FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	CHI/00HH/LSC/2021/0112
Property	**:**	Flat 5, 27 Upton Road, Torquay, Devon, TQ1 4AG
Applicant	**:**	Mr Moh Shafie
Representative	**:**	
Respondent	**:**	27 Upton Road Owners Management Company Limited
Representative	**:**	Mr Darren Stocks Crown Property Management
Type of application	**:**	Transferred Proceedings from the County Court in relation to service charges
Tribunal member(s)	**:**	Judge J Dobson
Date of hearing	**:**	11th April 2022
Date of decision	**:**	23rd May 2022

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the Decision of the Tribunal

1. **The administration charges challenged by the Applicant in the proceedings were payable and reasonable.**

Summary of the Decision of the County Court

2. **The money claims and claims for declarations brought are dismissed.**

3. **As to costs, the Respondent shall pay a £100 contribution to the fees paid by the Applicant within 21 days. Such payment may be made by credit to the Applicant's service charge account and if so shall be shown on an amended account.**

Procedural Background

4. In December 2020, the Applicant lessee filed a claim in the County Court under Claim No. H28YX326 in respect of sums said to be due from the Respondent freeholder. The claim related to a flat, Flat 5 ("the Flat") within the building at 27 Upton Road, Torquay TQ1 4AG ("the Building"). The stated value of the claim on the Claim Form was £1184.48, excluding the court fee paid which reflected that value.

5. A Particulars of Claim was provided subsequently. That sought a judgment in favour of the Applicant for what was asserted to be the correct balance on the service charge account and an additional sum for interest on a previous judgment from 2014, exceeding the value of the claim as issued and for which a fee had been paid. In addition, the Particulars in effect sought three declarations, namely firstly that a demand was issued fraudulently (and so the sum demanded was not due, contributing to the amount the Applicant claimed owed to him), secondly that the Respondent was in breach of an earlier Order of the County Court and thirdly that the Respondent is in breach of the Lease. It was also said that administration charges were not reasonable. There were several other issues raised across the pages- there were thirteen different headings to sections of the claim. There was therefore some complexity, as reflected in the length of this Decision, despite the monetary value of the claim as issued being modest.

6. The Respondent filed a very short Defence dated 16th March 2021, denying that any sums were due, including because a credit note was issued for a previous sum payable. In addition, a counterclaim was indicated of £2112.46 but no fee was been paid to issue a counter claim and so at most there was a claim for set-off of sums due to the Respondent from any sum otherwise due to the Applicant. The response did not address many of the issues with any specificity, but no further detail was sought or ordered.

7. The proceedings were transferred to the Tribunal by District Judge Taylor by order dated 10th November 2021 at a hearing. In light of the nature of the issues between the parties, the Tribunal was required to make a determination as to the Respondents liability to pay and the reasonableness of any relevant service charges and administration charges. The Tribunal Judge would decide, sitting as a Judge of the County Court, all other matters, including whether any sums were due to the Applicant and would deal with ancillary matters as to interest and costs (unless any element of costs fell within the more limited Tribunal jurisdiction).

8. The Tribunal gave Directions principally at a case management hearing, which took place on 8th February 2022 and at which Directions were given progressing the case to a final hearing, listed 11th April 2022. It was additionally identified in the Directions that there were court proceedings in 2014 concluding in a judgment; earlier proceedings in the Leasehold Valuation Tribunal in 2013 but which settled and so there was no relevant decision; and a further set of proceedings in 2019. Also, that the allegedly fraudulent demand, 6812, dates from 2012, although the Applicant said that he only discovered an issue in 2018. It was additionally established that the Applicant brought no challenge to the payability of any specific service charges and pursued no argument that any such charges were not reasonable in amount and ought to be lower.

The Lease

9. A copy of the lease was provided within the bundle- see below. The Lease is granted for the term of 999 years.

10. The relevant parts of the Lease provide the following various matters:

1.3	Interest is payable at 1.5% above the Barclays Bank base rate.
2.1	£50 per year is payable as basic rent
3.1	That is to be paid 25th March and 29th September on the given year in equal instalments
3.2	Service charges are to be paid on the dates in the Third Schedule
3.26	The lessee to pay all expenses in respect of a section 146 notice
4.4	The lessor will show the lessee the insurance policy and receipt of the premium
4.5	Sums payable under the insurance policy to be promptly used in repairing or rebuilding and proceeds held for anyone interested in them
5.1	Lessor may forfeit in the event of breaches by the lessee provided for

Third Schedule

1. Service costs are the sums spent in the lessor carrying out is obligations. The final service charge payable by the lessee is 9.75% of that. Interim service charge instalments are payments of 9.75 of the final service charges on the latest service charge statement.

2. The lessor must keep a detailed account and have statements prepared, including providing sufficient detail of costs and stating the final service charge and the total interim payments made with any positive or negative balance
3. Instalments to be paid on rent days
4. Positive balances to be paid by lessor to lessee on delivering the statement: negative balances to be paid by lessee within 14 days.

11. Whilst there are numerous other provisions in the Lease, it is not apparent that any are directly relevant to the specific issues to be determined in this case.

12. The Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

13. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in *Chartbrook* [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

The factual background to the dispute and the Property/ Building

14. The Applicant is a lessee, together with his wife, of the Flat. The Property was purchased by them in April 2008. The Respondent company is the lessee-owned freeholder of the Building. The Applicant and his wife hold a share in the Respondent. It should be recorded for the avoidance of doubt that the Applicant's wife, whilst the joint- lessee, is not a party to these proceedings and played no part in them.

15. It appears that the Building comprises at least five flats but no other information as provided by the parties. Nothing turns on the size or type of the Building or on any feature of the Building.

16. It is apparent that there has been a long history of dispute between the parties, of which the three sets of proceedings above form part.

The Hearing

17. The hearing was conducted entirely remotely as video proceedings. The Applicant, Mr Moh Shafie, represented himself. Mr David Stocks, the Respondent's managing agent, represented the Respondent.

18. The Applicant provided a bundle of 156 pages comprising various documents and a separate bundle of a further 74 pages comprising copies of the accounts for various years. Neither bundle included the parties' original statements of case or any Orders or Directions in the course of these proceedings.

19. It was necessary to obtain those documents from elsewhere during the early part of the hearing, together with the statement of Mr Stocks on behalf of the Respondent which it was established had been served, but I was unaware of, and the response to that from the Applicant plus a further year's accounts, of which I was also unaware. There was a particular delay in the Defence being found. At least half an hour of the hearing was wasted before all of the necessary documents were to hand. Those then needed to be read.

20. One effect of that delay was that to any extent that it may have been appropriate to proceed by way of one party cross- examining the other and asking any questions I considered appropriate following from there, time constraints led to a decision on my part that a pro-active approach would have to be taken by me and that the parties cases should primarily be clarified element by element in response to matters I raised, addressing as much as possible in the available time. I gave the parties the opportunity to ask any additional questions of the other and otherwise clarify any further matters as required.

