10326

FIRST TIER TRIBUNAL
(PROPERTY CHAMBER)
RESIDENTIAL PROPERTY

Case Reference:	MAN/00EQ/LSC/2013/0125
Property:	1 to 14, 18 & 19 Wheelock House, Barony Road, Nantwich, Cheshire, CW5 5GU
Applicant:	Wulvern Housing Limited, Wulvern House, Electra Way, Crewe, Cheshire CW1 6GW
Representative:	Mr David Beardmore, Solicitor and Company Secretary, Wulvern Housing Limited
Respondent	(1) Brighouse Homes (Nantwich) Limited, Courthill House, 60 Water Lane, Wilmslow, Cheshire SK9 5AJ (2) Adriatic Land 2 Limited, Mont Crevelt House, Bulwer Avenue, St Sampson, Guernsey, Channel Islands GY2 4LH
Representatives:	(1) Gateway Management (Nantwich) Limited Courthill House, 60 Water Lane, Wilmslow, Cheshire SK9 5AJ (2) JB Leitch Solicitors 10 Duke Street, Liverpool L1 5AS
Type of Application:	(1) Service charge: section 27A Landlord and Tenant Act 1985 (2) Section 20C Landlord and Tenant Act 1985
Appearances:	For the applicant: Mr James Coutts of Counsel For the first respondent: Mr Dave Meredith of Gateway Management (Nantwich) Limited For the second respondent: Mr Elis Gomer of Counsel

Tribunal Members:	Judge M. Davey (Chairman) Mr W.T. M. Roberts FRICS Mrs M. B. M. Mangles B.A. (Hons.)
Date and venue of Hearing:	30 September 2014: Manchester
Date of decision:	19 November 2014
Date of reasons:	06 December 2014

Decision

1. Section 27A Landlord and Tenant Act 1985

First and second respondents

The tribunal finds that the sums payable in respect of the service charge years 2010 to 2013 are

2010 £ 7, 016.43
2011 £ 7,850.25
2012 £ 9,600.68
2013 £ 9,610.24

2. Section 20C of the Landlord and Tenant Act 1985

Second respondent

The tribunal orders that the costs incurred by the landlord in respect of these proceedings shall not be capable of being relevant costs for the purposes of any future service charge demand.

Reasons for Decision

The Applications

1. These are the reasons for the decision of the First-tier Tribunal (Property Chamber) ("the tribunal") on two applications made to the tribunal by Wulvern Housing Limited ("the applicant"), which is a registered social housing provider. The applicant is the tenant, under sixteen leases, of apartments 1 to 14, and 18 & 19 Wheelock House, Barony Road, Nantwich, Cheshire, CW5 5GU ("the properties").

2. The first application, dated 19 August 2013, was made under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to the payability and reasonableness of the service charge under the applicant's leases of the properties. The second application, dated 14 May 2014, is made under section 20C of the 1985 Act and seeks an order that the costs incurred by "the landlord" in connection with the proceedings before the tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

3. The respondents to both applications are (1) Brighouse Homes (Nantwich) Limited ("the first respondent") and (2) Adriatic Land 2 Limited ("the second respondent"). The tribunal added the second respondent as a party to the first application on 07 March 2014 following a request from the applicant in a letter to the tribunal dated 04 March 2014.

The properties

4. The tribunal inspected the exterior of the properties, together with the communal areas, at 10.30 a.m. on 30 September 2013. All parties were present or represented at the inspection. Wheelock House is part of a development known as The Gateway, which is located in a pleasant residential area on the outskirts of Nantwich. The development (referred to in the lease, as to which see below, as the Estate) consists of two four storey apartment blocks, Wheelock House and Weaver House together with surrounding communal grounds. Wheelock House contains 26 flats and Weaver House 23 flats. Entry to Wheelock House is by a shared entrance. The stairs, corridors and landings are carpeted. An underground garage, with 46 parking spaces, lies below both buildings. Access is by a roller shutter door. The communal grounds consist of parking spaces, a "play area", as well as lawns and planted border areas. There is a locked bin store and a bicycle store. The latter is for the exclusive use of the applicant tenant's sub-tenants. The applicant tenant's leases also extend to 16 of the outside parking spaces. The applicant has no spaces in the underground garage.

The leases

5. Each of the sixteen subject properties is held on a lease granted to the applicant tenant on 21 December 2009 by the then freeholder, the first respondent, for a term of 999 years from 1 January 2006. The leases are in identical terms. The tribunal was provided with a copy of the lease for plot 6 (later to be Apartment 2). For ease of reference hereafter, the term "the lease" refers to the leases of all the properties. In turn the applicant tenant has sublet each property; nine on "Rent to Home Buy" assured shorthold tenancies and seven on assured tenancies. Since the grant of the leases the property has been managed

by Gateway Management (Nantwich) Limited ("Gateway") as agent for the freeholder. Gateway is not a party to the lease.

6. By clause 4 of the lease the applicant covenanted to pay the Service Charge Proportion at the times and in the manner provided for in the Fourth Schedule to the lease. That Schedule provides

(1) that the "Service Charge Commencement Date" is the date of the lease (para. 1.2) and the service charge "Accounting Period" is from 1 April to 31 March (para. 1.3);

(2) that "Service Charge Expenditure" means expenditure incurred

(a) in the observance and performance of the covenants and obligations and powers on the part of the landlord (which expression shall for the purposes of this schedule include managing agents employed by the landlord) and contained in this Lease or other obligations relating to the Estate or its occupation and imposed by operation of law;

(b) in the payment of expenses of management of the Estate of the proper fees of surveyors or agents appointed by the Landlord or in connection with the performance of the Landlord's obligations and powers and with the apportionment and collection of those expenses and fees between and from the several parties liable to reimburse the Landlord for them and of the expenses and fees for the collection of all other payments due from the tenants of the Properties not being the payment of the rent to the landlord;

(c) in the provision of services facilities amenities improvements and other works where in the Landlord's absolute discretion from time to time considers the provision to be for the general benefit of the Estate and the tenants of the Properties and whether or not the Landlord has covenanted to make the provision;

(d) in the payment of bank charges and of interest on and the cost of procuring any loan or loans raised to meet expenditure (para. 1.1);

(3) that for each Accounting Period the Landlord shall make an estimate of the anticipated amount of the service charge expenditure and shall notify the tenant of the same (para 4) and the tenant shall pay its proportion (para 5);

(4) that after the end of every Accounting Period the Landlord shall provide the tenant with a certificate of total service charge expenditure for the preceding period and upon request by the

tenant the tenant shall be entitled to receive a summary of the service charge expenditure for that period (para. 7);

(5) that within 14 days after the issue of the certificate the landlord must make allowance to the tenant for any surplus payment made or in the case of a deficit the tenant shall pay the balance to the landlord on demand (para. 8);

(6) the landlord shall be at liberty to vary the Accounting Period (para. 9)

(7) that a sinking fund may be established (para. 10).

