10274

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
(Formerly the Leasehold Valuation Tribunal)

Case Reference	:	**MAN/00CJ/LSC/2013/0137** **MAN00CJ/LAC/2013/0014**
Property	:	**Apartments 5 & 106, 9, 102, 103, 209, 212, 301, 311, 402, 409, and 410 Pandongate House, 5 City Road, Newcastle upon Tyne NE1 2AY**
Applicants	:	**Mr K. Barton and the Lessees of 11 other properties at Pandongate House (Case 0137)** **Mr K. Barton (Case 0014)**
Representative	:	**Mr K. Barton (Apartment 311)**
Respondent	:	**Pandongate House Management Company Limited (Lease appointed Management Company)**
Representative	:	**Mr Henry Stevens of Counsel**
Type of Application	:	**Service and Administration Charges – Section 27A and 20C of the Landlord and Tenant Act 1985, Schedule 11 of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Judge Lancelot Robson LLB (Hons)** **Mr I. Jefferson TD BA BSc MRICS** **Mrs A. R. Paterson**
Date and venue of Hearing	:	**8th May,29th and 30th July 2014** **The Tribunal Office, Manorview House, Kings Manor, Newcastle upon Tyne NE1 6PA**
Date of Decision	:	**23rd September 2014**

DECISION

Decisions of the Tribunal

(1) In respect of the Section 27A (Service Charge) application (0137) the Tribunal decided;

a) The monies held by the Respondent's agent are not secure, thus all demands made to the Applicants for contributions to the service charge and reserve funds are not payable at this time. The administrative arrangements for holding these funds do not comply with Sections 42 and 42A of the Landlord & Tenant Act 1987, or the RICS Service Charge Residential Management Code (2nd Edition) (Part 4), particularly paragraphs 4.5 - 4.7. This will remain the position until the Respondent's agent ensures that the funds are held in properly designated client accounts named as such, and informs the Applicants' representative in writing, with copies of compliant bank statements.

b) In the circumstances of this particular case the Tribunal decided to treat the so-called Reserve Fund as a fund intended to meet current contingencies since that is what it had been used for.

c) Pursuant to the Respondent's concession on that point, the Respondent shall credit the account of 311 Pandongate House with any sums demanded in excess of that lessee's contractual contribution to the service charge of 1.08% and notify the Applicant Mr Barton within 21 days of this decision, insofar as it has not already done so. Further, the Respondent shall satisfactorily identify the Apartment or Apartments which have been undercharged (stated at the hearing to be Apartment 106), and make any necessary demand within a further 21 days to try and recover the underpayment concerned.

d) The Tribunal has no jurisdiction in this application to order the Respondent to comply with the terms of its constitution or the Companies Acts, but failure to do so might be relevant evidence if an application for Appointment of a Manager under Section 24 of the Landlord and Tenant Act 1987 is made.

e) Likewise the Tribunal has no jurisdiction under Section 27A to order the Respondent to carry out works under the terms of the Lease which might be necessary or desirable.

f) The Tribunal found it unnecessary to make a specific determination on the Applicants' submission that the Respondent had failed to comply with dates specified in the Lease for making service charge demands, in the light of its other determinations on the validity of those demands. Nevertheless there may well be some force in this submission. The Tribunal noted that the Respondent appeared to be ignoring some parts of the Fourth Schedule in its accounting practices. Failure to comply with time limits specified in the Lease is not usually sufficient reason in itself to decide that any charges are

unreasonable or not payable, but the Lease may limit the issue of demands to certain dates.

g) Sums determined as being reasonable by the Tribunal below have not been correctly explained or demanded in accordance with the Lease or statute, including demands omitting a clear statement of arrears, incorrect sums brought forward, incorrect sums carried forward, confusion of the appropriate statutory notices of lessees rights and obligations accompanying the demands, adding confusing or misleading information as to charges within the statutory notices, making quarterly demands rather than annual demands. Thus these sums are not payable until valid demands have been issued. However the Tribunal also decided that the 18 month rule does not apply to any payments demanded of the Applicants, as the exception in Section 20B(2) of the 1985 Act applied.

(2) In respect of the specific items of service charge challenged by the Applicant, the Tribunal made the determinations and reductions noted in Appendix 2 to this decision. The Tribunal's reasons are stated in the main body of the decision.

(3) The Tribunal considered that both sides had been slow to implement the LVT decision made on 14th July 2011, but that the Respondent appeared to have now complied with the financial requirements of that decision, although it appeared not to have understood certain principles set out in that decision, leading to similar mistakes in subsequent years. However the Tribunal has no independent jurisdiction to enforce its decisions. A decision of the Tribunal is enforceable in the County Court in the same manner as a County Court Order. Any enforcement application should be made to that Court, as it has jurisdiction to make any peremptory or other orders necessary. (But see also paragraph (4) below).

(4) In respect of the Schedule 11 (Administration Charge) application (0014) by Mr Barton alone, the Tribunal decided that **none** of such charges (including items described as legal charges but in fact payable to the agent itself) levied in respect of the service charge years 2007, 2008, 2009, 2010, 2011, and 2012 were reasonable or payable by the Applicant Mr Barton in respect of 311 Pandongate House, for the reasons set out below. The Tribunal further decided that the solicitors' charges of Clarke Mairs placed on the Applicant's account were unreasonable.

(5) The Tribunal made an order under Section 20C of the 1985 Act that all of the costs incurred, or to be incurred, by the Respondent in connection with the application before this Tribunal, were **not** to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Applicants.

(6) The Tribunal further ordered under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the 2013 Rules) that the Respondent should reimburse the fees paid by the Applicant Mr Barton in respect of both applications.

(7) The Tribunal made the other determinations as set out under the various headings in this decision.

The Application

1. The Applicants are a number of long leaseholders of the above mentioned Apartments. The Respondent is the management company appointed by the Lease, collectively controlled by the long leaseholders of the 64 Apartments at Pandongate House.

2. The Applicants seek a determination of the reasonableness of service charges demanded relating to the years commencing on 1st January 2007, 2008, 2009, 2010, 2011, and 2012 pursuant to a (specimen) lease dated 17th September 2004 of Apartment 311 (the Lease). The Applicants are represented by Mr Keith Barton and the Respondent is represented by Mr Henry Stevens of Counsel, instructed by Town and City Properties (the managing agents appointed by the Respondent).