21. Insofar as there was oral evidence, that was given on behalf of the Applicant by the Applicant and on behalf of the Respondents by Mr Stocks. The detailed written statement in support of the application had been provided by the Applicant, the short statement in response was provided on behalf of the Respondent by Mr Stocks and the reply to that was also from the Applicant.

22. I explained to the parties that the elements within the jurisdiction of the Tribunal would be determined sitting as a Tribunal Judge, whereas the elements within the jurisdiction of the Court would be determined exercising my County Court jurisdiction. I also explained that given that I was dealing with both elements alone, I may not identify to them during

the hearing each time matters moved from a Tribunal matter to a Court matter but that the Decision would deal with each separately.

23. Although the Tribunal issues would usually be dealt with first in a Decision encompassing both County Court and Tribunal elements, in this instance I do not follow that course. Instead the County Court matters are dealt with first and the Tribunal ones follow that, for reasons which should become apparent.

The County Court issues

Claim

24. I address in some detail matters related to the money claim by the Applicant first and with appropriate sub- headings. I then turn to the other matters raised, where the points being made and the remedies which may be sought are less clear. The net result is disproportionate to the amount involved but where I have sought to avoid any matters being left unexplained where practicable, in the hope of avoiding avoidable further disputes between the parties.

- Account up to date at March/ September 2013?

25. As a number of other elements of this case are affected by it, I start with this point. I am mindful that I found the account unclear in the hearing and may have made observations reflecting a perception that the Respondent had not credited all that it ought.

26. There were proceedings between the parties in 2013 before this Tribunal. The Applicant's case is that the parties were encouraged by the Tribunal Judge at a case management hearing in August 2013 to reach a settlement and I have no reason to doubt that to be correct. It is not in dispute that a settlement was agreed – the compromise arrived at. The originally indicated compromise was that the Applicant and his wife would pay £760 for all service charges unpaid up to 24th September 2012. The Applicant made an offer in those terms which Mr Stocks accepted on behalf of the Respondent.

27. It was subsequently written by Mr Stocks that the relevant date was 24th March 2013, "that the amount of £760 to the 24th March 2013 is the only amount outstanding to that date" and in addition, £140 of the £760 was to be paid by being credited, so leaving £620 more to be paid by the Applicant and his wife.

28. That £140 was an insurance excess of £50 and a £90 fee paid by the Applicant to issue the particular Tribunal proceedings. It merits mention that 24th March is the last date before the next rent and service charge instalment should fall due on 25th March and I infer was chosen for that reason. The Applicant paid that sum of £620 on 12th September 2013. Between March 2013 and 12th September 2013, the further sum of

£422.86 was demanded for further service charges. That was not included in the compromise.

29. The amount shown on the account as at late 2012 and still at 24th March 2013 was £1191 rather than £740. It was not made unclear why compromise was reached of the account being cleared for payment and credit of a lower sum that but the difference between the payment and credit agreed and the balance shown is not directly relevant now. The clear effect of the compromise is that on the Applicant paying the agreed sum, the balance as at March 2013 was nil and so the correct balance on the account following the Applicant's payment can only have been sums falling due after 24th March 2013 and so which did not form part of the compromise.

30. In fact, the account shows £993.86 following the payment by the Applicant. I infer that the Respondent simply credited the actual amount of the payment made and failed at that time to account for that being the compromise of any sums due to March 2013, or even include the £140 specific credit specifically referred to. That was unsatisfactory and led to some confusion on the day of the hearing. Even Mr Stocks conceded, in error as it turns out, that the £140 was not shown as credited. Indeed, at first blush it seemed to follow that the service charge account showed a negative balance at least £573 greater than it ought to be thereafter and may continue to.

31. It was only in the course of considering a different point in writing this Decision that I noted that the account also shows two in March 2014, which total £573- one being £253.50 and the other £317.50. Once those are credited, the balance on the account is £816.09, which is the total of the £422.86 demand in Spring 2013 and £329.23 demanded in November 2013.

32. It follows that all of the credits relevant to the compromise were posted after all, albeit that I consider anyone could be forgiven for not identifying that. As to why the credits were not for the whole sum or did not identify the £140 element and the balance element but instead were for two apparently random figures may remain a mystery. Suffice to say, I find that as at 19th March 2014, the balance of £816.09 is the correct one.

- <u>Demand 6812</u>

33. Notwithstanding the observations above about the compromise, I consider it necessary to deal with the allegation of fraud. If I had found the allegation of fraud to be made out, that may have impacted on the compromise reached and whether it could be relied on, at least by the Respondent if relevant. The remedy sought is a declaration but I deal with it in the section of the Decision which otherwise relates to the money claims because it sits best with them and would impact on the sums claimed.

34. In respect of the allegation of fraud raised by the Applicant, I find the demand number 6812 for the sum of £1267.00 not to have been issued fraudulently. The demand is, as explained below, a demand for a total of various unpaid service charges, not a service charge demand for any specific period itself.

35. As explained to the Applicant at the case management hearing and in the final hearing, an allegation of fraud must be proved to the criminal standard, that is to say beyond reasonable doubt or so that the decision maker is sure that the matter alleged occurred. He specifically asserted that "somebody must have pocketed" the money demanded and expressed the same essential sentiment in other ways.

36. The Applicant claimed in the Particulars of Claim that proceedings were issued in 2019 by the Respondent against the Applicant and his wife, that full clarification of the account was requested and that documents were produced which included this particular demand. The Respondent did not dispute any of that. The Applicant stated that he did not recognise the demand and required other documents. The proceedings are said to have been discontinued.

37. The Applicant asserted, plainly correctly, that the balance on the service charge account produced was shown as nil at the outset and that the demand is said to have been made at a later point, on 24th February 2012. However, he said that no sum was shown in the 2012 or 2013 accounts, I understand as being expenditure to which service charges of the sum in question could relate.

38. The Applicant further referred to the address on the letter produced by the Respondent's representative in respect of the 2012 demand, being the address at which the Applicant currently lives He said in evidence before me, and I had no reason to doubt it, that he did not own the address in 2012 and therefore the Respondent would not have written to him there in 2012. That was a point well made. I could understand that obvious issue as to the address causing suspicion.

39. The Respondent's case was encapsulated in the first sentence of that Defence, which asserted that all service charge demands payable had been served and matters had already been discussed at previous hearings. There was no more specific response to the allegation of fraud and no reference to any specific discussion of the particular issue at any identified previous hearing.

40. Mr Stocks expanded in the hearing stating that his company had taken over management of the Building and that at that time there was a balance on the Applicant's service charge account. Therefore, a demand was made for payment of that balance, which demand was 6812. It is unclear how clearly that has previously been explained to the Applicant. The letter does however refer to unpaid charges for 2009 onwards.