7. The lease defines "The Service Charge Proportion" as the proportion of the Estate Expenditure which the square footage of the apartment bears to the total square footage of all other apartments in the two buildings added together plus the proportion of the Building Expenditure (i.e. the service charge expenditure attributable to the building in which the apartment is situated) which the square footage of the apartment bears to the total square footage of other properties in the Building.

The transfer of the freehold title

8. In a letter received on 23 December 2013, the first respondent informed the applicant that by a Transfer dated 23 October 2013, it had transferred its freehold interest in the properties to the second respondent (a company registered in Guernsey) and that as from 1 January 2014 all future correspondence and queries with regard to rent collection and tenancy related issues should be directed to Homeground Management Limited, PO Box 6433, London, W1A 2UZ. It was stated that the service charge due under the terms of the lease would be invoiced by and remain payable to The Gateway Management (Nantwich) Limited of Courthill House, 60 Water Lane, Wilmslow, Cheshire SK9 5AJ.

9. By a letter to the applicant dated 16 January 2014, Darbys Solicitors LLP 52 New Inn Hall Street, Oxford, OX1 2DN, the solicitors to the new landlord, wrote to the same effect confirming that "the management of the property and service charge arrangements shall continue to be operated by The Gateway Management (Nantwich) Limited."

10. The second respondent's title to the freehold was registered on 11 November 2013.

The disputed service charges

11. In its application the applicant challenged as a whole the service charges levied under the lease in respect of the calendar years 2010, 2011, 2012 and 2013. Although the lease provides for a service charge year of 1 April to 31 March this has never been adopted and the parties are agreed that the service charge year ("the Accounting Period") is 1 January to 31 December. At the case management hearing held on 19

February 2014 the applicant asked that the year 2014 be included in its application. The Directions of 27 February 2014 accordingly recorded that the application covered the years 2010 to 2014. By the time of the hearing on 30 September 2014 the applicant had agreed the stated sums for some service heads for some years.

12. The breakdown of the service charge budgets for the whole development at The Gateway for the years 2010 to 2013 are set out below

	2010	2011	2012	2013
Internal				
Cleaning	5,200.00	5,200.00	6,975.00	6,975.00
Lifts	2,000.00	2,000.00	2,800.00	2,800.00
BT lift line	300.00	300.00	451.00	451.00
Video entry	500.00	500.00	500.00	500.00
Gen. Maint'ce	500.00	500.00	500.00	500.00
Light'g & power	1,200.00	1,200.00	1,792.00	1,792.00
External				
Play area	340.00	340.00	340.00	340.00
Lighting	250.00	250.00	250.00	250.00
Gen M'ce/gutters	500.00	500.00	2,950.00	2,950.00
Bin stores	1,040.00	1,040.00		
Landscaped areas	3,900.00	3,900.00	3,807.00	3,807.00
Window cleaning	1,800.00	1,800.00	1,680.00	1,680.00
Ext.elev.main'ce	500.00	500.00	500.00	500.00
Tvaerials/satellite	100.00	100.00	100.00	100.00
Car park shutter	250.00	250.00	250.00	250.00
Basement				
Basement area	250.00	250.00	300.00	300.00
Gen Main'ce	250.00	250.00	300.00	300.00
Cycle store	100.00	100.00	144.00	144.00
Booster tank	400.00	400.00	400.00	400.00
General				
Insurance	4,562.00	4,562.00	7212.00	7212.00
Man.audit.Acc'y	5,000.00	5,000.00	6,815.00	6,815.00
H&S Inspect.	500.00	500.00	500.00	500.00
Sinking fund	3,577.50	3,577.50	2,629.00	2,629.00
Total	**33,020.00**	**33,020.00**	**41,275.00**	**41,275.00**

13. The total charges in respect of the properties, demanded of and paid by the applicant are:

21 December 2009 to 31 December 2010	£10.256.04
1 January to 31 December 2011	£ 9, 956,00
1 January to 31 December 2012	£12,445.00
1 January to 31 December 2013	£12,445.00
1 January to 31 December 2014	£12,445.00

This equates to 30.15% of the total development service charge budget for each year. The slightly higher sum demanded for 2010 would appear to include a service charge payment of £300 in respect of the period from 21 to 31 December 2009.

Evidence and appearances

14. The parties supplied a bundle of documents for the hearing which included the parties' statements of case and responses, witness statements of Rachel Shortland (Leasehold & Projects Coordinator for the Applicant); Mr Russell Brighouse (director of the first respondent) and Mr Andrew Smillie (Estate Manager of Homeground Management Limited) on behalf of the second respondent. At the hearing the applicant was represented by Mr James Coutts, of counsel and the second respondent by Mr Elis Gomer, of counsel. The first respondent was represented by its director, Mr Russell Brighouse and by Mr David Meredith of Gateway.

The applicant's case

15. Mr Coutts explained that the essence of the applicant's case was that each year it had received service charge demands from Gateway, which stated the sums due in respect of each of the applicant's leases (see paragraph 13 above). These demands were coupled with a budget statement for the whole development which itemised service charge heads of expenditure with a sum in respect of each item (see paragraph 12 above).

16. However, until these proceedings, and despite repeated requests by the applicant, Gateway had not provided any details, by way of service contracts, invoices or receipts, to prove that the costs claimed were incurred or how they were calculated. The applicant had also sought an explanation from Gateway as to why service charge demands had increased but, it alleges, without any satisfactory response. The applicant was concerned that if challenged by its sub-tenants as to the reasonableness of the charges it would be unable to provide a satisfactory explanation or justification.

17. Mr Coutts confirmed that the applicant did not dispute the method of calculation of the service charge for each apartment as provided for by the lease; that is by dividing the total cost of the service charge by the total area and then multiplying by each apartment's square footage.

18. However, the applicant did dispute the service charge sums demanded each year. Mr Coutts stated that even now the information supplied by the first respondent, which relates only to 2012 and 2013, is incomplete

and /or inadequate, although it accepts and agrees with the costs given in respect of a number of service charge heads in the years 2012 and 2013.

19. The applicant concludes that in the absence of a satisfactory explanation it considers the sums demanded to be unreasonably incurred and/or unreasonable in amount and supports this assertion by way of reference to service charges which it pays under a scheme at Moseley's Yard, Audlem. It does so not by way of a direct comparison as to actual sums, accepting that this was a different scheme, but simply to demonstrate information provided by another managing agent as to how costs had been incurred.

20. More particularly, in seeking to justify a lower charge, the applicant addressed each of the heads of service charge disputed and at the hearing Mr Coutts took the tribunal through a schedule which formed part of the applicant's response to the first respondent's statement of case. The schedule dealt with each service charge item in turn.

The first respondent's case and applicant's response

21. As noted above, the first respondent produced a witness statement by Mr Russell Brighouse, one of the two directors of the first respondent and of Gateway. (The other director is Mr Brighouse's wife Amelia Jane Brighouse). The first respondent relied on a "Summary of Service charge budgets and actual costs" which it had prepared in support of its case. It says that the actual service charge costs incurred in each year are as set out in that summary. They are reproduced in the table below.