Inspection

3. The Tribunal inspected the communal areas of the Building and the communal lobby of two small Apartments on the morning of 8th May 2014 in the company of representatives of both the Applicant and the Respondent. The building is a four storey brick built former commercial building in an area of similar buildings built about 1900, converted about 2003 into 64 Apartments by Charles Church. The building is within easy walking distance of Northumbria University and the city centre. Access is controlled by an entryphone system through an external gateway under an archway into a central yard. The building is "L shaped" with the apartments facing into the central yard. The external common parts consist of a paved yard, external bin store, a lift, a partly covered stairway and external balconies giving access to the property. There were a number of rendered and painted walls, some of which had been redecorated recently, although there were signs of green algae in places. The external and internal common parts were reasonably clean, the entryphone, and the lift were working at the time of the Tribunal's visit, although it noted that some communal external lighting was still switched on during the day. Also one part of the yard was being used by residents as an informal and unauthorised repository for recyclable waste, which detracted from the amenity of nearby flats. The structure of the property appeared generally in good condition, but the common parts appeared hard used, and some communal windows on the stairway had been damaged although graffiti and fly tipping appeared to be under control. The Tribunal understands that many

apartments are let out on short tenancies in an area which is popular with students.

Hearing

4. At the end of the first hearing day on 8th May 2014, the Tribunal adjourned and gave further Directions to deal with a number of missing documents and other matters which required attention to ensure all parties had a reasonable opportunity to present their cases. A further two day hearing was arranged for 29th and 30th July 2014.

5. At the resumed hearing on 29th July 2014, it transpired that the Respondent's managing agent had omitted to number the numerous documents produced pursuant to the further Directions. The Tribunal made it clear that this was very unsatisfactory. Ms Johnson, for the agent, admitted that the documents were in no particular order in the bundles. Examination of the bundles also showed that many invoices were filed as much as two years adrift from the service charge year shown on the binder and also that a considerable number were still missing. This the agent blamed upon lack of time and the Tribunal's omission in the original Directions to specify that the pages should be numbered. The agent's employees agreed to resubmit properly ordered and numbered invoices for the service charges for the years 2007 -2012 on the following day. The Tribunal then attempted to make progress on the 2012 service charges, but was severely hampered by missing invoices, and the lack of order in the documents. When these documents were resubmitted at 11.40am the following day they were numbered, but while some additional invoices were submitted, many invoices produced previously were omitted. No new bundle was produced for the year 2012, although it was produced after the hearing, and before the Tribunal's consideration of its decision. Again the agents blamed lack of time, although the Tribunal notes generally in that context that the agent is expected to keep orderly records, had many months to prepare for the hearing, and is obliged by law to keep its records for a minimum of 6 years.

6. The Respondent applied for a further adjournment of the case immediately after lunch on 30th July 2014, to allow the Respondent to reconsider and properly order its documents, offering to pay Mr Barton's costs thrown away at this hearing. Mr Barton stated that he would not object. After consideration, the Tribunal decided to refuse the application. It appeared from discussion with the parties that it would not be possible to find a convenient day to complete the hearing until November 2014. The Respondent had already had many months and several opportunities to get its paperwork in order. Further, the Respondent had had a similar problem with papers in the 2011 LVT case. The cost to the public purse and reasonable despatch of cases was also taken into account.

7a. The Tribunal notes that it has not accepted the Applicants' submissions that it should disallow all sums where no invoice was produced. The

Tribunal is entitled to make reasonable inferences from the available evidence. Also it has not accepted that where annual service charge accounts exist, an accountant's certificate is sufficient evidence of the accuracy of the sums spent, or that the accountant has examined all the relevant invoices. Again this is a matter of evidence and making reasonable inferences.

6b. The Tribunal notes that matters were heard in a different order to the one used in this decision. Matters have been re-ordered to try and make the decision easier to follow.

General issues

A. Bank accounts and Reserve Funds

8. The Applicant submitted that the agent had not supplied sufficient evidence as to the amounts which had been transferred to the reserve fund or that the reserve fund was being held in a separate bank account. The information provided as to amounts held was contradictory. The reserve fund apparently held only £0.39 at the end of the period in dispute. Amounts collected for the Reserve Fund had not been properly used in 2012 for a declared purpose i.e. redecoration, but had apparently been spent. Further, the amounts shown in statements as having been transferred to the Reserve Account were not equal in each year, as he submitted they should be. The Tribunal should disallow at least part of the transfer to the reserve fund due to the Respondent's failure to carry out repairs and maintenance in a timely manner.

9. The Respondent submitted that it had provided annual service charge accounts for the property within the Respondent's company accounts. It agreed that only £0.39 was held in the reserve fund account on 31st December 2012. The amount which should have been in the account was £10,040, if all debtors had paid and all creditors had been paid. The money had been borrowed by the service charge account to meet ongoing liabilities otherwise management of the block would have ground to a complete halt. There was a service charge deficit of £15,226 on 31st December 2012 and lessees' arrears of £7,732. £6,043 was held in the service charge current account, but this was deemed to be working capital. The reserve fund was held in a separate bank account. There were no reserve contributions prior to 2009. There was no requirement for contributions to the reserve fund to be equal, either in the Lease or otherwise.

10. The Tribunal found copies of some bank accounts statements in the bundle. The Tribunal noted that e.g. the reserve fund account was held in a client saver account (which the Tribunal notes is NOT a client account for the Respondent, only for the agent) The account name was "Town and City Management Limited Re Pandongate House Management Co Limited Reserve Fund". Nowhere in the title to the account did the words "client account" appear, or any other clear indication that the agent held the money as a trustee. The current service charge account was named "Town and City Management

Limited Re Pandongate House Management Co Limited Service Charge". The names on both the accounts are in clear breach of the RICS Service Charge Residential Management Code, para. 4.5. The service charge accounts for the year ending 31st December 2012 included a figure for the Reserve Fund of £10,040, and a figure of £(15,225) (i.e. a minus quantity) for the service charge account. The other figures could be discovered as noted in the Respondent's evidence above. However note 4 to the accounts was misleading in that it suggested the service charge money was held in trust at Barclays Bank. While that must clearly be the position between the Respondent and the leaseholders, there was and is no indication whatsoever that Barclays Bank has notice of the trust. Similarly Note 6 relating to the Reserve Fund states that it was established to meet the costs of various stated major works, but nowhere is there any indication that the money had already been used to meet shortfalls relating to other matters in the service charge account.

