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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/47UG/LIS/2016/0022** **BIR/47UG/LAC/2016/0002**
Property	:	**Flat 1, 57 Load Street, Bewdley, Worcestershire DY12 2AP**
Applicant	:	**Mr I Rogers**
Representative	:	**MFG Solicitors**
Respondent	:	**ESS Asset Management Limited**
Representative	:	**Brady Solicitors**
Type of Application	:	**Service charges, administration charges and limitation of costs**
Members of Tribunal	:	**Judge D Jackson** **Mrs S Tyrer FRICS** **Mr D Douglas**
Hearing	:	**9th November 2016 and 25th January 2017** **Kidderminster Magistrates Court**
Date of Decision	:	**14th February 2017**

DECISION

Background

1. On 9th June 2016 the Applicant applied to the Tribunal for a determination under s27A Landlord and Tenant Act 1985 ("the 1985 Act") in relation to service charges for past years 2010-2015 and also for the current service charge year 2016. The Applicant also made application for an order under s20C of the 1985 Act.
2. On 29th June 2016 the Applicant further made application for a determination in relation to administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
3. Directions dated 6th July 2016 and Directions No 2 dated 25th July 2016 were issued to clarify the identity of the Respondent. Representatives for the Respondent confirmed by letter dated 16th August 2016 that the Respondent had been correctly named.
4. Directions No 3 were issued on 23rd August 2016 requiring the parties to produce their respective Statements of Case.
5. The Applicant's Statement of Case is dated 18th October 2016 (references to this document are to page numbers preceded by A1). Statement of Case on behalf of the Respondent is dated 20th September 2016 (references to this document are to page numbers preceded by R1).
6. Although no direction was given by the Tribunal for a bundle to be prepared (the page numbering of the existing Statements of Case being perfectly adequate) solicitors for the Respondent took it upon themselves to prepare a further bundle, with different page numberings, running to two lever arch files (references to these documents are to page numbers preceded by R2).
7. The Tribunal began to hear this case on 9th November 2016. Mr Rogers attended and gave evidence. He was represented by Ms R Meager of counsel. The Respondent was represented by Mr C Sinclair of counsel. Evidence was given on behalf of the Respondent by Mr P Mather and Mr D Collinson of Block Management Ltd who are managing agents on behalf of the Respondent.
8. The hearing was adjourned part heard and further Directions No 4 were issued requiring further disclosure from the Respondent and further submissions from both parties.
9. By letter dated 5th December 2016 solicitors for the Respondent made application for part of the proceedings to be struck out on the basis that some of the service charges and administration charges had been the subject of determination by a court. The Tribunal is bound to record its concern that such an application, going to the jurisdiction of the Tribunal, should have been made by the Respondent at such a late stage.
10. The Tribunal issued further Directions No5 dated 14th December 2016 requiring submissions from both parties on the question of jurisdiction.
11. Further Submission on behalf of the Respondent in response to Directions No 4 and No 5 are dated 22nd December 2016 (references to this document are to page numbers preceded by R3). The Applicant's Submission in Reply is dated 17th January 2017 (references to this document are to page numbers preceded by A2).
12. The hearing was resumed part heard on 25th January 2017. Mr Rogers attended but was no longer represented by counsel. Mr Sinclair again appeared for the Respondent. Mr Mather and Mr Collinson gave evidence.