	2010	2011	2012	2013
Internal				
Cleaning	9,270.00	7,645.00	5,558.00	3,193.00
Lifts	2,820.00	2,880.00	2,880.00	3,024.00
BT lift line	760.00	117.00	651.70	531.00
Video entry	Nil	Nil	Nil	Nil
Gen. Maint'ce	3,382.00	2,744.00	2,395.72	285.23
Light'g & power	823.00	5,005.00	8,474.32.56	1,792.00
External				
Play area (note 1)	Nil	Nil	Nil	Nil
Lighting	Nil	Nil	1,930.02	Nil
Gen M'ce/gutters	Nil	Nil	1,944.00	Nil
Bin store (note 2)	Nil	Nil	Nil	Nil
Landscaped areas	3,807.00	4,930.00	4,435.20	4,435.20
Window cleaning	Nil	Nil	710.00	740.00
Ext.elev.main'ce	Nil	Nil	Nil	Nil
Tv aerials/dishes	Nil	Nil	115.00	83.50
Car park shutter	Nil	Nil	824.40	267.60
Basement				
Basement area	Nil	Nil	937.28	463.20

Gen Main'ce			216.00	Nil
Cycle store	Nil	Nil	Nil	Nil
Booster tank	Nil	Nil	112.10	104.40
General				
Insurance	7,092.00	7,212.00	7,680.00	7872.00
Man.audit.Acc'y	7,661.00	6,815.00	7,129.00	7,586.00
H&S Inspect.			280.00	675.00
Sinking fund	Nil	Nil	Nil	Nil
Total	**35,615.00**	**37,348.00**	**43,675.00**	**37,734.45**

Note 1. Included in landscaping.
Note 2. Included in internal cleaning (2012 and 2013)

22. The first respondent says that if one compares the actual costs with the budgeted costs it is evident that the former have exceeded the latter in three of the four years which means that there is an overall deficit of £5,783.43. The difference between the budgeted and stated actual costs is as follows.

Year	2010	2011	2012	2013
Budget	33,020.00	33,020.00	41,275.00	41,275.00
Actual	35,615.00	37,348.00	43,675.98	37,734.00
Surplus/deficit	-2,595.00	-4,328.00	-2,400.98	3,540.55

23. By way of evidence as to the costs stated to have been incurred, the first respondent disclosed invoices and other documents relating to service charge costs for the years 2012 and 2013. Mr Meredith stated that invoices for the years 2010 and 2011 were not available.

24. In its statement of case the first respondent dealt in turn with each of the disputed service charge heads of expenditure identified in the applicant's statement of case. The applicant then produced a statement in response. As noted above the applicant produced as part of its response a schedule which set out its position in respect of each service charge head. This was elaborated at the hearing when the first respondent sought to justify its charges. The position of the parties with regard to each head is set out below.

Internal cleaning. The first respondent says that there is and never has been any formal contract with a cleaning company. It says that until the end of March 2013 cleaning was carried out weekly by Stapely Home Management of Nantwich. The cleaning was carried out on request and the company invoiced Gateway. The first respondent attached to its statement (1) incomplete copy invoices (mostly barely

legible) for the year 2012 and for the first quarter of 2013 and (2) two invoices from Brighouse Plant Limited which had taken over the cleaning from 1 April 2013. The first of these two invoices, for £288 and dated 30 September 2013, is in respect of carpet and glass balustrade cleaning and the second, for £1,800 and dated 31 December 2013, is for fortnightly cleaning from 1 April to 31 December 2013. In response the applicant raised a number of concerns. First, that the invoices for 2012 add up to £4,930 although the first respondent's spreadsheet summary of accounts shows expenditure of £5,558, to which Mr Meredith responded that some invoices had been inadvertently omitted. Second, the applicant is concerned that, since April 2013, invoices for cleaning have been raised by Brighouse Plant Limited which is listed on the companies register as a provider of rented and leased construction and civil engineering machinery and is connected to Brighouse Homes by the same directors. Third, the invoice for fortnightly visits is inconsistent with the first respondent's statement of case where it is described as weekly. Mr Meredith said that it is in fact weekly at certain times of the year.

Lift maintenance. There are two lifts, one in each of Wheelock House and Weaver House. The first respondent provided 12 separate monthly invoices for lift maintenance from Orona Limited issued in 2012 and 2013 together with a lift maintenance agreement for an initial period of 1 year from 24 December 2010 at a fee of £1,200 payable in advance for 6 visits a year. The agreement, which is dated 10 January 2011 and is signed by the customer but not by Orona's representative, relates to the lift at Weaver House. At the hearing Mr Meredith for the first respondent stated that there was another agreement for Wheelock House but he had mistakenly omitted to include that contract in the bundle.

BT Lift line. The first respondent provided bills from BT for 2012 and 2013 for the rental of the emergency telephone in each lift. The applicant noted that all of the 2012 bills contained a charge for late payment and one returned cheque charge. It said that this extra cost should not be borne by the tenant.

Video door entry. The first respondent agreed that there had been no expenditure on this item.

General maintenance. The first respondent provided a number of invoices in respect of work at the two buildings in 2012 by three companies. The applicant is concerned that two of these companies (TD Eco Energy Ltd. and Brighouse Group Holdings Ltd.) are associated with the first respondent, having the same two directors, and that one of the lift repair jobs is a quotation (from Orona Ltd.) rather than an invoice for work done. One invoice, from TD Eco Energy Ltd., for "maintenance" was for £1,276.20 but no details of work done were provided. Invoices from TD Eco Energy Ltd. were also provided for work stated to have been carried out in 2013. The applicant was

again concerned that this company had objects that did not encompass works of the kind that had been carried out.

Communal lighting and power. The first respondent provided electricity meter bills from EON for 2012 and 2013. The applicant says that there are no addresses on the bills and the only reference is to meters. Indeed eight of the bills have no address or meter numbers. The accounts are always in arrears. The applicant says that charges have risen from £823 in 2010 to £8,474.32 in 2013 with no apparent effort to change provider by the first respondent. The applicant is also concerned that on 16 June 2014 EON affixed a notice to the communal area stating that electricity may have to be disconnected if outstanding bills were not settled. It says that if this were to happen it would have a serious effect on occupiers.

External lighting maintenance. Invoices for works in 2012 and 2013 are provided by the first respondent. The applicant says that the invoices for 2012 are from TD Eco Energy Ltd. (as to which see above).

General maintenance and gutter cleaning. In 2012 an invoice for £1,944 for gutter cleaning was raised by Brighouse Group Holdings. The applicant is concerned that this is an associated company whose objects are to provide head office activities.

Play area. The applicant asked why, if this item had been moved into the landscaping budget that budget had not increased by £340.00.

Bin stores. The budgets for 2010 and 2011 included £1,040 each year for this item but no expenses were incurred. The first respondent states that for 2012 and 2013 it is included in the internal cleaning item.

Landscaped areas. The first respondent produced one invoice per year for gardening work done in 2012 and 2013. The applicant says that it was from Brighouse Plant which is an associated company listed as a provider of construction and civil engineering machinery.