41. The balance shown on the Applicant's service charge account at the time of the compromise was £1191 owed by the Applicant and his wife to the Respondent. As explained above, the Applicant and his wife subsequently paid that £620 sum in September 2013, which payment I find to have been made pursuant to the compromise. He also withdrew the proceedings.

42. It is difficult to understand how the Applicant could not have been aware of the allegedly fraudulent demand at the time of entering into the compromise. If that demand had not at that time been made and the sum demanded shown on the account, the balance on the account would have been a credit of £76.50. Including as it did the sum of £1267.50 demanded in demand 6812 in February 2012, some while before the compromise, the balance on the account as at March 2013 when the compromise was reached was a negative one of the £1191.

43. I consider it entirely likely that the Applicant knew of the balance owed on his account at the time the current agents took over management, which was a relatively recent matter in early 2013, at least far more so than by several years later. I do not consider there to be a need for any specific finding given the other evidence and inferences which can properly be drawn.

44. In contrast, there is no discernible logic to the Applicant agreeing to the compromise, including a payment by him (or by his wife and himself) of £620 to the Respondent, aside from other credits, to clear the account at that date if the amount of demand 6812 were not shown on the account and the account was therefore already in credit. The agreement can only be sensibly explained by there being a sum due to the Respondent at the time, that being the sum shown on the account, or at least the £620, and including the amount of demand 6812. Only then is there a balance owed by the Applicant on the account for the compromise sum to be applied to.

45. Mr Stocks stated, and I accept, that the way in which the ledger prepared by the Respondent's representative when it took over management of the Building was posted shows an initial nil balance, therefore at April 2011. That is the entry seized on by the Applicant. I also accept that then when the arrears from the period of management by the previous managing agent were posted, the negative balance was produced. I do not find anything unusual about that based on my experience of many other cases where one agent has taken over from another.

46. In a similar vein, whilst the Applicant states that the sum does not reflect the annual accounts for 2012 or 2013, that is entirely consistent with the explanation provided by Mr Stocks and indeed the content of the 2012 letter. The sum would not feature in those accounts if it reflects the balance owed by the Applicant from earlier years. I find there to be nothing obviously unusual in the approach said to have been taken by the Respondent and its representative, which I find entirely believable and which does not indicate any improper dealing on the part, despite separate concerns as to dealing with service charges referred to below.

47. I find that a demand was made in 2012 for the balance showing on the Applicant's account as at the change of agents and the sum was at that time added to the service charge account. I find that there was a concluded compromise between the parties in 2013 in respect of the balance of the account, which account included the sum of demand 6812. I find that there is nothing demonstrated which enables the Applicant to go behind that compromise.

48. I should add that I accept that the Applicant could not have been sent a letter by the Respondent in 2012 to an address he did not own. The letter produced on behalf of the Respondent is plainly not correct. In other circumstances, that may have led to a different outcome.

49. However, on balance I accepted Mr Stocks' explanation. That was that the letter has been printed off his company's computer system more recently. The address for the Applicant on that system had been altered to the Applicant's current address for ongoing correspondence, in place of the address originally used in 2012, established as being the address of the Property. Mr Stocks suggested that the field on the letter filled with the Applicants address had been completed by the computer system in the course of the letter being printed and had been filled with the up to date address stored.

50. I find that does occur and that correspondence is in other instances generated on case management and similar systems including up to date details rather than original details. That by no means always occurs, I find. Nevertheless, it does sometimes. It is a plausible explanation.

51. In the absence of the compromise in 2013 and there being a balance showed as owed to the Respondent in respect of which there could be a compromise, which necessitated the amount of demand 6812 already being shown on the account for the reasons explained above, I may have taken somewhat more persuading that Mr Stock's explanation was correct. Mr Stocks told he that he was making an assumption and his explanation was not as clear as it could have been, so it was not especially compelling on its own. However, in context, there was sufficient.

52. I accept that the Applicant may not have had sight of the actual demand back in 2012. On the evidence available to me, that was sent to the Property, whereas the Applicant lived elsewhere. However, that does not detract from the wider position in 2012 and 2013, the amount of the demand being shown on the account and the compromise reached. I find it entirely plausible that whilst the Applicant had not queried about the demand in 2013, he did by 2019, by which time other concerns had arisen, court proceedings had been issued and relations had deteriorated, so that he may have seized upon what was at first blush an obvious issue with his address, forgetting what he may have understood when entering into the compromise six years earlier.

53. Given that there are various reasons why parties withdraw proceedings and why the Respondent may have withdrawn the 2019 proceedings and

where I have no evidence of the particular reason, I do not find that to provide assistance to my determination of fraud in relation to demand 6812.

54. The net effect of the above matters is that the Applicant has failed by a wide margin to demonstrate fraud on the part of, or on behalf of, the Respondent.

55. For completeness, whilst the Applicant refers in the Particulars of Claim to querying a separate sum of £500, in response to which the accounts were adjusted, I find that demonstrates nothing more than an error on that occasion. Whilst that is troubling in itself, for these purposes the most pertinent point is that it indicates that where an issue was identified, that issue was attended to. Given that the Applicant's query about demand 6812 produced no action on the part of the Respondent, which maintained that the demand was correct, the approach to the £500 by making an adjustment tends to support there being nothing untoward in the Respondent's dealings with accounts and demands, rather than the opposite as asserted by the Applicant.

56. I finally explain for the avoid of doubt why I have dealt with the question of a fraudulent demand exercising County Court jurisdiction rather than Tribunal jurisdiction. I carefully considered whether to take the opposite approach, which I envisaged as more likely at the time of the hearing.

57. There is no challenge to service charges themselves. The demand was for a balance due on the service charge account but was not itself a service charge demand. In making his challenge, the Applicant contended that the sum was not due at all and should appear on the account, as being manufactured later. He did not base his case on any service charges items not being payable or being unreasonable.

- <u>Judgment for £640.46 and interest</u>

58. In relation to the judgment awarded to the Applicant by District Judge Parnell sitting at Ipswich County Court on 29th May 2014 in claim number 3QZ21988 of £440.46. The Applicant asserted in the Particulars of Claim that the Respondent has not paid the sum.

59. The judgment was apparently awarded in respect of money paid out by Aviva to the Respondent following a claim arising from water ingress into the Applicant's flat. The sum was not paid on to the Applicant and the Applicant's case was that after seeking payment from the Respondent and not receiving it, the Applicant issued proceedings. The Order reveals that judgment was awarded for £265.50 plus interest plus the fees paid for the proceedings.