The Lease

13. The freeholder is Property Participations Limited (see paragraphs 2-4 of Statement of Case of Respondent and R1 pages 4-7). The freeholder is not a party to these proceedings.
14. The Respondent is the intermediary landlord (R1 pages 1-3).
15. The Applicant holds the Property under the terms of a Lease dated 17th October 1986 and made between William Trevor Davies (1) and Michael Paul Mumford ("the Lease") for a term of 99 years from the date of the Lease at an Annual Rent of £50.
16. The relevant clauses in the Lease are:
    a) Clause 3(9) – Tenant Covenant to pay costs incurred or in contemplation of s146 proceedings.
    b) Clause 4(4) – Tenant Covenant to pay Interim Charge and Service Charge.
    c) Clause 5(5) – Landlord Covenant, subject to payment of Interim Charge and Service Charge, inter alia, to maintain and repair main structure of the Building and Common Parts, to insure the Building of which the Property forms a part and to employ Managing Agents.
    d) Fifth Schedule, paragraph 1(1) – Total Expenditure is defined as total expenditure incurred by Landlord in carrying out its obligations under Clause 5(5).
    e) Fifth Schedule, paragraph 1(2) – Service Charge means one third of Total Expenditure.
    f) Fifth Schedule, paragraph 1(3) – Interim Charge to be a fair and reasonable interim payment specified at the discretion of the Landlord or Managing Agents and payable, as provided for in paragraph 3, by equal payments on 24th June and 25th December in each year.
    g) Accounting Period – is defined at clause 1(6) as commencing on 1st January and ending on 31st December in any year.
    h) Fifth Schedule, paragraph 6 - provides for service of a Certificate of the amount of Service Charge to be served by the Landlord or Managing Agents as soon as practicable after the expiration of each Accounting Period.
    i) Fifth Schedule, paragraphs 4 and 5 - provide for any surplus by which the Interim Charge exceeds the Service Charge to be credited and carried forward. If the Service Charge exceeds the Interim Charge the Tenant shall pay the excess within 28 days of the Certificate.

Inspection

17. The Tribunal inspected the Property on the morning of 9th November 2016.
18. The Property is a 3rd floor flat located within a mid terraced building of mixed uses. The ground floor is occupied by an Indian Restaurant and the upper levels comprise three self contained apartments. The Property fronts directly onto Load Street and is constructed of brick with a pitch tile roof covering. Some of the earlier parts of the building are of timber and plaster construction. The building was in the main constructed in the 18th century and a new frontage installed in the 19th century. The restaurant use has a separate entrance to the apartments. These are accessed off Load Street and each apartment is located on separate floors, accessed through a small communal lobby area, with a wooden staircase giving access to the upper floors.

19. The Tribunal noted on inspection that the residential aspect of the property was in poor decorative order both externally to the window frames and internally to the communal lobby and staircase areas.
Externally the building is poorly maintained with areas of brickwork to both front and rear elevations requiring re- pointing and with some evidence of water damage to the front elevation. To the rear of the building the gutters were blocked. To the roof some tile slippage was evident and the chimney and chimney flashings were in need of repair and maintenance.

Internally there was little evidence of the cleaning of the communal stair area or lobby and the minimum provision to ensure compliance with a Fire Risk assessment. It was noted on inspection that the emergency lighting unit on the first floor landing was faulty and missing its cover, and there was little evidence of any portable fire fighting equipment which would usually be provided where a property has a single means of escape.

The parking spaces allocated to each apartment are situated at the rear of the property, they accessed from a rear service road and have no direct vehicular access to the property, these only being accessible on foot by passing along a long passageway adjacent to the property.

Service Charge Year 2010

20. The application form seeks a determination for service charge year 2010. However Applicant's Statement of Case only raises issues 2011-2016.
21. At the hearing on 9th November 2016 Ms Meager for the Applicant confirmed that no determination was sought in relation to service charge year 2010. Accordingly the Tribunal consents to withdrawal of that part of the proceedings as relates to service charge year 2010 under Rule 22(3).
22. It is convenient, at this stage to record, that although the Lease provides for an Accounting Period that runs from 1st January to 31st December, the Respondent, perhaps being confused by the dates of payment of the Interim Charge, has prepared service charge accounts based on the period "for the year ended 24th December". In this Decision when referring to a service charge year the Tribunal is referring to a calendar year in accordance with the definition of Accounting Period in the Lease.
23. The failure of the Respondent to use the correct Accounting Period does not have the effect of rendering nothing at all payable as service charges for the years in question. The Tribunal is able to use the service charge accounts, which are only a week out, to "reach the best informed decision it can upon the material available to it" (see **Warrior Quay v Joaquim** LRX/42/2006).