Window cleaning. An invoice dated 23 January 2012 from 360 Ltd for £350 for window cleaning at both buildings was provided. The first respondent says it is for 6 months of that year and that an invoice for the remainder was omitted from the bundle. The first respondent also supplied invoices from Mark Hughes Professional Window Cleaning, dated 29 January 2013, for £180 and 6 October 2013, for £190. Mr Meredith said that the other (quarterly) invoices for that year are missing.

Car park roller shutter door. The first respondent concedes that an invoice of £248.40 from Brighouse Group Holdings for fixing the front door to Wheelock House has been included under the wrong cost heading for 2012.

Basement area. The applicant says that a sum of £937.28 shown in the service charge summary for 2012 is in respect of basement flooding and relates to an invoice (actually for £937.28 plus VAT) from Brighouse Plant Ltd., a provider of rented and leased construction and civil engineering machinery which is connected to Brighouse Homes by the same directors. The applicant says that nevertheless the invoices refers to work by a "specialist contractor".

General maintenance (of basement). Invoices for £216 (for 2012) and £385.20 (2013) in respect of basement cleaning are from Brighouse Plant Ltd. (as to which see above).

Cycle stores. The applicant queries why a sum is collected for this item each year when there has not been any expenditure.

Booster tank chlorination. No invoice for this work, which the first respondent states to have been carried out in 2012, has been provided by the first respondent.

Buildings insurance. With regard to insurance the applicant says that it had never received copies of the insurance policy, renewal premium or receipts for payment despite numerous requests, most recently on February 6 2013. The first respondent provided a broker's invoice for the premiums in 2012 and 2013. However, the applicant remains concerned that it has not seen a cover note or policy. It also believes that the premiums are unreasonably high by comparison with those paid in respect of another scheme (Mosley Court) where it is a tenant.

Management accountancy audit fees. The first respondent has provided invoices dated 30 September 2012 for £7,129 and 30 September 2013 for £7,586, from Brighouse Group Holdings in respect of Audit/Accountancy. The applicant says that despite requests, it had never received from the first respondent, in compliance with the terms of the lease, any statutory audited accounts or minutes of annual general meetings which may have taken place. It says that no information has been given as to how the sums demanded were calculated. It was only on 19 September 2014 that the first respondent supplied summary accounts for 2010 and 2011 as part of these proceedings.

Health and Safety inspections. The applicant said that it had received a fire risk assessment from the first respondent but only after requesting the same. It had never received details of health and safety inspections or electrical checks. The first respondent says that these inspections were carried out but no invoices have been supplied. Mr Meredith says that this was an omission on his part.

Sinking fund. The applicant says that it had never received any information from the first respondent as to the level of payments made into the sinking fund, the balance held in the fund and any accrued

interest. The first respondent says that there are no sums in the sinking fund because there has been an overall deficit in the service charge account over the last four years. The applicant says that it has only discovered this to be the case as a result of the present proceedings.

25. At the hearing Mr Russ Brighouse submitted that the applicant had failed to make its case. He said that any questions that the applicant had raised over the service charge in the last two and a half years had been answered fully by Gateway. He questioned why, if the applicant had been unhappy with the services provided it had not said so? He said no other tenants had complained. Mr Brighouse dismissed the suggestion that because works were done by associated companies this enabled the applicant to infer that overcharging had taken place. He asked what did it matter who did the works as long as they were done satisfactorily at, what he submitted were, reasonable costs?

The applicant's case against the second respondent and its response

26. The applicant says that the second respondent is involved because it became the landlord on 11 November 2013 during the Accounting Year and because the 2014 service charge is disputed. Mr Gomer, for the second respondent says that his client only acquired title to the freehold on 11 November 2013. Thus in respect of the service charge periods 2010, 2011, 2012 and 2013 the only proper respondent should be the then freeholder landlord; that is to say the first respondent. This should be so even in the case of 2013 notwithstanding the second respondent's acquisition of the freehold on 11 November 2013. This is because the service charge demand for the calendar year 2013 was made on 13 December 2012 and paid shortly thereafter. The second respondent had no control over the matters governed by that demand, it only having acquired legal title to the freehold, and thus responsibility for the service charge costs incurred after 11 November 2013. He further submitted that the application has never been amended to include the year 2014, nor was that year covered by the applicant's statement of case.

27. However, Mr Gomer submitted that even if his client was properly a respondent in respect of either or both of the years 2013 and 2014, the applicant had confused two procedures. He submitted that what it was really seeking was information in order to decide whether an application should be made under section 27A of the Landlord and Tenant Act 1985 for a determination as to the payability and reasonableness of the service charge. He says that this could have been done by using the provisions in the 1985 Act, such as section 21, appropriate to that purpose. What the applicant had done instead, was to mount a section 27A claim on the basis of a lack of transparency as to service charge costs, asking the tribunal to infer that those costs must be unreasonable if not satisfactorily explained. Mr Gomer says that

whilst the tribunal is an expert body which can properly employ its own knowledge and experience it cannot just infer that a service charge demand is unreasonable simply because a breakdown of the costs have not been provided. He questioned how the tribunal could make that inference in the absence of any evidence from the applicant as to why the charges levied might be unreasonably incurred or unreasonable and if so what figure they considered would be reasonable.

28. Mr Gomer also submitted that in these circumstances it would not be just and equitable to make an order against the second respondent under section 20C of the Landlord and Tenant Act 1985. He said that his client had unnecessarily incurred costs as a result of being joined as a party to these proceedings and says that submissions on costs will be made after the event.

Discussion and decision

29. The applicant's case against the first respondent rests on two linked assertions. First, that the lack of transparency as to service charge costs since the leases were granted is such that the applicant has no means of knowing whether some of the services charged for have been provided or whether actual costs incurred for particular services were reasonable. Second, that the service charge costs seem high when compared to sums that the applicant pays in respect of another development, even allowing for differences between the two schemes. The applicant is particularly concerned that many of the services at the properties are provided by associated companies of the first respondent landlord and that management is carried out by such a company. The inference it makes is that in such circumstances costs have been unreasonably incurred or are unreasonably high.

30. The first respondent freely confesses that its service charge paperwork is very poor. However, it says that the services have been provided to a good standard, at reasonable cost, and no other tenants have complained or queried the service charge. Indeed, it says that on those occasions when the applicant has enquired as to service charge matters the first respondent has given a satisfactory response. The first respondent says it should not matter who provided the service as long as the charges were reasonably incurred and were reasonable in amount. In the first respondent's submission the charges made were well within what would reasonably have been expected for this type of development.

31. Having read and heard the respective written and oral submissions of the parties the tribunal finds that the management of the service charge accounts at this development has been woefully inadequate. Management of services is effectively in the hands of the freeholder/developer, Brighouse Homes Ltd. In reality this means Mr Russell Brighouse who is one of the two directors of that company, the

other being his wife, Amanda Jane Brighouse. Mr Brighouse is the active partner. He manages the services through a wholly owned managing agent, Gateway, the directors of which are Mr & Mrs Brighouse. However, day to day management appears to be in the hands of that company's employee, Mr Dave Meredith.