60. It is apparent that the Applicant applied for a Third Party Debt Order and that an interim Order was made on 14th August 2015 on the paper application by District Judge Mitchell and including a fee of £100 for issue of that application, the sum of the interim Order being £540.46. That was

not a final order. The application is said in the interim Order to have been listed at 3.30pm on 6th October 2015to be made final. The Applicant stated to me that he did not attend the hearing. He produced no final Order.

61. I cannot find on the evidence before me that such a final Order was made. Not only is there no positive evidence that it was- ideally the Order itself but as I noted in the hearing that has not been produced- but the likely outcome of the hearing have been listed and the Applicant having failed to attend is that the whole application would have been dismissed. I infer that occurred. The usual consequence of that is that the fee paid to issue the Third Party Debt Order application would not be awarded to the Applicant and so would not be payable by the Respondent, hence the £540.46 referred to in the interim Order would have reduced back to £440.46. The £100 fee was not therefore recoverable.

62. The Applicant's claim refers to enforcement application fees and produces a total of £640.46. It is clear that £100 of those fees is that referred to above, where I have found that not to be recoverable.

63. The Applicant stated in evidence that he paid another £100 court fee on 19th January 2016 for what he describes as an "endowment application." However, I do not recognise that description. There is and was no application properly given that name which could have been made.

64. I accept there to be correspondence from the Court dated 3rd May 2016 which refers to a fee paid on 19th January 2016. Unfortunately, that it as far as the documentation goes and where I have no better information following the hearing.

65. There is no documentary evidence of the nature of the application and reason for any such payment. More significantly, the fact that the Applicant may have paid a further fee again does not mean that he is entitled to recover it. There is nothing to demonstrate that such a fee was ever awarded to him by the Court against the Respondent.

66. The Applicant referred in his case to the Respondent being in breach of an Order of Deputy District Judge Bennett. However, nowhere is there reference to what that related to, to what it required be done and to what the breach may be. There is no copy of the Order in the bundle.

67. It is possible that the second £100 fee paid by the Applicant was awarded. However, I have nothing which so states in writing or which was so stated and explained by the Applicant. The Applicant was unable to explain to me the other £100 at the hearing in terms which persuaded me that there was a sum which the Respondent had been ordered to pay to him and so should have been included in the credit posted to his service charge account.

68. I cannot find on balance and on such evidence as was before me that a fee was awarded to the Applicant and ordered to be paid by the Respondent. I

therefore find that the sum for which the Applicant was entitled to payment was £440.46.

69. The Applicant contends that the Respondent has failed to make payment of the judgment sum. Mr Stocks said that a credit had been posted to the Applicant's account. I find, despite Mr Stocks evidence- which I do not accept- that no credit was posted. I make that finding because I cannot identify any credit for £440.46 in the Applicant's service charge account and I have looked through the ledger for the Property from 2019 on which no credit for the sum of the judgment is shown, still less any description referring to credit for that purpose. Mr Stocks did not identify when the credit was applied, merely saying that it was. I cannot accept Mr Stocks unsupported evidence, not least where the approach to the credits due following the compromise was that those were not properly attended to and the concern about management of the account that arises.

70. The difficulty which the Applicant has is that any relevant Orders having been made, there is no power to make them again. He was entitled to enforce the £440.46 judgment sum, and indeed started to do so. If he had completed the Third Party Debt Order process or had pursued other means of enforcement, he would have been entitled to appropriate fees. That is not because of anything I might be able to do now but because the orders made at the time would have provided for it.

71. However, the judgment has not been enforced. As to why the Applicant's application for which the fee was paid in January 2016 did not assist with resolving that- or at least did not successfully resolve it, I do not know. Suffice to say that it appears clear that it did not do so where no payment was forthcoming.

72. The judgment is also over six years old and was over six years old at the time of the issue of proceedings. There is nothing before me to indicate that it remains enforceable.

73. The Respondent ought I consider and through its agent to have posted a credit for the amount of the judgment, absent actually paying the money over to the Applicant. That should have happened following the judgment being given. It is quite surprising and disappointing that did not happen. It does not reflect at all well on the Respondent or its agent.

74. I add that the Respondent asserted in the written Defence that the bank account details given in the Third Party Debt Order application were incorrect and so the Respondent was not liable to pay the fee for the application because of that error. No evidence was given in support of that assertion. However, there is no need to make any finding as to whether or not it is correct in light of the determinations above.

75. In terms of the Applicant's assertion of an entitlement to interest on the amount of the judgment, the Order of 29th May 2014 granting that judgment makes no reference to interest being payable on the judgment

sum. That is in contrast to the award of interest on the £265.50 found due up to the date of the judgment.

76. Given the amount of the judgment sum, I do not find that surprising, although my surprise or lack of it matters not at all. The more relevant point is that any power to award interest was in the hands of the Judge who gave judgment. It is not in the hands of the Court now to vary the judgment, which has not specifically been requested, to add in interest which was not ordered payable at the time and several years ago.

77. There is therefore no basis for the Court awarding interest now and hence this element of the Applicant's claim also fails.

78. I pause to observe that notwithstanding the above determinations, the approach of the Respondent as demonstrated by above matters was highly unsatisfactory. It ought to have been wholly unnecessary for the Applicant to have to issued proceedings and obtained a judgment. The judgment should then have been attended to and credit posted to the service charge account at that time.

- <u>Claim for £1124.48 or £923.43</u>

79. The first matter to mention is that the figure in the Particulars of Claim- £1124.48- and the figure in the witness statement of the Applicant which is in very similar terms to the Particulars- £923.43 are quite obviously different. No specific explanation has been given but it is apparent that the service costs in relation to which a share is payable by the Applicant and his wife has been calculated in the first instance as £6088.75 and the second as £6290.32.

80. It is further apparent that in the Particulars, a guess was made of expenditure in 2019- there is a figure followed by question marks- whereas by the time of the witness statement, I perceive that the correct figure was known. I adopt the figures in the witness statement.

81. However, I am unable to find that the account ought to show a balance payable to the Applicant of £923.43, or any other sum, as at the date of issue of proceedings.

82. I pause to mention that I have dealt with this matter within the County Court section because it relates to a sum claimed by the Applicant and where it is effectively said that the accounts are incorrect- the section is headed "Accounts" in the Applicant's case. As I have noted above, the Applicant's case is not put that any specific charges were not payable or were not reasonable and so fall within the jurisdiction of the Tribunal. Rather the Applicant's case is essentially based on an accounting exercise. I have concluded that this element falls within Court jurisdiction and where it quite uncertain to what extent it may fall within Tribunal jurisdiction. It may that the practical difference is limited given that I am exercising both jurisdictions, one at a time, although there are circumstances in which the distinction could become more significant.

83. It is a far from simple task to establish exactly what the accounts position should be. I have attempted to achieve that as far as reasonably practicable and insofar as relevant to the issues in this case. I am content that I have been able to deal with that amply to be able to address the immediate question, if not necessarily every other question that there could be.