Jurisdiction

24. Section 27A (4) (c) of the 1985 Act and paragraph 5(4) (c) of Part 1 of Schedule 11 to the 2002 Act provides no application may be made to the Tribunal in respect of a matter which "has been the subject of determination by a court".
25. On 21st August 2012 the Respondent obtained a County Court Judgement ("the First Set of Proceedings") in the sum of £1280.42 against the Applicant (see Submissions on behalf of the Respondent dated 22nd December 2016 R3 page 61).

Particulars of Claim (R3 pages 54-56) specify arrears of service charge and Legal Costs 25th December 2010 to 23rd June 2012 as set out in the attached statement (R3 page 57).

26. On 25th February 2013 the Respondent obtained a County Court Judgement ("the Second Set of Proceedings") in the sum of £2,556.63 against the Applicant (see Submissions on behalf of the Respondent dated 22nd December 2016 R3 page 97). Particulars of Claim (R3 pages 89-91) specify arrears of service charge and costs for the period to 24th December 2012 as set out in the attached statement (R3 pages 92-93).
27. On 11th October 2013 the Respondent obtained a County Court Judgement ("the Third Set of Proceedings") in the sum of £2,416.72 against the Applicant (see Submissions on behalf of the Respondent dated 22nd December 2016 R3 page 137). Particulars of Claim (R3 pages 128-131) specify arrears of service charge and costs for the period to 24th December 2013 as set out in the attached statement (R3 pages 135-136).
28. On 28th January 2015 the Respondent obtained a County Court Judgement ("the Fourth Set of Proceedings") in the sum of £1877.76 against the Applicant (see Submissions on behalf of the Respondent dated 22nd December 2016 R3 page 168). Particulars of Claim (R3 pages 159-162) specify arrears of service charge and costs for the period to 24th December 2014 as set out in the attached statement (R3 pages 166-167).
29. However the Judgement of 28th January 2015 was set aside by the Court on 9th June 2015 and proceedings subsequently discontinued (see paragraph 49 of Submissions on behalf of the Respondent dated 22nd December 2016 R3).
30. The Applicant in Applicant's Submission in Reply dated 17th January 2017 (A2) submits that as all three surviving judgements were obtained in default those judgements cannot be regarded as determinations. The Applicant also contends, by analogy to the Civil Procedure Rules, that the Respondent is treated as having accepted jurisdiction by failing to contest jurisdiction within 14 days of acknowledging service.
31. Both submissions are misconceived. We follow the decision of the Upper Tribunal in **Cowling v Worcester Community Housing Limited** [2015] UKUT 0496 (LC) at paragraph 16:

"The differing reasons behind the making of the money order do not alter the fact that, subject to the outstanding application for permission to appeal, the money order or judgement remains extant".

32. We therefore find that the default judgement is a determination by the court for the purposes of both the 1985 Act and the 2002 Act.
33. It is trite law that the Tribunal is a creature of statute and jurisdiction cannot be conferred upon it or denied either by default or by agreement of the parties. The CPR has no application to proceedings before the Tribunal.
34. As there is an extant judgement for administration charges for the period 25th December 2010 to 24th December 2013 the Tribunal has no jurisdiction to determine that part of the application as relates to administration charges *that have been determined by the court* for that period and must strike out that part of the application under Rule 9(2) (a). At paragraphs 92-133 below the Tribunal deals with Legal Costs for this period, which as they were incurred post judgement, have not been the subject of determination by a court
35. However as there is no extant judgement for the period 25th December 2013 -24th December 2014 (and those proceedings have been discontinued) there is no want of jurisdiction on the part of the Tribunal to consider both service charges and administration charges from 25th December 2013, or more correctly in accordance

with the Accounting Period in the Lease, service charge years 2014, 2015 and 2016.