32. At this stage the Tribunal would point out that it agrees with the first respondent that the mere fact that it employs a company that it owns or is involved in to provide services is not objectionable in principle unless it is established that such arrangements are a mere "sham"; that is to say an arrangement which disguises the true relationship or agreement between the parties (See *Skilleter v Charles* [1991] 24 HLR 421). No sham has been established in the present case. However, such arrangements can justify a rigorous scrutiny of the fees being charged and the services provided (See *Country Trade Ltd. v Marcus Noakes and others* [2011] UKUT 407 (LC).

33. Returning to the first respondent's management of services, the tribunal finds that the first respondent has at no stage sought to comply with the terms of Schedule 4 of the lease. Paragraph 3 of that Schedule requires the landlord to keep an account of the Service Charge Expenditure for each Accounting Period and to provide the tenant with a copy of the Account for the preceding Accounting Period as soon as reasonably practicable after the end of that Accounting Period. No such account has ever been provided to the tenant or disclosed as part of these proceedings.

34. Whilst, in accordance with paragraph 4 of the Fourth Schedule, the landlord has provided an estimate of anticipated service charge expenditure at the beginning of each Accounting Period it has never, as required by paragraph 7 of that Schedule, issued after the end of any Accounting period, a Certificate certifying the total amount of the service charge Expenditure for the preceding period. Furthermore, the landlord has never, in compliance with paragraph 8 of the Schedule, carried out a balancing exercise in respect of anticipated and actual costs at the end of each Accounting Period after which the tenant is required to pay any shortfall or credited with any surplus payment.

35. What has clearly happened is that, as noted above, before each accounting period the landlord has provided the tenant with a service charge "budget" for the whole development, purportedly being the anticipated expenditure for the forthcoming Accounting Period along with a demand for the tenant's proportion. The budget for 2010 was of necessity speculative given that service charge costs at that point were unknown. However, although the landlord now asserts that costs exceeded the budget in 2010, the budget/service charge invoice for 2011 was not revised in the light of that knowledge. It remained at the product of £1 per square foot. This produced a total for the whole development of £33,020.00 for each of the two years which the landlord then proportionately allocated to each apartment in the development according to its square footage. It has then demanded

from the applicant/tenant a service charge payment which is the sum total of the sums allocated to each of the sixteen properties held by the tenant.

36. Mr Brighouse asserted that on those occasions when the applicant has enquired as to service charge matters the first respondent has given a satisfactory response. With respect the tribunal does not agree. On 21 December 2011 Gateway wrote to the applicant with a service charge invoice for 2012 stating that "Due to the shortfall received last year and taking into account additional cleaning costs, VAT on lift maintenance and on management and accountancy fees and an increase in insurance premiums it has been necessary to increase the charge by 25p per square foot this year. At the end of 2012 we will again assess the costs over the 12 month period and make any adjustment accordingly." (The new total service charge for the development was £41,275.00). Clearly no such assessment took place at the end of 2012 because the budget/invoice remained the same for 2013 despite the landlord's assertion in these proceedings that there was a deficit of £4,328.00 in 2011 and £2,400.98 in 2012.

37. On 18 January 2012 the applicant wrote to Gateway asking for a schedule showing how the service charge for each property was arrived at including the component parts of the charge. The writer (Ms Shortland) also requested evidence as to how and why the proposed increase had been arrived at. In reply, by a letter dated 2 February 2012 , Gateway's Office Manager stated that he enclosed a "breakdown of the charges and their component parts". However, this was simply the budget costs statements for 2010 and 2011. He stated that "The increase takes into account the underpayments made last year against the budgeted figures, the actual costs of the services being provided and to ensure that the sinking fund does not get into negative figures." No further information was provided. Ms Shortland clearly persisted with her requests for further details and on 7 February 2012 stated that the applicant would not pay the increased element of the charge until more information was provided. She specifically required details of how the charges for certain heads had been arrived at; viz; buildings insurance, lifts, management fees; landscaped areas and play areas. It was not until 6 December 2012 that she received an email from Mr Russ Brighouse regarding the extra 25p charge. That email referred to different service charge heads and is dealt with in the appropriate places below. By a letter to Gateway dated 11 February 2013, the applicant had also requested a written summary of the service charge accounts for the previous accounting year. No response was received.

38. Thus despite Mr Brighouse's assertions in evidence, at no stage was the tenant informed of actual service charge expenditure by the landlord. It was only as a result of the present proceedings that the tenant discovered what is alleged to have been expended by the landlord on service charge matters for each of the years in question. As seen above the landlord claims that this has resulted in a running deficit of £5,783.43 for the development.

39. The tribunal finds that the methodology adopted by the landlord has been most unorthodox. The lease provides for the landlord to estimate expenditure in respect of each service charge head and for the total to be apportioned on a square footage basis amongst the properties. However, the landlord has done the reverse. It has simply chosen the sums of £1.00 (2010 and 2011) or £1.25 (2012 and 2013) per square foot to produce anticipated expenditure which is then apportioned rateably amongst the apartments according to their respective areas for service charge billing purposes. Nevertheless, a figure is shown against each service charge head in the budget statement, the total of which comes to the budget sum for that year. It follows that the sums in respect of each head must have been arbitrarily chosen so as to arrive at the predetermined service charge budget total. It is therefore difficult to see how the figures for individual heads can be said to reflect actual or anticipated service charge costs in respect of those heads. In fact the landlord says that it had incurred losses on the service charge account in 2010, 2011 and 2012, although it failed to explain why it had not sought to recover these deficits through a proper service charge adjustment each year.

40. However, the task of the tribunal is to determine how much is payable by the tenant each year by way of service charge. The tribunal has sought to do this first, by examining the sums alleged to have been incurred by the landlord and determining whether those sums were reasonably incurred and if so were reasonable in amount in accordance with section 19 of the Landlord and Tenant Act 1985 and second, by comparing the proportionate total sum thereby produced for each year in question against that (proportionately) paid by the tenant for those years.

41. In respect of the years 2010 and 2011 the landlord has produced no evidence as to service charge expenditure by way of receipts, contracts or invoices. It says these are unavailable. However, it has produced some evidence of expenditure for the years 2012 and 2013. Although reference was made in oral submissions on behalf of the parties to the onus of proof it has been held that there is no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or of costs in service charge cases and that "If the tenant gives evidence establishing a prima facie case, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions" (*Yorkbrook Investments Limited v Batten* [1985] 2 EGLR 100 at 102K). Thus the tribunal will reach a conclusion on the whole of the evidence. In *Daejan Investments Limited v Benson* [2011] EWCA Civ. 39 (at paragraph 86) Lord Justice Sedley said of the burden of proof that "It is common for advocates to resort to this when the case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal begins and ends with an evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law."