11. The Tribunal decided firstly that all the service charge monies currently in the Respondent's agent's accounts were not properly secured as against the agent's creditors. It was thus unreasonable for any further money to be paid to the Respondent until this problem was rectified. This problem can be rectified within a few days if the agent gives the proper notices and renames the accounts following the RICS Code Paras 4.5 - 4.7. Secondly, the Tribunal decided that the sums demanded in respect of the reserve fund from 2009 onwards were not in fact in a true reserve fund to defray the costs of non-annual recurring expenditure, but had always been used as a means of financing under-recovery of current service charges. This is very bad practice. It penalises prompt payers by subsidising slow payers, thus favouring one group of beneficiaries against another. Nevertheless, the Tribunal recognised that if it decided to reduce this element of the service charge for the years in question, this would be very likely to precipitate an immediate cash crisis for the Respondent which would adversely affect the interests of all the leaseholders, including the Applicants. While not intending to set a precedent, the Tribunal decided in the circumstances of this case to treat the so-called Reserve Fund as a fund intended to meet current contingencies since that is what it had been used for. In any subsequent application another Tribunal might take a much more stringent approach to this issue. The recognised way to deal with the problem of under-recovery is to collect a reasonable amount, (often 10%) as a contingency for any current year, to prepare and serve accurate final annual accounts on leaseholders promptly, demanding any resultant balancing charges or giving credit for overcharges at the same time, and to energetically pursue debtors.

12. The Tribunal agreed with the Respondent's submission that it was not a requirement under the Lease or otherwise for contributions to the reserve fund to be equal. The Tribunal could find no force in the circumstances of this case for the Applicant's submission that transfers to the reserve fund should be disallowed in view of the Respondent's

alleged failure to carry out repairs and maintenance. In any event, the Tribunal had no jurisdiction to do so.

B. – Service Charge percentage for Apartment 311 Pandongate House.

13. This matter was conceded prior to the hearing by the Respondent. The Tribunal reiterates its decision at Item (1)c) above.

C. – Matters not requiring decision

14. The Tribunal reiterates Items (1)d),(1)e), (1)f) and (3) above.

D. – Validity of Service Charge Demands

15. The Applicants submitted that service charge demands were not being made in accordance with the Fourth Schedule to the Lease, particularly in respect of estimates being made no later than the beginning of December immediately preceding the commencement of the maintenance year, failing to supply a certificate signed by the company showing the actual service charge or the amount of any adjustment for any maintenance year, and failing to charge the actual service charge for the maintenance year (for example, the accounts for 2010 showed a surplus of £10,287 which had not been credited to the leaseholders). In any event the demands were incomprehensible. Further the demands did not comply with statute in several respects, particularly the requirement of certain (unspecified) information to be shown pursuant to Sections 47 and 48 of the Landlord & Tenant Act 1987, and the statements of the lessee's rights and obligations.

16. The Respondent submitted that the limited company accounts did clearly show the amount of service charge expenditure for the relevant years and the copies sent to the Applicants would have been a copy of those signed by the Directors. The surplus in 2010 had been used to offset the deficit shown the previous year. The demands made had always had the correct statements of rights and obligations attached.

17. The Tribunal was initially hampered in consideration of this matter by the fact that the Respondent had omitted a page in nearly all the company accounts copied in the bundle which detailed the annual service charge accounts. These were provided for the second day of the hearing. The Applicant had not clarified his particular problems with the statutory information, apart from the statements of the lessee's rights and responsibilities.

18. Despite the agent's confidence that the correct statutory statements of rights and obligations had been provided, the copy provided attached to the back of the copy service charge invoices was the statement relevant to administration charges. Further the statement had been altered to include a list of additional administration charges to be made by the agent. The Tribunal invited the Respondent's witness, Mrs Johnson to take them to one of the many service charge invoices in the bundle which had the correct "service charge" statement attached, but she was unable to do so. It seemed clear to the Tribunal from her evidence that she had not previously understood the difference between the two

forms of statement. Thus the Tribunal concluded on the balance of the evidence that none of the service charge demands made by the Respondent was valid, as the wrong statutory statement had been attached. The Tribunal consequently found it unnecessary to seek submissions, or rule on the question of altering or adding to the statutory information, although in other cases it might be relevant to do so.

19. The Tribunal also considered the effect of service charge demands based on estimates, without the issue of any final service charge accounts as foreseen by the Lease, or clear statements of individual accounts. While it appeared that copies of the Respondent's company accounts were being issued giving some indication of the general situation (notwithstanding the deficiencies noted by the Tribunal above), it was clear from the obscure and confusing demands and summaries in the bundle that no reasonable leaseholders would be able to accurately work out their own financial position from the information provided by the Respondent. This situation had persisted throughout the period in dispute from at least 2008 onwards. The demands thus had a very fundamental defect, they were unintelligible. Whatever the provisions of the Lease, it must be implied that information and demands supplied in accordance with the Lease are intelligible to a reasonable leaseholder trying to ascertain his or her own financial position. Unintelligible demands must by their very nature be invalid.

20. The Tribunal therefore decided that all demands issued by the Respondent for the service charge years 2008 – 2012 inclusive were invalid and needed to be reissued in a summary intelligible to a reasonable leaseholder before they became payable. This should pose no problem to a competent managing agent. The Tribunal noted that the useful summary provided by the Respondent for the hearing as Appendix 15 of the bundle, which condensed 8 years into two sheets of A4, might be a useful starting point for rectifying this problem, and could form part of the demand, so long as the statutory and other requirements for a demand are also met.

E. – Specific service charge items

2007

21. The Applicants disputed all charges made in that year, but often in very general terms. Specific items were mentioned in their Reply to the Respondent's statement of case; water and sewerage charges being incorrect, multiple versions of the accounts, inconsistent correspondence. Other items mentioned in the Applicants' original statement of case included unsatisfactory cleaning and window cleaning, caretaking done by a member of the manager's staff, poor external maintenance, legal fees of £176.25 unexplained. No evidence of insurance premium of £9,423.16, or that it was competitive. Water and sewerage charges were being billed to the Respondent, not to

individuals, the cumulative deficit £1,004 not being explained. He believed that the major part of that deficit of £982 (incurred in 2004) related to legal fees incurred in setting up the Respondent company, which he submitted should have been done at the cost of the developer, not the leaseholders.