36. However the position in relation to service charge years 2011, 2012 and 2013 is more complicated.

37. Under section 19 of the 1985 Act there is a distinction between costs that have been incurred under s19 (1) and future costs under s19 (2). The Lease mirrors the statutory machinery by distinguishing between the Service Charge determined by Certificate once Total Expenditure for an Accounting Period is known and the Interim Charge.

38. Section 27A provides for applications to be made to the Tribunal under s27A (1) where costs have been incurred under s19 (1) and also under s27A (3) where costs are yet to be incurred under s19 (2). Section 27A (4) which prevents applications where there has already been a determination by the court specifically provides for applications under both s27A (1) and s27A (3). Put simply if a court has made a determination in relation to the Interim Charge under s27A (3) and s19 (2) the Tribunal retains jurisdiction in relation to Service Charge following Certificate of Total expenditure under s27A (1) and s19 (1).

39. Looking at the Statement of Account at R3 pages 135-136 (the basis of the Judgement of 11th October 2013 at R3 page 136) it is clear that the Court made its determination, subject to the two exceptions set out at paragraphs 40 and 41 below, in relation to Interim Charges only (described as "Service charge On A/c Lessees"). Under those circumstances the Tribunal has determination to make a determination of Service Charge following Certificate of Total Expenditure.

40. The Court has made a determination in relation to "Demand re Deficit for Period As per Certified S/C Accounts 25/12/11 and 24/12/12". Adjusting that period to the Accounting Period in the Lease we find that there has been s27A (1) determination by the Court of the Service Charge for service charge year 2012.

41. The Court has also made a determination in relation to "Credit re Surplus for Period As per Certified S/C Accounts 25/12/10 -24/12/11". Again adjusting for the correct Accounting Period we find that there has also been s27A (1) determination by a Court of the Service Charge for service charge year 2011.

42. Accordingly we have no jurisdiction in relation to service charge years 2011 and 2012 and must strike out that part of the application under Rule 9(2) (a).

43. Our conclusions on jurisdiction may be summarised as follows;
Service charge year 2010 – withdrawn
Service charge year 2011 - struck out.
Service charge year 2012 – struck out.
Service charge years 2013, 2014 and 2015 – jurisdiction to determine Service Charge
Service Charge year 2016 – jurisdiction to determine Interim Charge.
Administration Charges up to 24/12/13 – struck out save that the Tribunal can consider Legal costs incurred after the date of Judgement.
Administration Charges post 24/12/13 – jurisdiction to determine.

Insurance

44. The Applicant relies on alternative quotations for buidings insurance. Those alternative quotations from AXA and NIG are at A1 pages 1-18. At the hearing on 9th November 2017 two further quotations from Tristar and Policyfast were put in evidence by the Applicant.