42. In the present case the landlord has met the challenge to the service charges for 2010 and 2011 simply by asserting that the costs are as stated without any evidence as to them having been incurred or of any details as to those costs. In the case of 2012 and 2013 it has provided some evidence as to costs stated to have been incurred. However, as the Upper Tribunal has observed, "The [tribunal] does not have to suspend judgment or belief and simply accept the landlord's evidence. It is entitled to robustly scrutinise the evidence adduced by the landlord (and of course, the tenant) which, after examination, it is entitled to accept or reject on the grounds of credibility" (*Country Trade Ltd. v Marcus Noakes and others* [2011] UKUT 407 (LC)).

43. In the present case the tribunal was particularly vexed by the following service charge items.

Internal communal parts cleaning

44. It can be seen from the table in paragraph 23 above that the sums claimed to have been spent on cleaning have ranged from £9,270 in 2010 to £3,193.00 in 2013. This is surprising, because the amount of cleaning needed in a new development should not have differed greatly from 2010 to 2014 being a period of low inflation. The cleaning involved is of carpeted halls and corridors on 4 levels in the two buildings containing 26 flats in Wheelock and 23 flats in Weaver. The tribunal estimates that the level of cleaning of the common parts in these blocks which is reasonably required would be of the order of 2 hours per week by one cleaner in each building.

(1) There is no evidence as to the costs of £9,270.00 and £7,645.00 stated to have been incurred in 2010 and 2011 respectively, when according to a letter dated 2 February 2012 from Gateway to the applicant, a cleaner from Stapely Home Management of Nantwich attended weekly. The budgeted costs for those years were £5,200 for each year. The sums stated to have been incurred in 2012 and 2013 are £5,558 and £3,193.00 respectively. Stapely Home Management continued to carry out cleaning until 1 April 2013 when cleaning was taken over by Brighouse Plant Limited on 1 April 2013.

(2) The applicant is concerned that cleaning is now being carried out by Brighouse Plant Limited, which is listed on the companies register as a provider of rented and leased construction and civil engineering machinery and is connected to Brighouse Homes by the same directors. It queries whether the work is actually being carried out by this company. However, the reality appears to be that the first respondent has simply decided, on grounds of cost, that cleaning should be provided "in house" by one of Mr Brighouse's companies. In evidence Mr Brighouse stated that this was a less expensive solution.

(3) The tenant has not produced any independent evidence that cleaning is not being, or has not been, carried out. However, by a letter to Gateway dated 18 January 2012 the writer (Ms Shortland) stated

that "I cannot recall when the windows were last cleaned and I have concerns which I have expressed to you with regard to the standard of cleaning in the common areas." In a reply dated 2 February 2012 Gateway explained that the cleaner attended weekly and that a problem was sometimes caused between visits by residents entering the building with muddy footwear which is transferred down the communal hallways.

(4) Ironically the charges made by Brighouse Plant are the lowest cleaning charges ever incurred at the development and average out in 2013 at £53 per week for the two buildings. (£2088 for 39 weeks) which the tribunal deems to be reasonable. This confirms the tribunal's belief, based on its knowledge and experience, that the costs incurred in 2012 and 2013 until that point (which were 100% higher at £106 per week) were unreasonable. The tribunal has accordingly adjusted downwards the cleaning charges payable for all four years.

BT Lift line.

45. The first respondent provided bills from BT for 2012 and 2013 for the rental of the emergency telephone in each lift. The applicant noted that all of the 2012 bills contained a charge for late payment and one returned cheque charge. It said that this extra cost should not be borne by the tenant. The tribunal agrees and has reduced the charges for 2012 accordingly from £651.70 to £502.20.

General maintenance.

46. The first respondent provided a number of invoices in respect of work at the two buildings in 2012 and 2013 by three companies. The applicant is concerned that two of these companies are associated with the first respondent, having the same two directors and that one of the lift repair jobs is a quotation rather than an invoice for work done. As stated above, the tribunal finds that the awarding of work to an associated company of the landlord does not in itself mean that the charges are unreasonable or unreasonably incurred. However, they do require close scrutiny. The invoice dated 28 September 2012 from one of the associated companies, TD Eco Energy Ltd. for "maintenance charges" of £1,276.20 gives no details as to the work carried out and in the absence of further evidence the tribunal is not satisfied that the alleged expense was reasonably incurred. It is therefore disallowed as a service charge cost for 2012. By contrast, the tribunal is satisfied on balance that the quotation of Orona, dated 04 October 2012 for a lift repair at Wheelock House was accepted and that the sum of £159.84 was reasonably incurred.

47. No invoices have been provided by the first respondent in respect of the years 2010 and 2011. Nevertheless it claims sums of £3,382.00 and £2,744.00 in respect of those years respectively. These sums seem high for a new development, without any satisfactory explanation or indeed any explanation at all as to the nature and cost of the specific works in

question. The tribunal has adjusted the charge under this head by approximately 50% in 2012 for lack of evidence and doing the best that it can in the circumstances the tribunal considers it reasonable to reduce the sums payable in 2010 and 2011 by a similar percentage.

General maintenance and gutter cleaning.

48. In 2012 an invoice dated 12 January for £1,944 for gutter cleaning was raised by Brighouse Group Holdings. The applicant is concerned that this is an associated company whose objects are to provide head office activities. The tribunal realises that it is a common feature of this scheme that invoices for works are often issued by associated companies of the first respondent whose objects are unrelated to the type of work in question. In itself this does not mean that work was not done. However, in this instance the absence of details such as time sheets raise a reasonable doubt as to whether the job was done or if it was done, the time taken. The first respondent admitted in evidence that cherry pickers were not used for this type of work, which is unusual in view of the height of the buildings. In these circumstances the tribunal is not satisfied that the cost was reasonably incurred and it is accordingly disallowed as a service charge cost.

Landscaped areas.

49. In an email to the applicant dated 6 December 2012, Mr Brighouse stated that the landscaping charge for 2012 comprised "Mowing of the communal external areas March to November including weed control, and leaf clearing outside the months stated 18 visits for mowing at £180 per visit and £350 to leaf clear total" (*sic.*). This comes to £3,590. It is not clear whether the sum is VAT inclusive or not. If exclusive the total including VAT would have been £4,308. However, as part of its case the first respondent produced an invoice of £4,435.20 per year from Brighouse Plant in respect of gardening work done in 2012 and 2013. The invoices were dated 30 September each year. No breakdown of work done was provided other than "22 visits @£168 per visit." Despite the discrepancies in information provided it seems tolerably clear to the tribunal that landscaping and gardening work has been done by somebody on behalf of the landlord. No evidence to suggest otherwise has been provided. On the other hand the sums charged seem inordinately high. There is no evidence of any tenders having been invited for the work. Once again the work appears to have been done by or for Mr Brighouse or one of his companies. The applicant claims that it pays £58 per visit at the similar scheme at Moseley's Yard. In the tribunal's experience the grounds at the subject development could be maintained at a much lower cost. From its inspection the tribunal considered that the necessary work, grass cutting and shrub maintenance could be done by two gardeners at a cost of £72 per visit. If there were 22 visits per annum that would

amount to £1,584.00 per annum. The tribunal has accordingly reduced the service charge gardening costs for each year to this sum.