22. The Respondent submitted that during this period the property was managed by another agent, Sanderson Wetherall, and it had not passed on its records. The discrepancy in the water bills was explained by the letter from the then accountants, Joseph Miller & Co dated 9th March 2009. The water bills totalled £1,970.11 less than stated in the signed statutory accounts. This had been rectified in the accounts for the following year. The water company had refused to install separate meters for each apartment. The Respondent could do no more. The total deficit shown in the 2007 accounts was £15,021.93 which was included as income, presumably on the basis that the agent would issue excess demands for this sum. This was apparently not done, nor was this advised to the new agents, Town and City. The Respondent effectively agreed in evidence that this would not have been obvious to the leaseholders from the documents supplied to them. The position was in fact as stated in a letter dated 15th October 2009 by the (new) accountant to a Director of the Company, (Miss Joisce).

23. The Tribunal considered the submissions and evidence. It was informed at the hearing that the handover between the agents had not been amicable. The management file had not been handed over to Town and City. Part of the previous agent's last fee remained unpaid, and management had effectively stopped for a period during 2008. No money had been handed over by the previous agents. The Tribunal will return to that matter in relation to the 2008 accounts. Nevertheless, the previous agents had handed over a note of all the leaseholders' accounts, made up to on or about 1st October 2008, most of which showed money owed to the service charge, although the Tribunal noted that some were in credit.

24. Dealing with the Applicant's specific complaints, the Tribunal decided that the discrepancy in the water and sewerage charges had been explained in the Joseph Miller & Co letter of 9th March 2009. The Applicant's view that individual meters should be installed was unrealistic if the water company was not prepared to do so. Whatever had been said about the accounts for 2007 by others, the Tribunal had a signed copy of the accounts in the bundle. They were completed without audit, but the Tribunal noted the clarity and frankness of the Accountant's letter of 2nd February 2009. That letter also revealed the existence of a service charge expenditure report he had seen, prepared by the previous agents. It also provided a list of debtors, noted certain errors within the accounts, and that an amount of £1,609.88 was due from the developer for 2007 (apparently relating to unsold properties). The letter recommended following up the various debtors. It would have assisted greatly if the file had been recovered from the previous

agent, but in view of the dispute over fees, the reality was that without payment of the fees no file would be forthcoming.

25. Relating to other matters in issue, the Applicants provided no evidence for the assertions that the maintenance, cleaning and window cleaning had not been done satisfactorily in 2007, and there is no likely way of discovering the truth of those items more than 6 years later. The complaint about the caretaker suffers from the same problem. The Tribunal notes that the quality of the caretaking work was not challenged, although if a member of the agent's staff was doing the work, the Respondent's Council (i.e. Board of Directors) should have been informed. Again there is no evidence of this point, one way or the other. The Tribunal decided that the Applicants had not put forward sufficient evidence to make a case for the Respondent to answer.

26. The Tribunal further considered in all the circumstances that to make swingeing reductions in the service charge for 2007, as requested by the Applicants would be too harsh in a situation where it was difficult to see how the Respondent would be able to recover the management file or money from third parties without expensive litigation, and there was a significant risk that it might not be successful. In any event, the unrecovered costs would have to be replaced by the leaseholders themselves in their capacity as members of the company before any such litigation was concluded. The Tribunal decided to accept that the Respondent Company's filed accounts for 2007 were reasonable, and also that the previous agent's final statements prepared in October 2008 confirming individual leaseholders' account balances were accurate (except for Apartment 311). The Respondent has conceded that too high a contribution percentage was applied to Apartment 311 and will take steps to give credit on the leaseholder's account for amounts overcharged. Tribunal also decided that the apartment undercharged should be identified and a demand for balance due sent within 21 days of the date of this decision.

<u>2008-12</u>

<u>2008</u>

27. 2008 is an atypical year, but raises a number of issues affecting subsequent years. The Tribunal noted that in answer to questions from the Tribunal, the Respondent's agent agreed that Town and City had been appointed as its new managing agent on or about 19th June 2008, but conceded later that there was a further agreement (not produced to the Tribunal) dated 1st October 2014. However the previous agent had insisted on receiving a full 3 months' notice to terminate its appointment with the result that such notice was only effective to terminate that appointment on 30th September 2008. The agent believed that it had been instructed to commence work as from 19th June, as it was alleged that no management was being done by the previous agent, but the previous agent remained in effective control of the property and the management until 30th September 2008. However only from 1st October 2008 were the records, management, and invoicing within the control of Town and City during 2008. The

Respondent also conceded in answer to questions from the Tribunal during the hearing that the Company Secretarial fees for all years should be removed after the Tribunal pointed out that the agent's management agreement included this service within the management fee.

28. The Tribunal decided that it was unreasonable for Town & City to charge its management fee when another agent was instructed, and (according to its own evidence) had been formally prohibited from entering the site. The agent had apparently not been involved with the day to day running of property until October. The appropriate course was to apportion the previous agent's fee to 30th September, and apportion Town & City's fee from 1st October. The Tribunal makes no comment on the merits of the previous agent's fee, which is apparently in dispute, and has not been paid.

29. The Applicants submitted that the caretaking costs, cleaning, and window cleaning were below standard on similar grounds to 2007. The company secretarial services were also substandard as the Respondent had incurred a late filing penalty from the Companies Registry of £317 (paid in 2009) apparently for the accounts relating to 2007 and 2008. This was due to the agent failing to obtain the signature of a director of the company to the accounts within the time limited for filing the accounts. Mr Barton also queried the increased cost of the building insurance and whether the cost was competitive. There was no invoice for the Health and Safety inspection charged at £552. He also queried the sundries item of £513, the water rates of £11,690 and the management fees which he considered totalled £12,484. He noted that the copy of the accounts he had received was marked "draft", that the accounts were dated 12th January 2010, and submitted that as a result the Respondent was unable to recover money included in the budget for 2011. He also queried the duplication of management charges in the period 1st June to 30th September 2008, and how much of the other charges were being paid to persons connected to the agent. He submitted that the Tribunal should disallow all the 2008 service charge expenditure.

30. The Respondent initially submitted that the current agent had not been involved in preparing the 2007 accounts, and could shed no light on the filing penalty of £100 for that year, but also stated that these accounts had only been approved on 22nd January 2009. The Respondent relied generally on the signed accounts for 2008 (and all other years), but made no specific further comment in its written statement. (The Tribunal notes that production by the Respondent of invoices for the years 2008 – 2012 only occurred after further directions were given for the second day of the hearing). At the hearing the Respondent conceded that some of the Late filing fees should be removed from the service charges. The Tribunal was prepared to accept that a late filing fee was allowed in the year of the takeover, due to the difficulties encountered. It seems that a late filing fee for 2007 would have been almost unavoidable for a new agent.