84. The list of payments includes the £620 compromise payment in September 2013 referred to above but not the additional credit of £573 which I found should have been posted. Necessarily that alone means that the payments made should be shown as £573 more, or the service charge payable as £573 less, the net effect being the same either way. I prefer the former approach.

85. However, it is firstly not apparent that the Applicant has factored into his figures the debit in demand 6812 for the balance owed before the Respondent's current agents took over management and the account balance at that time and for the subsequent months. More generally, the Applicant has listed payments made of £7213.75 from the start of April 2012 onwards: in contrast he has listed charges during the service charge year which started 1st May 2012 and ended 30th April 2013. April 2012 fell into the previous service charge year and so the Applicant does not compare like with like.

86. The Applicant calculated that from year ended April 2013 onward, service charges as the relevant percentage of actual service costs should be £6290.32, whereas the amount demanded was £8099.27. I have considered the accounts provided by the Applicant from year ending April 2013 onward (which 2013 accounts also include the figures for the preceding year, 2012 in the usual way). I am content that the figures provided by the Applicant in his table of service charge expenditure for year ended 30th April 2013 onward are correct. I am content that the percentage of that expenditure payable in respect of the Property is correct. I am therefore content that during years ending April 2013 to April 2020, the appropriate sum payable by the Applicant and his wife would, ignoring any other matters altering the relevant figure, be £6290.32.

87. The Applicant is correct to say that the obligation of his wife and himself is to pay 9.75% of actual service costs payable, although in the immediate year at any given time the Applicant may properly be required to pay more than that sum later turns out to be if the on-account sums demanded for the year are reasonable but turn out to be higher than the costs actually incurred in the year. The Applicant had said that his totals included the actual sums demanded and in contrast the correct sums for the service charge expenditure year by year, as I have found they do. I adopt those figures below rather than the amount of the actual demands issued on behalf of the Respondent.

88. I should make it clear that I am also content from the accounts information available that the payments made by the Applicant (and his wife) from the date on which they started to be listed were in fact £7213.75, to which the credit of £573 ought to be added as the simpler of the two potential

approaches, totalling £7786.75. If the Applicant were comparing like with like from a nil balance and from the correct starting point with no other factors impacting, the Applicant would be in credit during the period by £1496.43 (although that is more than he has claimed) as at April 2020. However, for reasons I will come to, he is not and does not have a claim for such sum, so that £1496.43 bears no relation to the reality of the situation.

89. I note with no little concern that Mr Stocks said that where interim demands had exceeded sums actually required for the given year, the directors of the Respondent had decided to carry the positive balances forward, apparently presuming that they were entitled to decide such a matter. He said that refunds could be issued but there may then need to be a cash call at a later time. The latter may be so, but it does not entitle the Respondent to fail to do the former.

90. The Respondent is entitled to make on- account demands for payment, which must be reasonable at the time of being made. The Lease is clear about that. They will very likely turn out not to be the same as the share of actual expenditure, whether higher or lower.

91. However, the Lease provides for such matters in paragraphs 1. and 2. of the Third Schedule. The Lease requires that there is a service charge statement prepared for each period ending on 24th June (more as to that date below) which must state the service costs, the amount of the final service charge, the amount of the interim instalments paid and the amount by which the final service charge exceeds the interim ones or vice versa. It must also be certified. There must then be a reconciliation against actual costs and the share of those costs payable by the given lessee. The service charge accounts for the lessees should have shown the amount due for the year based on the reconciliation and so at the very least any appropriate credit to be set against sums demanded for the following year.

92. The liability of the Applicant applying the relevant percentage of actual service costs and the approach which Mr Stocks stated had been taken by the directors of the Respondent, inevitably mean that amounts demanded of the Applicant were higher than they ought to be and that the balance shown on the service charge account is not correct for that reason, because it fails to show credit against reconciled actual charges.

93. I determine for the avoidance of doubt that the Lease does not allow the Respondent to retain any positive balances arising from on account demands exceeding the actual service charges for the given year. The balances have to be returned to the lessees. In practice, I could accept that where there has already been an on-account demand for the subsequent service charge year and that has not yet been paid, any sum otherwise due back to a lessee could be applied to such a demand, or indeed any sums owed by the given lessee from previous years, reducing such sums owing.

94. It is apparent from the accounts that for the end of April 2017, the Respondent held onto £8327. It is also shown in the accounts in the year to end April 2018 and 2019 that service charges demanded during the year

were somewhat lower than expenditure on service costs. To that extent, there was a modicum of logic to Mr Stocks comments, although that can be put no higher, not least where a significant balance continued to be retained. It scarcely needs saying that the Respondent is obliged to comply with the terms of the Lease and perceived logic of a different approach cannot alter that.

95. By service charge year ending end of April 2020, the Respondent continued to hold a balance of £6296 and by end of April 2021 that was £6347. There is no reference to any debtors. In addition to the service charge balance as described, a sum of £4000 is held named as capital redemption. I must concede that I cannot identify what that is. It is not apparent that there is an entitlement on the part of the Respondent to hold it, but I have no information about it and so do not seek to guess what the answer might be. There is in any event nothing to suggest that the answer may affect the outcome of this case. I consider that I am compelled to, and safely can, leave it to one side.

96. No service charge demands ought to have been made between December 2020 and 25th March 2021. Doing the best that I can on the available information, I find that the amount held was roughly the same in December 2020 as it was in April 2021. Leaving aside the £4000, and on the footing that all lessees, including the Applicant had paid all service charges demanded and so had overpaid against actual expenditure, the Applicant and his wife would be entitled to the return of their share of the unspent service charge payments made as at the date of issue of the claim. Regrettably for the Applicant, in reality there was nothing to be returned, to the Applicant and his wife at least.

97. I explain why potential credits and/ or sums are not owed to the Applicant.

98. I have observed above that the Applicant did not compare like with like. He included payments from April 2012 which fell into the accounting year 2011 to end of April 2012 and not the year to end April 2013 and so should not be included in a comparison against expenditure and shares of that for year ended April 2013. That reason alone would have rendered the Applicant's figures wrong. The Applicant also assumes no earlier sums were owed. That is addressed to a fair extent in the discussion about the allegedly fraudulent demand, so I do not repeat it.

99. However, none of that has any practical effect because of the compromise and the nil balance as at 24th March 2013.

100. If one takes a nil balance as at March 2013- reflecting the compromise reached and which renders earlier amounts due and payments irrelevant- and at the end of the service charge year slightly later, the service charge expenditure since then as identified by the Applicant, to 30th April 2020, is £5838.82.

101. In comparison, the payments listed by the Applicant which apply to that period amount to £5514.01 (ignoring the £620 in September 2013 and

the further credits posted only in March 2014 which were required to produce the balance agreed to be nil at March 2013).