Basement area

50. The tribunal is concerned that the invoice for £1,124.74 from Brighouse Plant Ltd. dated 30 September 2012 refers to "specialist contractor cleaning" but gives no details as to any such contractor or their quotation. The tribunal is not satisfied that the expense was reasonably incurred. It is accordingly disallowed.

Cycle stores

50. The applicant queries why a sum is collected for this item each year when there has not been any expenditure. The tribunal agrees and the sums charged under this head are accordingly disallowed.

Booster tank chlorination

51. No invoice for this work stated to have been carried out in 2012 has been provided by the first respondent. It is thus not established that the work was carried out and is disallowed.

52. In the case of other service charge heads the tribunal is satisfied that the sums charged are reasonably incurred and reasonable. They are

Lift maintenance The tribunal is satisfied that there has been a lift maintenance contract at all times for Wheelock House and Weaver House. There is no evidence that the sums claimed are unreasonable and the tribunal finds the charges to be reasonable.

Communal lighting and power The bills provided for 2012 and 2013 are very unclear in that the location of the meters to which they relate are not specified. In so far as the meters are the ones for this development, the bills (some of which are missing) suggest that the figures claimed for 2012 and 2013 (£5,877.56 and £8,474.32 respectively) are correct. The applicant says that despite the fact that the bills have risen alarmingly from £823 in 2010 to £8,474.32 in 2013 there is no evidence that the first respondent has queried these sums or sought to change to a cheaper supplier. The tribunal is at first sight troubled as to the sums attributed to this head of charge. The bills for 2012 and 2013 indicate that the consumption readings for one of the two meters are much higher than the other. There is no apparent explanation for this discrepancy. However, no evidence has been led as to why this might be the case and the tribunal therefore sees no reason not to accept these readings as accurate.

External lighting maintenance Invoices for works in 2012 and 2013 are provided by the first respondent. The applicant says that the invoices for 2012 are from one of the connected companies, TD Eco

Energy Ltd. (see above). However, work sheets are provided and the tribunal sees no reason to disallow these sums.

Bin stores. The budgets for 2010 and 2011 included £1,040 each year for this item but no expenses were incurred. In 2012 and 2013 it is stated by the first respondent to be included in the internal cleaning item.

Window cleaning By a letter to Gateway dated 18 January 2012 the applicant queried whether window cleaning was being carried out. Gateway replied on 2 February 2012 stating that window cleaning was carried out four times a year (in January, April, June and September 2011 and on 23 January 2012). However, by an email to the applicant, dated 27 June 2012, Mr Brighouse stated that the windows were cleaned in January, April, July and October. This followed a complaint about lack of window cleaning by the applicant on the same day. Although the invoices supplied by the first respondent are incomplete the tribunal has no evidence that the windows were not cleaned and the charges raised were not unreasonable. Thus they are allowed.

Car park roller shutter door. The respondent concedes that an invoice of £248.40 from Brighouse Group Holdings for fixing the front door to Wheelock House has been included under the wrong cost heading for 2012. The tribunal agrees but allows this item under another head. Otherwise the other costs under this head are allowed.

Buildings insurance When asked by the applicant in December 2012 for details as to the insurance Mr Brighouse replied to the effect that he was "unable to provide a breakdown for this as the cost is the cost". Although the evidence provided by the first respondent is grossly unsatisfactory, it seems tolerably clear that the property has been insured at the costs specified in the first respondent's case. Although these costs seem high to the tribunal in the light of its knowledge and experience, in the absence of evidence from the applicant as to the costs being unreasonable the tribunal sees no ground on which to disallow these costs.

Management accountancy audit fees. The only invoices in respect of this head, for £7,129 (2012) and £7,586 (2013) are from Brighouse Holdings to Gateway Management. This is most peculiar. It is more usual for the managing agent to charge the freeholder for management services. Here the freeholder would appear to be charging the managing agents. The tribunal can only assume that this is indicative of the unprofessional way in which this development has been managed. It seems tolerably clear that this item is meant to reflect the costs of management of the development by the first respondent. No audited accounts have ever been provided. It was only on 19 September 2014 as part of these proceedings that the first respondent supplied unhelpful summary accounts for 2010 and 2011.

The only information given as to how the sums demanded under this head were calculated is in an email from Mr Brighouse to the applicant, dated 6 December 2012 where he stated that "The Management fee breaks down to be £116.00 plus VAT for each apartment which includes accountancy this is very competitive I get £190.00 plus vat per Apartment not including accountancy for a block of Apartments in Manchester City Centre" (*sic.*) Mr Brighouse's statement is of course true only if one has regard to the (alleged) actual cost for 2011 and the budgeted cost for 2012; that is to say, £139 per apartment including VAT. However, the management fee invoices for 2012 and 2013 are dated 30 September 2012 and 30 September 2013. Thus his explanation based on budget figures does not tally with the actual management fee charged by Brighouse Group Holdings. Those sums work out at £145 and £154 per flat (including VAT) for 2012 and 2013 respectively.

The tribunal considers that those sums would not be an unreasonable charge for a well managed development. However, as noted above we have found that this development is not well managed even though the development looks to be in good order. The tribunal would therefore deduct 25% from the sums in question to reflect the poor standard of management of the service charge account.

53. **Health and Safety inspections**. The first respondent says that these inspections were carried out but no invoices have been supplied. Mr Meredith says that this was an omission on his part. The tribunal is not satisfied, in the absence of evidence, that these inspections have been carried out and the sums specified are disallowed.

54. In summary the sums allowed determined to be payable way of service charge are as set out in the second table below. The first table sets out the tribunal's findings as to the reasonable total service charge costs for the development. The second table sets out the applicant's share of this cost in respect of the properties (that is to say 30.15% of the total) and the amount of overpayments made.

Table 1

	2010	2011	2012	2013
Internal				
Cleaning	2,756.00	2,756.00	2,756.00	2,756.00
Lifts	2,820.00	2,880.00	2,880.00	3,024.00
BT lift line	760.00	117.00	651.70	531.00
Video entry	Nil	Nil	Nil	Nil
Gen. Maint'ce	1,691.00	1,372.00	1,159.52	285.23
Light'g & power	823.00	5,005.00	5,877.56	8,474.32
External				
Play area (note 1)	Nil	Nil	Nil	Nil
Lighting	Nil	Nil	1,930.02	Nil

Gen M'ce/gutters	Nil	Nil	Nil	Nil
Bin store (note 2)	Nil	Nil	Nil	Nil
Landscaped areas	1,584.00	1,584.00	1,584.00	1,584.00
Window cleaning	Nil	Nil	710.00	740.00
Ext.elev.main'ce	Nil	Nil	Nil	Nil
Tv aerials/dishes	Nil	Nil	115.00	83.50
Car park shutter	Nil	Nil	824.40	267.60
Basement				
Basement area	Nil	Nil	Nil	463.20
Gen Main'ce			216.00	Nil
Cycle store	Nil	Nil	Nil	Nil
Booster tank	Nil	Nil	112.10	104.40
General				
Insurance	7,092.00	7,212.00	7,680.00	7872.00
Man.audit.Acc'y	5,745. 75	5,111.25	5,346.75	5,689.50
H&S Inspect.	Nil	Nil	Nil	Nil
Sinking fund	Nil	Nil	Nil	Nil
Total	**23,271.75**	**26,037.25**	**31,845.05**	**31,874.75**