Cleaning and Window Cleaning (all years).

31. The Applicants submitted that these items had been done unsatisfactorily, and that many invoices were missing. They queried the frequency of cleaning. They submitted (undated) photographs as evidence of this problem. They also considered that windows on the 3rd and fourth levels had not been cleaned. From 2009, the cleaners came from Darlington, some distance away, which would increase their costs.

32. The Respondent denied that the work had been done unsatisfactorily. The agent submitted that to clean the 3rd and 4th level windows it was necessary for a cherry picker to be used. To clean windows facing the street it was necessary for a temporary road closure order to be obtained. Thus this was only done on a limited number of occasions. The cleaners for 2009 onwards had come from Darlington, but they were known to the agent as reliable.

33. The Tribunal considered the submissions and evidence. Mr Barton did not reside at the property, and his own evidence could, at best, only be anecdotal. The situation was similar to 2007. The Tribunal considered that without quite detailed first hand evidence it could only properly rely on its own inspection, some years after the event. The photographs showed litter on the communal walkways, but not in large quantities, and it did not appear to have been there for some time. Neither the photographs, nor the Tribunal's own inspection, suggested long term neglect of the cleaning. The state of the communal decoration in the photographs was tired and paint was peeling, but that was not a cleaning issue. Regrettably litter can be dropped within minutes of cleaning, and it may be several days before it is removed, even in the best maintained building. The Respondent admitted that the windows on the 3rd and 4th levels were cleaned less often, but clearly the cost of that work was greater. The Tribunal noted that the Lease did not allow for a differential contribution for this item to be applied to the 3rd and 4th levels. The nearest analogy the Tribunal is aware of is contributions to the maintenance of a lift, which will be of negligible benefit to residents on the ground floor, but in most cases the service charge contribution makes no differentiation to take account of that matter. This issue is, in the Tribunal's experience, a common problem in service charges, but without the agreement of all the leaseholders, or a variation of the Lease, the contractual terms of the Lease must apply.

34. The Tribunal decided that the distance travelled by the cleaners and window cleaners was relevant. The Respondent stated that the cleaners cleaned several other blocks nearby but the cost seemed high as compared with previous locally sourced cleaning costs. Clearly a 60 mile round trip would add significantly to the time and cost of the work. Unless the Respondent had evidence to show a comparison between local and Darlington costs, it seemed that this issue should be resolved in favour of the Applicants. The Respondent provided no

evidence on this issue. The Tribunal decided to reduce the cleaning and window cleaning costs by 10% for those years when the Darlington cleaners were used, as the additional time incurred was unreasonable.

Insurance (all years)

35. The Applicants submitted that the Respondent's agent was taking a commission from the annual building insurance premium. They also queried whether the cost was competitive, and whether terrorism insurance was reasonable. Relating to 2008, the Respondent had cancelled the insurance arranged by the previous agent, and arranged one with a more expensive premium.

36. The Respondent's agent admitted that it received a commission of 20% on the insurance premium, but submitted that it was entitled to do this by agreement with the Respondent's directors. The insurance had been arranged through a broker.

37. The Tribunal considered the evidence and submissions. The additional cost in 2008 seemed to relate to the addition of terrorism cover. If so, the basic cost appeared competitive when compared with the previous insurance. The Tribunal noted that it is now well settled law that the person insuring is not obliged to accept the lowest quotation (even if it is possible to obtain a truly comparable quote several years after the event). The obligation is to act reasonably. Adding terrorism cover for the subject property cannot now be considered unreasonable. However, the agent was unable to produce evidence of the agreement between the Respondent and agent allowing it to benefit from commission, or that the general body of leaseholders were aware of it. In the light of that commission, the management charge by the agent seemed high. For simplicity, the Tribunal decided to apply a broad brush approach to that matter by applying a reduction in the basic management fee of £20 per unit per annum from 2009 onwards, to reflect the commission received, before applying any other reductions to the management fee (discussed below).

Fire Risk and Health & Safety Assessments (all years)

38. The Applicants submitted that these assessments were unreasonable, and the costs were also unreasonable. It appeared that the assessments had been carried out by persons connected to the Respondent's agent. The same assessor who had charged £125 for an annual assessment in 2009, had charged £470 a year later. Work by connected persons should be considered when assessing the agent's management fee.

39. The Respondent submitted that the assessments were reasonable, and required by law. The costs were also reasonable. The Assessments had been carried out by other parts of the agent's organisation, but there was no reason in principle why the work should not be carried out by connected persons.

40. The Tribunal considered the evidence and submissions. At the hearing it pointed out to the Respondent's agent that there was no legal

requirement for such assessments to be carried out annually. The legal requirement was that they should be carried out when reasonably considered necessary. The Tribunal considered that fees for an initial detailed inspection were reasonable. The agent's own quarterly inspections should reveal whether it was reasonable to carry out a further inspection, although even if no new circumstances intervened, a further inspection would be reasonable every five years. In this case, the cost of the detailed initial inspections would be allowed, but annual repeat inspections were disallowed as unreasonable.

Accountancy (all years)

41. The Applicant submitted that the annual accounts were inaccurate, lacked sufficient detail, and were not audited, or provided a certificate as required by the Lease. The fees were unreasonable. The accountants were doing work which should have been done by the managing agents, as noted in the 2011 LVT decision.

42. The Respondent submitted that the accounts did not require audit, and satisfied the terms of the Lease.

43. The Tribunal considered the evidence and submissions. It appeared common ground that the 2007 accounts did not themselves give a clear picture of the Respondent's financial position regarding debtors, and this issue was not clarified in subsequent accounts. Nevertheless, both sets of accountants had written letters to Directors or the agents pointing out the shortcomings of the accounts, making reasonable recommendations for action, notably on 2nd February, 9th March, and 15th October 2009. It would be a serious matter to publicly qualify the accounts, especially in a transitional period. The main problem appeared to be that no effective action had been taken to implement the advice in those letters. The Tribunal decided that the problem related to management rather than accountancy. The Tribunal decided to allow the accountant fees in full, apart from an apparent error in the 2012 accounts where the amount noted in the accounts overstated the accountants' charges by £6.