102. That indicates an underpayment by the Applicant and his wife of £324.81. That is against actual expenditure, ignoring the higher level of any on account demands.

103. The Applicant has also ignored any service charges falling due between April 2020 and the date of issue in December 2020. The evidence clearly indicates that the Respondent has raised another on account service charge demand since April 2020 and indeed it would be surprising if it had not. Similarly, a demand in March 2020 on account of the 2020 to 2021 year, which whilst pre-dating April 2020 in itself is not relevant to the service charge year ending 30th April 2020 to which the Applicant referred, but rather the next year. The Applicant indeed accepted, albeit not in precise terms, that there had been such demands.

104. It was common ground that the Applicant had not made any further payment in the period since April 2020. The Applicant's claim was based on the premise that the stated sum as at April 2020 was not only owed then but also was owed as at issue of the claim and that the position was static. It was not.

105. I was and am unable to understand how the Applicant might have perceived that he could adopt a date several months prior to the issue of proceedings and treat matters as if preserved in aspic at that point, ignoring sums falling due in the subsequent months. I determine, lest I need to, that he cannot.

106. I do not know whether those 2020 demands were accurate on account demands. I infer that there is very likely to be something of a difference between on the account demands and actual costs during the service charge year. Nevertheless, the demands can only be taken account of as issued. There had been no reconciliation of the 2020- 2021 service charges due or undertaken at the time of issue of the proceedings.

107. Hence, from a negative of £324.81 as at April 2020, the Applicant then owed more by December 2020 against the share due of actual expenditure plus the on account demands for 2020/21 and indeed will have continued to owe more, to an ever- increasing extent, in the absence of making payments.

108. I should return in that context to the sum held by the Respondent for the lessees collectively. That sum as at April 2021 is notwithstanding the act that the sum would, if such money were allowed to be held, be higher if the Applicant and his wife had not underpaid to April 2020 and had not failed to pay service charges demanded during the year ended 30th April 2021. The Applicant necessarily cannot be entitled to any of the sum held. There cannot be a comparison of payments against actual expenditure, against which the Applicant still falls short, and a claim for a share of money generally retained by the Respondent. If the Applicant had overpaid

against the proper share of service costs for the Property as at December 2020, and so such overpayment formed part of the sums retained by the Respondent, there would be entitlement to have that excess returned. Where the Applicant has underpaid, necessarily there is no excess. The sum held must reflect the overpayments by other lessees.

109. I expect that the approach that I have taken is almost certainly not precisely accurate. I am not a forensic accountant and the information provided is less than completely clear. In this instance, the margin between the position as I understand it as at December 2020 and the Applicant's claim is very wide. Given the size of the overall figures involved, any modest inaccuracy does not alter the end result.

110. I should make clear that all of the above assumes that the Respondent complied with the requirements of the Lease in respect of demands and hence service charges, at least after September 2013 or an appropriate later date were in fact due. If the Respondent did not, the position may be quite different. Hence, I raise the matter with some caution.

111. The Lease, at paragraph 2 of the Third Schedule, requires certified service charge statements for each period ending 24th June, as mentioned above. The accounts provided are, as the dates referred to in this Decision reveal, up to 30th April in any given year. There are no such service charge statements in the bundle. I do not know whether any exist. However, the Applicant has referred to a delay in preparation of service charge statements, from which I infer that there are such statements. Otherwise, I perceive that the issue raised by the Applicant would have been about a lack of such statements rather than delay. In any event, the Applicant, whilst raising several arguments, did not raise an issue about lack of such statements. Necessarily it was not responded to.

112. In a similar vein, the Applicant's assertion that he was owed money by the Respondent was that he was owed that as at the date of issue of proceedings, not that anything should have been repaid to him following a reconciliation in any given past year. Consequently, that was not responded to either.

113. I have concluded that I must determine this case on the bases on which the Applicant's case is put that I should ignore any potential point which was not before me. I add that I rejected seeking additional evidence and/ or submissions from the parties on a matter not raised, in a case of modest value and some weeks after the hearing took place. I also add that if there had been an argument that service charges were not payable because of a failure to provide service charge statements or to undertake reconciliations, that would have been a matter to be dealt with sitting as the Tribunal but I need not dwell on that.

114. I finally add for completeness that the compromise reached that the account was nil as at March 2013 would have precluded any issue being taken about earlier demands and payment by the Applicant and his wife on 21st July 2015 of everything demanded by the Respondent, save for what

are obviously the administration charges applied, would potentially have amounted to an acceptance or admission that the sums demanded to that point were payable. The £2040 paid in 2018 and 2019 may have had a similar effect. Hence the question of the extent, if any, to which the Applicant could have relied on any non-compliance with the Lease by the Respondent, would have been a difficult one and certainly not one with a simple and clear answer. That is arguably another sound reason for not seeking further submissions at this very late stage were such another reason needed.

115. The Respondent's defence was premised on no money being owed and a balance owed by the Applicant of £2112.46 as at December 2020, although that appears to relate to on- account demands and not reconciled end of year figures. However, there was no counterclaim and so I am not required to determine the exact sum which may have been owed to the Respondent or may currently be. Hence, I do not attempt to do so.

116. The claim was by the Applicant for an order that a sum was owed to him. As I have said above, I am not persuaded on the balance of probabilities on the cases presented and the evidence received that a sum is owed to the Applicant as claimed or any other sum. I have decided the case before me. I also observe again that assuming that the Applicant and his wife have continued not to pay service charges, the position will have altered further, and not in their favour, by now.

117. It necessarily follows that the money claim for the asserted balance on the account by the Applicant fails.

Other declarations and other matters

118. The Applicant has raised in the Particulars of Claim various other matters.

119. It is asserted that the Respondent is in breach of the Lease. A number of different assertions are made. including that a service charge statement was not prepared within six months and that not all documents were produced in response to a request under section of the Landlord and Tenant Act 1985

120. In relation to the first, reference is made to the Lease requiring preparation of a service charge statement, to which I have referred above. However, the particular breach asserted by the Applicant is the failure to do that within six months, based on RICS guidance. That is, as I have referred to above, rather than asserting a lack of statements at all. The guidance, which I perceive to be the Code referred to above, is explained above to be relevant evidence of the appropriateness of the approach taken but is not the foundation for a breach in itself. Whilst it is hard to discern the Respondent's position about the particular allegation, I find that the Applicant has failed to sufficiently demonstrate a breach for me to make a finding of one.

121. In respect of the asserted failure to produce documents, it is far from clear from the Particulars of Claim what remedy the Applicant sought in relation to those matters, I am no clearer following the hearing. Evidence of any breach on the part of the Respondent and entitlement to such remedy as is sought is also lacking. The Applicant said few invoices had been produced. Mr Stocks said the documents had been save where redacted to remove information of other lessees. I simply did not have sufficient and clear evidence on which to reach any decision that there ought to have been other documents provided to the Applicant. Given that it was for the Applicant to provide a breach and demonstrate an entitlement to a remedy sought and he has not succeeded in doing so, that aspect of his claim fails.