Table 2

	Year	2010	2011	2012	2013
		£	£	£	£
1	Budget	33,020.00	33,020.00	41,275.00	41,275.00
2	Stated actual	35,615.00	37,348.00	43,675.98	37,734.00
3	Tribunal determined	**23,271.75**	**26,037.25**	**31,843.05**	**31,874.75**
4	Applicant Paid	10,256.04	9, 956.00	12,445.00	12,445.00
5	Applicant Due	7,016.43	7,850.23	9,600.68	9,610.24
6	Difference	3,239.61	2,105.77	2,844.32	2,834.76

The case against the second respondent

55. The tribunal agrees with Mr Gomer, for the second respondent, that because his client only acquired title to the freehold on 11 November 2013 it should not be a respondent in respect of the service charge years 2010, 2011 and 2012 in which years it was not the landlord. However, Mr Gomer further submits that his client should not be a respondent in respect of 2013 as well. He says that this is because the service charge demand for that year was made on 13 December 2012 and paid shortly thereafter at a time when his client was not the freeholder. He says that in any event, his client only had responsibility for service charge costs incurred on or after 11 November 2013.

56. The tribunal does not accept this reasoning. Once the second respondent acquired the freehold it took over management of the service charge account and the obligations in the lease as to services as from that point. This would include the provisions of schedule 4 to the lease as to balancing accounts etc. The tribunal has no evidence as to the terms on which the freehold was acquired by the second respondent and any provision made in that sale as to the service charge rights and obligations in respect of 2013. That is a matter for those parties. Nevertheless, it is clear that for the reasons given above the second respondent is properly made a party in respect of the application relating to 2013. However, Mr Gomer submitted that even if his client was properly a respondent in respect of either or both of the years 2013 and 2014, the tribunal cannot just infer that a service charge demand is unreasonable simply because a breakdown of the costs have not been provided. He questioned how the tribunal could make that inference in the absence of any evidence from the applicant as to why the charges levied might be unreasonably incurred or unreasonable and if so what figure they considered would be reasonable.

57. In other words Mr Gomer is saying that the tribunal must accept the evidence of the landlord without any deduction. The tribunal does not agree. In *Country Trade Ltd v Marcus Noakes* [2011] UKUT 407 (LC) Judge Gerald, having reviewed a number of authorities, said "It is not in my judgment the effect of the above-mentioned authorities that the [tribunal] must accept the evidence of the landlord without deduction if there is no countervailing evidence from the tenant. The evidence required in these types of service charge disputes is quite different from the sort of complex largely no-factual evidence and issued addressed in cases such as *Arrowdale*." (This should refer to *Arrowdell*). He said that the tribunal is entitled to weight the whole of the evidence. It does not have to "suspend judgment or belief and simply accept the landlord's evidence." If the tribunal is satisfied that some work has been done but does not accept that the charges are credible or justified the tribunal "is entitled to apply a robust, common sense approach and make appropriate deductions based on the available evidence such as it is from the amounts claimed always bearing in mind it must explain its reasons for doing so."

58. This is what the tribunal has done in the present case as explained above when determining the service charge as reasonably payable for the disputed years including 2013. Thus the tribunal's decision for that year will be binding on the second respondent also.

59. Mr Gomer submitted that the application has never been amended to include the year 2014, nor was that year covered by the applicant's statement of case. The tribunal finds that the directions were sufficiently clear as to the service charge for 2014 having been added to the application. However, it agrees that neither party has led evidence as to the payability and reasonableness of the charge for that year, presumably on the basis that the year has not ended and therefore no

final statement as to costs incurred is yet due. The tribunal therefore declines to make a determination in respect of 2014 at this stage. If the applicant wishes to withdraw its application in respect of 2014 it will no doubt decide whether it wishes to make a fresh application in 2015 once it has seen evidence as to costs allegedly incurred by the landlord. That is of course a matter for the applicant.

Section 20C

60. Mr Gomer also submitted that in the circumstances it would not be just and equitable to make an order against the second respondent under section 20C of the Landlord and Tenant Act 1985. He said that his client had unnecessarily incurred costs as a result of being joined as a party to these proceedings and says that submissions on costs will be made after the event. The first respondent also resisted a section 20C order.

61. The tribunal finds that an application for a section 20C order against the first respondent is not necessary because that company is no longer the landlord and is therefore unable to make a future service charge demand which would include its costs incurred in these proceedings. Accordingly, the tribunal then considered whether a section 20C order should be made against the second respondent. As Mr Gomer pointed out in his submission the only principle on which such an order should be based is that it is just and equitable to make the order. Mr Gomer said that principle is not met in the present case. He says that is because the second respondent had no responsibility for the service charge before it acquired the freehold and therefore should not have been joined in the proceedings. As explained above the tribunal does not accept this argument. It was necessary to join the second respondent as a party for the reasons explained above. Furthermore, it seems tolerably clear that despite the change of freeholder the service charge is still being managed in the same way by, the landlord's agent, Gateway, other than in accordance with the terms of the lease, including the year 2013, the accounts of which are the responsibility of the second respondent. As noted above the applicant has been successful in obtaining significant reductions in the service charge for all years including 2013.

62. The tribunal finds that in these circumstances it would be just and equitable to make an order that none of the second respondent's costs incurred in connection with the current proceedings are to be regarded as relevant costs in respect of any future service charge demand by the landlord. This is without prejudice as to whether the lease would otherwise have permitted the same in the absence of this order. Mr Gomer submitted that this lease would permit recovery of the costs. However, the tribunal does not agree. The only relevant provision is that in paragraph 1.1(b) of the Fourth Schedule. which provides that service charge expenditure includes expenditure incurred

" in the payment of expenses of management of the Estate of the proper fees of surveyors or agents appointed by the Landlord or in connection with the performance of the Landlord's obligations and powers and with the apportionment and collection of those expenses and fees between and from the several parties liable to reimburse the Landlord for them and of the expenses and fees for the collection of all other payments due from the tenants of the Properties not being the payment of the rent to the landlord".

63. That clause makes no reference to the fees of lawyers in tribunal proceedings and is not otherwise sufficiently clear to cover the second respondent's costs in respect of these proceedings brought by the applicant. (See *Daejan Properties Ltd. v Griffin and Matthew* [2014] UKUT 0206 (LC).

Martin Davey
Chairman of the Tribunal

Annex

The Law

1. Section 27A(1) of the 1985 Act provides:

"An application may be made to the appropriate 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. Section 27A(3) of the 1985 Act provides:

"An application may also be made to the appropriate 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 it would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable."

3. A "service charge" is defined in section 18(1) of the 1985 Act as:

"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."

4. Section 19(1) of the 1985 Act, provides that:

"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly."

5. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as "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.

6. Section 20C of the 1985 Act provides that a tenant may apply to...the First-tier Tribunal for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before [the Tribunal] 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.