Company Secretarial Fees

44. Dealt with above.

Late Filing Penalties

45. This matter has been dealt with at paragraph 30 above

Legal and Debt Collection Costs (all years)

46. The Applicant submitted that these costs were unreasonable and not in accordance with the Lease. They appeared to relate to costs of collection from individual leaseholders, which were not collected from them.

47. The Respondent's agent submitted that these were costs of the agent, agreed with the Respondent, and notified to the leaseholders. However the Respondent was unable to produce a satisfactory set of invoices, or

point to any written evidence where this had been agreed with the Directors.

48. The Tribunal considered the evidence and submissions. It was concerned by unsupported evidence given by the Respondent's agent's witnesses that various actions had been agreed, authorised or directed by the Respondent's officers, and then given further evidence relating to other matters that financial decisions and approval of expenditure had been delegated to the agent. It also appeared from the evidence that only one leaseholder, or at most two, had been appointed at any particular time during the periods in question. Neither of these leaseholders had appeared effective. Thus the overall impression gained by the Tribunal was that the Respondent was effectively leaderless, and relying almost totally on the agent. In such a situation, the Tribunal should take some care in accepting evidence of the relationship between these two organisations. There was no witness statement or correspondence from a director of the Respondent. The Tribunal also agreed with the previous LVT decision in 2011 that chasing arrears (short of legal action) was part of the duties of a managing agent, and should not be additionally charged to lessees. The costs of the solicitors and other third parties were also disallowed. If the money being pursued was not yet due, as the Tribunal has found above, then the solicitors' costs were clearly unreasonable. The Tribunal was also concerned to see that a significant amount of solicitors' costs were incurred relating to a Section 146 notice, which was not preceded by a section 168 determination of this Tribunal, as it should have been. Mr Stevens suggested that he understood one had been obtained, and in any event Mr Barton had not pleaded this issue. Nevertheless, the Tribunal considered that issuing and pursuing a Section 146 notice without having obtained a Section 168 determination was an abuse of process, which seemed to have been used to pressurise Mr Barton's mortgagees and previously his LPA Receiver into paying demands. Such a practice is wrong in principle.

Management Fees (All years)

49. The Applicants submitted that the management of the current agent had been very unsatisfactory since its appointment, referring to many matters raised above. Mr Barton submitted that 50% should be deducted from the basic management fees. He further submitted that a number of items, e.g. sundries and letters chasing debts were not permissable additional extra charges or in accordance with the management agreement. He further submitted that a number of services were being done by third parties connected to the Respondent's agent, for example Fire and Health & Safety surveys. He queried the propriety of such charges.

50. The Respondent refuted Mr Barton's submissions. It conceded that there had been billing problems, but generally the management was being done, and to a satisfactory standard. It was permissable for services to be carried out by related companies. The inspectors retained by the agent provided expertise.

51. The Tribunal considered the submissions and evidence. Overall, the performance of the agent was highly unsatisfactory. It appeared that it was generally arranging for the services to be carried out, but its accounting arrangements revealed a lack of basic accounting, legal and management knowledge, and even basic office procedures. It claimed to have proper records but the shortcomings of its filing system have been noted above. It showed questionable understanding of the Lease and the RICS Code. The agent's actions to date had led directly to many of the other problems noted by the Tribunal in this decision. Errors were being blamed upon the Directors of the Respondent, but at the same time the agent claimed that significant financial matters had been delegated to it. There was, however, no evidence of these matters beyond the oral evidence of the agent's staff at the hearing. There were no minutes of meetings between the directors and the agent, or a witness statement from a director.

52. The Tribunal decided that the fees charged were unreasonable, relating to quality and cost. It noted that it was exceeding the terms of the management agreement and/or the Lease relating to administration charges for chasing arrears. There was little or no evidence that charges being made had been agreed with the Respondent's Directors or that the use of connected contractors had been known to or approved by the Directors. The same applied to the insurance commission. The other problem was VAT, which would have applied at different rates in different years. The Tribunal decided that rather than try to disentangle this complicated financial web of charges, it would take a broad brush approach and apply the following principles to deciding upon reasonable charges for the years in dispute;

a) decide a reasonable basic fee per unit per year based on its own experience of local market conditions. It decided that a reasonable basic fee would be £130 per unit in 2008, £135 per unit in 2009, £140 per unit in 2010, £145 per unit in 2011, and £150 per unit in £2012.
b) From each figure the Tribunal deducted £20 to reflect the insurance commission. The resulting figure reflected the charge for a reasonable service.
c) The Tribunal then applied a reduction of 50% to all years to reflect the quality of the actual service.
d) It then added VAT at the rate which applied for each year in dispute.

Sundries (All years)

53. The Applicants submitted that this charge was unreasonable and inadequately documented. Production of the invoices revealed that these were annual charges made by the managing agent for unexpected items of work which it considered additional to its basic charge. The Applicants continued their challenge.

54. The Tribunal considered the evidence and submissions. In the annual accounts this item had been treated separately from the management fees. It looked like the usual item for odd small payments which do not

fit conveniently into any established category. In fact these payments were all to the managing agent. The charges appeared unrelated to the amount of work actually or estimated to be done. The same amount was charged for each half year. It appeared to be just an additional charge by the agent. The Tribunal disallowed the charges entirely.

Electricity and Water Charges (All years)

55. The Applicants submitted that these charges were too high. Mr Barton considered that the Respondent should have installed individual meters, rather than having one meter for the whole development. There were invoices missing.

56. The Respondents submitted that they had paid the charges made by the relevant suppliers. The water company had refused to install individual meters, and thus nothing could be done about that issue. There had been problems with a supplier charging more than the agreed rate, and getting a credit for the overcharge.

57. The Tribunal considered the evidence and submissions. Normally it would have expected this issue to be relatively simple. However a number of invoices were missing. The Tribunal had to make assumptions based on the evidence it had about consumption. It accepted the Respondent's view that it was not in a position to insist that individual meters be installed against opposition from the water company. Nevertheless it concluded that the charges made were not unreasonable.

Water pumps and disinfection (2011 and 2012)

58. The Applicants challenged these costs. In their view the pumps had failed on several occasions due to lack of maintenance by the Respondent. The cost should not be passed on to the leaseholders. Many leaseholders had suffered loss and been put to great inconvenience while the pumps were fixed. Also, the costs were too high.

59. The Respondent submitted that there had been no maintenance contract on the pumps when the management had been handed over. The development needed a separate header tank and pumps to pump water into the header tank. These pumps had failed over a period in 2011 and 2012. Also it was necessary to disinfect the header tank periodically to prevent the growth of harmful organisms.

