27A of the Act and £125.00 in respect of the application fee under Schedule 11 of the Commonhold & Leasehold Reform Act 2002. In addition, Mr Newman submitted that the Respondent should also reimburse the Hearing fee of £190.00. Mr Newman, however, conceded that in his opinion it would only be appropriate to order repayment of fees if the Applicant was successful.
- 8.4 The Respondent confirmed that he had previously agreed that he would pay the insurance premiums due, although as these, and the service charges were not, in his opinion, properly demanded, he was not required to pay them.
- 8.5 The purpose of an application under Section 20C is to prevent a landlord from recovering his costs in Tribunal proceedings through the service charge. The guidance in previous cases is to the effect that an order under Section 20C is to deprive the landlord of a property right and it should be exercised sparingly (see for example, *Veensa –v- Chong*: Lands Tribunal [2003]1EGLR175).
- 8.6 On balance, the Tribunal considers that it would be in the interest of justice to make an order under Section 20C preventing the Applicant from recovering its costs of these proceedings through the service charge in this case.
- 8.7 In reaching its decision on Section 20C, the Tribunal had regard to the fact that the Applicant has not succeeded in persuading the Tribunal of the merits of its arguments on the matter of administration charges and that although the service charge demands from Evtol Estates Ltd were properly demanded, previous service charge demands from Richard Hopwood on behalf of the previous freeholder were not. The Tribunal was not persuaded by the Applicant's evidence that the administration charges were properly demanded or, in all cases, properly incurred.

8.8 The Tribunal also determined that the Applicants' request that they be reimbursed for the Application and Hearing costs was unreasonable and made an order accordingly preventing the applicants from charging these costs to the Respondent.

9. APPEAL

9.1 Any appeal against this Decision must be made to the Upper Tribunal (Lands Chambers). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Graham Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)