122. In respect of "Demand 15716, dated 21 July 2015", it is apparent from the service charge account that related to administration charges in respect of the legal fees referred to. As the Tribunal determination is that the administration charge is payable and reasonable, there is no applicable remedy in the County Court. Insofar as the Applicant states that he asks for an explanation of asserted lack of receipt of correspondence, I do not consider it the role of the County Court to address that.

123. Matters are very briefly and not at all clearly set out under a heading "Accounting Year". The Applicant refers to a gap of 35 days between "account year 30 April, according to Clause 3.1 of the lease date 25 March" and says that an explanation has been requested from the Respondent but not received.

124. However, 25th March is one of the rent days and consequently one of the on- account service charge payment dates. It has no other significance. I am unable to discern what, if any, remedy the Applicant might have been seeking, still less potentially entitled to in respect of the above matter and the purpose of making any finding. However, if there is a breach by the Respondent in respect of the accounting year, about which I make no finding in the absence of any identifiable reason to do so, the difference between the end of the accounting year adopted and the rent days is not one.

125. The final alleged breach of the Lease by the Respondent I can discern is asserted to be in not paying the amount of a positive balance on the service charge statement to the Applicant. Reference is made to previous credits for overpayments on the advice of the Tribunal is 2013 and it is implicit that the Applicant asserts a credit balance since. However, that has not been demonstrated on the information available to me. Not only has the service charge account never in fact shown a credit balance but it will be appreciated from my findings above that the Applicant has not demonstrated that there ought to be one, or indeed that there ought to have been one at any previous time since 2013. In event, if there were said to be dates in the past where there should have been payments, it is not apparent that there is any current breach or entitlement to any payment now. Even if the Applicant was entitled to a declaration of a past breach by

the Respondent, I consider that there would be no purpose in making a declaration not directly relevant now.

126. For the avoidance of doubt, I do not that it would have been appropriate to issue a general declaration as to a breach of the Lease by the Respondent. There would need to be a specific breach to identify and a purpose to the declaration. I consider it unnecessary to say more about that.

127. As mentioned above, the Applicant further seeks in the prayer to the Particulars (but not in the main body) a judgment that the Respondent is in breach of the Order of Deputy District Judge Bennett in his 2014 claim. I take it that the Applicant seeks a declaration, although that is not completely clear.

128. However, as I have already observed, the bundle does not contain any judgment of that Judge and I have no information as to what it relates. It may follow from the application for which the fee was paid in January 2016 or from something else entirely. I have no idea what order was made and so no way of knowing whether there has been a breach of it. It is again not clear to me that it would be appropriate to declare a breach of an order absent any specific consequence following on from that. However, that matters not where I am unable to identify a breach in any event. It follows that the determination sought by the Applicant that the Respondent is in breach will not be made.

129. There are general assertions of bullying and emotional injury and about other unfairness in managing but I find there is nowhere near to being a case sufficiently presented that any remedy could be awarded and so I find no need to address those at any greater length.

Interest

130. There is no sum awarded on which to award interest. Consequently, the claim for an award of interest necessarily fails.

The Case before the Tribunal

The Tribunal's jurisdiction

131. The Tribunal has power to decide about all aspects of liability to pay administration charges and can interpret the lease where necessary to resolve disputes or uncertainties. Administration charges are not variable service charges as defined by the Landlord and Tenant Act 1985.

132. The relevant provisions are instead to be found in section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Administration charges are defined (ins Schedule 11) as, amongst certain other possibilities:

"…. an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly:

.....
(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 the landlord or tenant, or
....."

133. The Tribunal can decide by whom, to whom, how much and when an administration charge is payable. By paragraph 2 of schedule 11, an administration charge is only payable to the extent that it is reasonable. The Tribunal therefore also determines the reasonableness of the charges. Insofar as it is relevant, it is for the lessor to show that an administration charge is reasonable- but see paragraph 155 below.

134. The definition of administration charges is a wide one and includes charges by third parties such as solicitors. The sums do not need to be expressly stated as payable under an express term of the Lease.

135. In a similar vein, the Tribunal has power under section 27A of the Landlord and Tenant Act 1985 ("the Act") to decide about all aspects of liability to pay service charges. The Tribunal determines the reasonableness of the charges, including where service charges are payable in advance, no greater amount than is reasonable is payable (section 19(2)). The Commonhold and Leasehold Reform Act introduced a similar concept for administration charges as that which existed for service charges.

136. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states that failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.

137. It is well established that a lessee's challenge to the reasonableness of a service charge or administration charge must be based on some evidence that the charge is unreasonable. The burden is on the landlord to prove reasonableness, but the tenant cannot simply put the landlord to proof of its case. Rather the lessee must produce some evidence of unreasonableness before the lessor can be required to prove reasonableness (see for example *Schilling v Canary Riverside Development Ptd Limited* [2005] EW Lands LRX 26 2005 in relation to service charges).

138. In *Knapper v Francis* [2017] UKUT 003 (LC) it was held that where service charges, as they were, demanded were so demanded on account, the question is whether those demands were reasonable in the circumstances which existed at that date. It may be seen that I have referenced that principle in the County Court part of this Decision.

139. The Tribunal is entitled in determining the service charges or administration payable whether any sum should be off- set in consequence of any breach by the lessor. However, I need not dwell on that in this instance.

Payability of the Administration charge

140. The only specific matter raised by the Applicant and which I have determined as falling within the jurisdiction of the Tribunal related to administration charges, more specifically legal fees demanded as an administration charge on 21st July 2015 by way of demand 15176. The heading in the Particulars refers to the specific demand rather than making explicit reference to administration charges but the fees appear to me to have been demanded as administration charges. The Applicant asserted that there should be no charge because he has not owed any money to the Respondent which entitled it to incur such charges and recover them from him.

141. Given that the charges were levied in consequence of sums said to be owed by the Applicant to the Respondent, the Tribunal determination primarily rest on whether or not sums were owed. That is the reason for addressing the County Court matters first and the Tribunal matters second.

142. There was very little said about that in the hearing. The simple element is that as at mid- 2015, the Applicant's service charge account did not show a credit to the Applicant but rather there was a debit for money owed to the Respondent. Therefore, unless the account is so incorrect that nothing was owed, it was at first blush reasonable for action to be taken by or on behalf of the Respondent to seek to pursue money owed. I adopt the position that I took in the County Court part of this decision of leaving aside any point which might potentially have been able to be taken about compliance by the Respondent with the Lease but which was not taken.