60. The Tribunal considered the evidence and submissions. The actual costs did not seem to be seriously challenged. The problem was; upon whom the costs should fall. While it was surprising that the water pumps had failed so soon after installation, it was not clear that regular maintenance would have avoided the problem. Clearly the work had to be done urgently otherwise the development would stop functioning. The Tribunal decided that the work was reasonable, and reasonable in amount. It also noted that the Respondent had arranged a maintenance

contract, which provided periodic inspections, which seemed prudent, although somewhat late.

Charges for Developer's units written off in 2011 accounts.

61. The Applicants challenged why the Respondent had written off £1,610 owed by the freeholder to the service charge on unsold units in the period ending in 2007. No attempt had been made to recover the money.

62. The Respondent's agent submitted that it did not know why this sum had been written off. It had been a decision taken by the Directors of the Company. Its witnesses believed that no action had been taken to recover the money.

63. The Tribunal considered the submissions, and the lack of evidence. Without evidence from a person with actual knowledge of the circumstances, it seemed most unusual to write off the money before any limitation periods had expired. It also seemed surprising that the money owed had not been as energetically pursued as money owed by, for instance, Mr Barton, whose mortgage provider had been informed. Charles Church is part of a large nationally known development company. It seemed extraordinary that it would fail to pay moneys properly due and demanded. The Tribunal considered that until the result of a demand made on Charles Church (and/or the current freeholder) had been ascertained, and a satisfactory explanation was given to the directors of the Respondent, this money should not be recoverable from the general service charge. To protect the position, a demand should be made forthwith, to try and ensure that the Limitation Acts would not apply to the sums involved.

Non Compliance with previous LVT decision in 2011

64. For clarity, the Tribunal notes that the 2011 decision applied to estimated charges for 2010 only. This Tribunal is therefore entitled to revisit all sums in the service charge for 2010 in the light of final accounts now available.

65. The Applicant Mr Barton submitted that he was not sure from the accounts produced to him if all amounts reduced in the 2011 decision had been credited.

66. The Respondent submitted that it had removed all the charges and exhibited a colour coded account summary to demonstrate this point. The remaining sums unpaid had been recovered from Mr Barton's mortgagee.

67. The Tribunal decided that both sides had been slow to implement the previous decision. The Respondent appeared to have now complied with the financial aspects of that decision, but appeared not to have understood the principles set out in the decision, leading to errors in

preparing accounts for subsequent years, and also resulting in such matters being raised again in this application. In the context of statements, the Tribunal noted that some statements dated in 2011 had items included which related to items for 2012, an apparent impossibility. It is bad practice to back-date documents, as it tends to affect a party's credibility.

68. However the Tribunal has no independent jurisdiction to enforce its decisions. A decision of the Tribunal is enforceable in the County Court in the same manner as a County Court Order. Any enforcement application should be made to that Court, as it has jurisdiction to make any peremptory or other orders necessary.

Decision on application relating the Administration charges

69. In respect of the Schedule 11 (Administration Charge) application (0014) by Mr Barton alone, Mr Barton submitted that none of the charges applied to his account in the period were payable. The items to which they related were not payable, nor had they been demanded properly. Also the Respondent had rejected a cheque from him for £1,200 in 2013 without proper explanation.

70. The Respondent submitted that it had removed some administration charges from the account but had not removed the charges of the solicitors pursuing payments contending that this had been allowed by paragraph 59 of the 2011 decision. Mr Stevens suggested the Tribunal should give as wide an interpretation as possible of the covenant relating to payment of charges for Section 146 notices.

71. The Tribunal considered the evidence and submissions. The evidence was complex. The Tribunal noted and approved the views of the 2011 Tribunal that chasing letters were part of the general management duties. The Tribunal decided that the agent was in error in relying on paragraph 59 of the 2011 decision. It was a conflation of what was stated there. As noted above, the Section 146 notices served on the Applicant were invalid without a Section 168 order. Further, the Tribunal considered that the accounting defects noted above made it impossible for the Applicant to ascertain his true financial position. Requiring him to pay for the cost of pursuing service charges in such a situation was unreasonable.

72. The Tribunal decided that **none** of such charges (including items described as legal charges but in fact payable to the agent itself) levied in respect of the service charge years 2007, 2008, 2009, 2010, 2011, and 2012 were reasonable or payable by the Applicant Mr Barton in respect of 311 Pandongate House. The Tribunal further decided that the solicitors' charges placed on the Applicant's account were unreasonable.

Costs

Section 20C

73. The Applicants made an application under Section 20C. The Applicant submitted that he had attempted to negotiate with the Respondent over this matter, most lately after the Tribunal's original Directions, but the Respondent's agents had been evasive, and eventually proposed a date which they knew was inconvenient. He had asked them for another date but they had not replied. It was unreasonable to include the Respondent's costs in the service charge. The Respondent had not prepared properly for the hearing by producing the documents that were required. The Lease did not allow the collection of these costs as an administration charge.

74. Mr Stevens submitted that Mr Barton had not agreed to a proposed appointment to inspect the documents when the Respondent's agent had tried to negotiate with him. The Applicants were conflating Section 20C with Rule 13 of the 2013 Rules. The Respondent was a lessee owned management company. The Applicants were not paying their service charges and thus driving the Respondent into a corner. The Applicants' pleadings were impenetrable and even gnomic in places. Mr Barton had not made his criticisms clear. There was a question of proportionality. The Respondent had been asked to answer a case which had not been put forward in sufficient detail until the day of the hearing.

75. The Tribunal considered that Mr Stevens' submissions on this point were overstated. It was correct that some elements of Mr Barton's statements of case were vague, but this appeared to be due mainly to the fact that the Respondent had given insufficient discovery at the proper time. It had still not done so by the close of the hearing, despite having been given multiple opportunities to do so by the Tribunal. The email exchanges in the bundle relating to the appointment to inspect the Respondent's accounts and invoices appeared to support Mr Barton's version of events. It seemed more relevant to the Tribunal that despite the time given in the original Directions, a seven week adjournment, and a further opportunity to produce and order its files for the hearing, the Respondents had been quite unable to give a proper or coherent discovery of its files, as noted above. As the Tribunal had been unable to extract the all the documents after many months and a three day hearing, it seemed most unlikely that Mr Barton could have done better at a short inspection appointment. The Tribunal considered that the fault lay squarely with the Respondent's agent. At best, its approach was unprofessional and muddled in the extreme. The Respondent's Directors/Council appeared to have little understanding of what was being done by the agent, which was supposed to advise them. The agent blamed many issues on the Directors orally at the hearing, but despite being the Company's Secretary it produced no

minutes of Directors' meetings or communications which supported this criticism.