45. The Tribunal has considered those alternative quotations carefully. There are however a number of errors in relation to the information given on behalf of the Applicant to those prospective insurers:
    a) The Tristar policy indicates that the Property is within a block of residential flats and that there are 3 units only. There is a failure to disclose that this is a mixed use building of 4 units.
    b) The Policyfast policy is based on a 3 storey building with no disclosure of the commercial premises on the ground floor.
    c) The AXA policy indicates purpose built flats rather than conversion of a much older building. The sum insured is only £300,000 which is approximately £80,000 less than the sum insured by the Respondent. There is no property owner's liability.
    d) NIG were also incorrectly told that the building was purpose built flats. Only 3 flats are disclosed and no mention is made of the commercial user. 100% of the property is incorrectly described as being occupied by the same tenant. The date of construction is incorrectly given as 1900.
46. We do not find any of the quotations to be "like for like". There is a failure to disclose fully the age of the building. The sums insured and level of property owner's liability is less than the sum insured, in some cases, by the Respondent. There is a constant failure to disclose the existence of the ground floor commercial unit. The fact that those ground floor premises are licenced and that cooking takes place are material facts when seeking to insure a very old, partially wooden built, building.
47. Within its Statement of Case dated 20th September 2016 the Respondent has explained (R1 paragraph 15) that the difference between the insurance invoices and the figures in the accounts is entirely due to direct debit charges (and in service charge year 2012, which is no longer before us, additional charges were incurred because the direct debit was cancelled due to non-payment of service charge by all 3 tenants). We find that those charges have been reasonably incurred.
48. Although the Tribunal is not considering service charge year 2012 it may assist the parties to record that in effect there were 6 policy years covering 5 service charge years. For this reason two insurance years fell due in the single service charge year 2012 (R2 pages 325-326 and 390-391).
49. In considering insurance for service charge years 2013-2015 the Tribunal notes that the method employed in preparing service charge accounts is to include the insurance paid in that service charge year but which in fact relates to insurance for the following year.
50. In accounts for year ended 24th December 2015 (R2 page 497) the expenditure on insurance was £1392. This relates to the invoice at R2 page 501 of £1391.89 for the period 17/12/15 to 17/12/16. Similarly in accounts for year ended 24th December 2014 (R2 page 449) the expenditure on insurance was £1280.This relates to the invoice at R2 page 453 of £1280.21 for the period 17/12/14 to 17/12/15.
51. However accounts for year ended 24th December 2013 (R2 page 397) record expenditure of £1359. The invoice at R2 page 403 for the period 17/12/13 to 17/12/14 is in the sum of £1205.54.
52. It was conceded by Mr Mather and Mr Collinson that expenditure on insurance for service charge year 2013 should be £1205.54 and not £1359.
53. Subject to that correction we find sums expended on insurance for service charge years 2013-2015 to be reasonable. We did not find the Applicant's alternative quotes to be "like for like". We find the sums charged for insurance to be entirely

reasonable when seeking to insure a 4 storey building with ground floor restaurant use.

Managing Agent's Fees

54. Service charge accounts for year ended 24th December 2013 show a management fee refund of £675 (R1 page 154). As set out in the Statement of Case of the Respondent dated 20th September 2016 at paragraph 15 the effect of this is to reduce managing agent's fees to £600 for service charge years 2011 and 2012.
55. For the service charge years before us, 2013-2015, the managing agent's fee has been constant at £600.
56. The managing agents do not have a key at their offices to the Property but one is kept by arrangement at a local travel agency in case of emergency. The Property is inspected once a year. The agents deal with any enquiries from leaseholder or tenants. They arrange fire and risk assessments when necessary and also arrange insurance.
57. No alternative figures have been put forward by the Applicant.
58. The Landlord can employ a managing agent under clause 5(5) (h) (i) (a) of the Lease. Although this is a small development of only 3 flats there is a minimum that any managing agent will charge. There are particular challenges to management here. In particular the age and character of the building and the mixed user. We find £600 (which equates to £200 per flat) to be reasonable.

Bank Charges

59. The only challenge remaining before us if to the sum of £5. We find that this sum forms part of Total expenditure and is reasonable and payable.

Legal fees

60. The sums in dispute that are within our jurisdiction are:
    2013 - £450 Legal fees re debt collection.
    2014 - £576 Legal and professional charges.
    - £48 Legal fees re debt collection.
    2015 - £144 Legal fees re debt collection.
61. Mr Mather and Mr Collinson explained that these sums relate to and are sent directly to the "offending party". However these sums are also charged to the service charge account to cover the time spent by the managing agents chasing those leaseholders who have not paid service charges or ground rent. Once payment has been obtained from the defaulter (inclusive of debt collection fee) the fee is refunded to the service charge account. The net effect is that the service charge only bears those debt collection fees that are not recovered from the defaulter.
62. Thus in accounts for year ended 24th December 2013 (R2 page 397) although legal fees re debt collection of £450 were charged to the service charge £324 was recorded as income under "Reimbursement of legal fees re debt collection". In the year to 24th December 2014 (R2 page 449) legal fees incurred were £48 but £138 was obtained by way of reimbursement. Finally in 2015 (R2 page 497) legal fees expended was exactly balanced by £144 reimbursement.
63. To complete the picture it would appear that the debtor of £48 in 2014 is Mr Rogers who has received a separate default demand which he disputes in these proceedings as an administration charge (paragraph 87). The £48 therefore