143. In light of the other findings made about sums claimed by the Applicant to be due to him and the balances on the account from time to time on the basis of the parties advanced cases, money was owed by the Applicant to the Respondent as at July 2015 even on the Applicant's own figures as to the actual service charge expenditure and the share of that attributable to the Property.

144. It has been established in the County Court part of this Decision that it was agreed that the balance on the service charge account would be nil as at March 2013 on the payment by the Applicant and his wife of £620 and

that the payment was made (and eventually the rest of the appropriate credit was posted). There were then the demands mentioned above and issued on behalf of the Respondent in respect of the Property both for the service charge year ending April 2014 and then more for the year ended April 2015 and April 2016. By July 2015 the account shows a sum owed by the Applicant and his wife of £2163.30 to the resident-owned freeholder which required payment of service charges for income which facilitated the expenditure to maintain and manage the Building.

145. It is right to observe that the demands in years ending April 2014, 2015 and 2016 were all on account demands. As the Respondent had not reconciled the on account demands and correct end of year figures based on actual service charges by July 2015, the total of the on account demands was not an accurate reflection of sums actually due in the given service charge years. However, there were sums due. The Applicant and his wife did not pay any more after the September 2013 payment until 27th July 2015, after the date of the administration charges for legal fees.

146. The Applicant's assertion that no sum was owed is therefore incorrect. I find that the Respondent was entitled to incur and charge administration charges in respect of the sums outstanding from the Applicant.

147. I should pause to observe that the service charge account describes this demand and others which appear to be administration charges as service charge demands, which I find they were not. However, I also find that to be an error of description rather than an error substance to this case. The demands are properly ones for what are in practice administration, irrespective of how they are described, and so should be treated as such.

148. The Applicant also includes in the Particulars of Claim and separately to the specific demand for charges related to legal fees, another heading which is specifically of "Administration Charges"- demonstrating that the Applicant also regards the charges as administration charges albeit the service charge account suggests otherwise.. That appears to relate to other charges applied because of payments said to be due from the Applicant and unpaid.

149. It is difficult to understand the wording used by the Applicant under this heading but those do include the assertion that no payments were due. I understand that to be the key point- that no sums were due from the Applicant, at least as the Applicant perceived, and so there should be no administration charges in respect of such sums. There is no specific indication of which charges in particular the Applicant has in mind or whether he means all.

150. Given the scant identification of his case by the Applicant and the other findings I have made as to sums owed by the Applicant, at least since September 2013 when the account was brought to nil as at 24th March 2013 (albeit not as at September 2013 because of the further demand in between those dates), the Applicant has failed to raise any adequate challenge to the administration charges. The assertion that no specific ones

or none at all were due because no payments were overdue from the Applicant necessarily fails. That is despite uncertainty as to what the actual amounts due at any given time ought to have been.

151. There may or may not be other arguments which could have been raised in respect of the payability and/ or reasonableness of the amount of the administration charges or any ones of them. Various different points are made in particular instances of Tribunal proceedings. However, I again limit myself to the arguments raised by the Applicant and do not speculate about or investigate whether any other arguments might have been relevant in this instance had the Applicant sought to raise them.

152. For completeness, it should be added that there was no application to prevent costs of the litigation, if any, being recoverable as service charges and/or administration charges, in the event that such recovery would otherwise be permitted pursuant to the Lease and applying section 20C of the Act and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Therefore, no determination has been made about such matters.

153. It follows that there is nothing which alters the £95 administration charge in respect of legal fees or any other administration charge shown on the accounts.

Other Observations

154. Finally, it merits recording that firstly, the parties have an ongoing contractual relationship, where working together as far as practicable is likely to be in the interests of both sides. In contrast, ongoing disputes are likely to be determinantal to all.

155. Secondly, the clear impression I have been given is that whilst the Applicant has misunderstood various matters or incorrectly relied on particular points, the Respondent and its agent have contributed to the situation, including by disputing matters rather than explaining their position and by such explanation facilitating the Applicant's understanding. So too in the event of failures to comply with the requirements of the Lease.

156. The failure to deal with the judgment and effectively to have retained insurance money which ought to have been paid to the Applicant ought to be a cause of embarrassment to the Respondent. Notwithstanding my determination as to the Applicant's inability to compel payment, it is impossible not to feel sympathy for the Applicant- although of course the case falls to be determined in accordance with the law and not where sympathy may lie. I trust that the Respondent and its agent will consider very carefully whether it might reasonably now post a credit to the service charge account of the Applicant lessee and member of the Respondent company in the sum of £440.46, notwithstanding any lack of legal requirement to do so.

157. The failure to deal better with the credits due in September 2013 arising from the compromise is frustrating because of the confusion caused. However, as the credit was dealt with, albeit delayed, there was no substantive effect and so it is unnecessary to say more.

158. I have touched on other matters which appear to me to give rise to concern or at least potential concern. I do not repeat them. There may also be a point which could be taken about the date of service charge demands, which were not the rent days as provided for in the Lease and not appear to even have been consistent dates year on year. The obligation is to comply with that and to account for money in accordance with it, not for the Respondent to decide how it proceeds, ignoring the provisions of the Lease. If the Respondent fails to comply with the requirements of the Lease then, unless unbeknown to me those have been changed, the Respondent leaves the door wide open to various potential challenges and litigation. I find the provisions of the Lease to be clear as to service costs, charges and requisite documentation. The Respondent ought to read it carefully and ensure compliance.

159. Hence there is a need for-improvement on both sides. The relative lack of success of the Applicant in this claim does not detract from the unsatisfactory approach on the Respondent's side where specifically identified, irrespective of how accurate the perception of wider failings may be.

Costs and fees

160. Given that no matters were advanced as a result of which the Tribunal's limited costs jurisdiction arose, matters as to costs fall entirely to the County Court. The claim was allocated to the Small Claims Track in respect of the Court elements of the case, in which the Civil Procedure Rules provide limited circumstances in which legal costs are. By far the most common outcome is that no costs are awarded.

161. Both Mr Shafie and Mr Stocks told me they/ their client made no claims for costs in the event. Hence no determination need be made, and the appropriate Order is simply that there be no order as to costs.

Court fees

162. The Applicant has failed with his claim as brought. No sum has been found due to the Applicant and the Applicant has not received the declarations sought. On the other hand, I do not consider that the Respondent should be completely free from paying any of the fees, given its contribution to the situation which gave rise to the claim.

163. I consider that weighing up the nature and outcome of the claim and the relevant factors within part 44 of the Civil Procedure Rules, the appropriate order is made for payment of a contribution to the fees by the Respondent in the sum of £100. The balance of those fees must be borne by the Applicant.

ANNEX - RIGHTS OF APPEAL

Appealing against the Tribunal's decision

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

2. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

3. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

4. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

5. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case. The date that the judgment is sent to the parties is the hand-down date.

6. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

7. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;

    1. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

    2. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.

    3. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.