76. Nevertheless, the Respondent was obliged to accept responsibility for its agent. The Applicants in their capacity as lessees were not obliged to do so, although they might be required under company law to deal with these, and other matters. The Respondent would have to look to its advisers and members on this point generally. The Tribunal decided that the Applicants had had no reasonable alternative to bringing this application to a hearing, thus it decided to make an order under Section 20C to limit the Respondent's costs chargeable to the service charge relating to this application to Nil.

Rule 13

77. The Applicant also made an application under the 2013 Rules that the Respondent be ordered to reimburse the fees paid by Mr Barton. It was not entirely clear whether Mr Barton referred to all fees paid, or his fees paid to the Tribunal. The Respondent resisted this application.

The Tribunal decided that in the context of his submissions, Mr Barton was referring to his fees paid to the Tribunal. For the reasons stated above, it appeared to the Tribunal that there had been no reasonable alternative to bringing this application. Thus Mr Baron was entitled to reimbursement of his fees. The Tribunal decided to order that the Respondent give Mr Barton a credit on his account of the same amount as the fees he had paid to the Tribunal. The Tribunal does not have access to the administration file, so the actual fee should be ascertained from the case officer.

Signed: Lancelot Robson
Tribunal Judge

Dated: 23rd September 2014

Appendix 1 – extracts of relevant legislation

Landlord & Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions 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.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,

(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-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.

Section 20C

(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 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 a 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;
(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 a 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.

Commonhold And Leasehold Reform Act 2002

Schedule 11 Paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 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).

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

13.-(1) The Tribunal may make an order in respect of costs only-
(a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on application or on its own initiative.

(4) – (9)...

Appendix 2

(Decisions made by Tribunal on specific items of service charge) See attached

Appendix 2

(Decisions made by Tribunal on specific items of service charge)

Service Charge Decision Summary 2007 – 2012 inclusive

NB 1 – This summary relates only to the named Applicants who should be charged their lease stated contribution based on the lower annual totals noted below. Leaseholders not taking part in the application are not entitled to these reductions.

NB 2 – Highlighted figures indicate amounts altered by the Tribunal from the demanded sums.

2007 – Final accounts approved by accountants accepted.

	2008		**2009**		**2010**	
EXPENDITURE	Demand	Allowed	Demand	Allowed	Demand	Allowed
Cleaning	4,547	4,547	4,784	**4,306**	5,410	**4,869**
Refuse clearance						
Window cleaning	1,939	1,939	2,118	**1906**	3,423	**3,081**
Jet cleaning			2,279	2,279		
Cleaning water tank			799	799	2,127	2,127
Maintain grounds	425	425	155	155		
Block Ins	11,180	11,180	10,052	10,052	11,341	11,341
Directors' Ins					257	257
Engineering Ins	84	84	710	710	350	350
Assess Fire Risk			125	125	450	**Nil**
Health & Safety	552	552	552	**Nil**		
Accountancy	1,029	1,029	1,526	**1,426**	1,236	1,236
Co. Sec. Fees	200	**Nil**	200	**Nil**	200	**Nil**
Late Filing Pnlty		**100**			750	**Nil**
Legal and debt costs			317	**Nil**		
Management Fees	12,484	**8,257**	9,660	**8,464**	10,363	**9,024**
Co. House Fee	130	**30**				

Sundries	383	**Nil**	542	**Nil**	633	**Nil**
General Building Rep.						
Electrical	677	677	888	888	281	281
Drains						
Roof and gutters			322	322	153	153
Lightning Protection			350	350		
Alarms	116	116	1,507	1,507	1,195	1,195
Refuse	1,410	1,410	1,765	1,765	715	715
Misc. Repairs	490	490	2,663	2,663	901	901
Water pumping						
Water disinfection						
Electronic gates						
Door Entry	214	214	272	272	200	200
Lift Maintenance	1,485	1,485	1,584	1,584	1,664	1,664
Electricity co. parts	4,322	4,322	4,107	4,107	4,664	4,664
Water rates	11,690	11,690	15,082	15,082	15,960	15,960
Telephone	17	17	249	249	172	172
Freeholder's units						
Reserve fund (contingency)			2,520	2,520	1,000	1,000
Total	53,374	**48,564**	65,128	**61,808**	64,709	**60,454**

	2011		**2012**	
EXPENDITURE	Demand	Allowed	Demand	Allowed
Cleaning	5,052	**4,547**	5,142	**4,628**
Refuse clearance	1,872	1,872	2,084	2,084

Window cleaning	2,612	**2,351**	1,099	**989**
Jet cleaning			1,665	1,665
Cleaning water tank				
Maintain grounds				
Block Ins	11,183	11,183	8,522	8,522
Directors' Ins	319	319	332	332
Engineering Ins	281	281	255	255
Assess Fire Risk	264	**Nil**	265	**Nil**
Health & Safety	1,140	**Nil**	576	**Nil**
Accountancy	1,278	1,278	1,338	**1,332**
Co. Sec. Fees	248	**Nil**	200	**Nil**
Late Filing Pnlty				
Legal & debt costs	1,633	**Nil**	676	**Nil**
Management Fee	10,901	**9,600**	11,228	**9,984**
Co. House Fee				
Sundries	498	**Nil**	494	**14**
General Building Rep.				
Electrical	562	562	723	723
Drains				
Roof and gutters			1,128	1,128
Lightning Protection	250	250		
Alarms	1,115	1,115	1,969	1,969
Refuse	270	270		
Misc. Repairs	2,864	2,864	2,139	2,139
Water pumping	6,432	6,432	5,210	5,210
Water disinfection	1,356	1,356	696	696
Electronic gates			1,998	1,998

Door Entry	72	72			
Lift Maintenance	1,596	1,596	2,033	2,033	
Electricity co. parts	5,800	5,800	5,436	5,436	
Water rates	18,660	18,660	19,430	19,430	
Telephone	341	341	288	288	
Freeholder's units	1,610	**Nil**			
Reserve fund	1,000	1,000	5,520	5,520	(NB In fact, contingency)
Total	79,209	**71,749**	80,446	**76,375**	