appears as both an outstanding service charge item and as an outstanding administration charge against the defaulter until it is paid when both items are simultaneously cancelled.

64. Our finding is that Legal fees re debt collection do not form part of Total Expenditure for the purposes of service charges payable under the lease. They are essentially a matter between landlord and tenant and are accounted for in that way. We therefore find that legal fees re debt collection of £450, £48 and £144 are not payable.
65. Mr Rogers should appreciate that he will not receive a refund of his one third share of these sums as any sums received will also have to be removed from the accounts for the relevant years. We were told at the hearing that, in fact, the balance not recovered was only £84 over 5 years.
66. The sum of £576 appears in the accounts for year ended 24th December 2014 (R2 page 449) where it is described as "Legal and professional charges". The explanation given to the Tribunal at the hearing on 9th November 2016 was that this related to "external consultant to unravel problems". The Tribunal was unconvinced by that explanation and as a result Mr Mather has made a Witness Statement dated 21st December 2016 (R3 pages 191-196).
67. In January 2014 the Tenant of Flat 3 (who happens to be Mr Rogers' sister) reported a leak. The Managing Agents consulted Clive Marcroft MRICS to advise. When pressed at the hearing it appears that all Mr Marcroft did was to write twice to the Tenant of Flat 3 to advise her that in his opinion under the terms of the Lease the managing agents were entitled to enter her flat to inspect. The tenant refused.
68. No condition report was prepared by Mr Marcroft. He made no report at all to the managing agents as to what if any damage had been caused. No work was ever advised or carried out. All that was done was that two letters were sent indicating that the managing agents could enter to inspect. There was no follow up. For this trifling work Mr Marcroft rendered two invoices each in the sum of £240 plus VAT. On each occasion he claimed to have spent exactly one hour; although what exactly he did during each of those hours is not recorded.
69. Under the lease the Landlord can employ a surveyor (clause 5(5) (h) (ii)). However we are far from persuaded that any significant work at all was carried out nor that any of the purported work was necessary. If all Mr Marcroft did was write two letters asking for access then we find that those letters should have been written by the managing agents themselves as part of their general management fee.
70. We find that the whole of the work purported to have been carried out by Mr Marcroft was not reasonably incurred. We disallow the whole of the sum of £576 as part of Total Expenditure for service charge year 2014.

Accountant's fees

71. Paragraph 1(1) (b) of the Fifth Schedule to the Lease specifically includes within Total Expenditure the cost of an Accountant to determine Total Expenditure.
72. Paragraph 15 of the Statement of Case on behalf of the Respondent dated 20th September 2016 (R1) explains that for service charge year 2013 the Accountancy fee includes £420 for production of the 2013 accounts as well as £438 for the production of the 2013 accounts. The 2014 accounts include an Accountancy fee of £438 being the other half of the 2013 invoice (see R2 pages 370 and 469).
73. No evidence to challenge the amount of the Accountant's fee has been produced by the Applicant.

74. We have seen the accounts. The amounts involved are relatively small, nevertheless Total Expenditure has to be determined under the terms of the Lease. We are satisfied that the sum of £365 plus VAT is entirely reasonable.

Fire and safety

75. The Applicant challenges Property risk survey of £878 in 2013 (R2 page 352) and Fire Risk Assessment of £222 in 2015 (R2 page 500).
76. Following the adjournment on 9th November 2016 the Respondent has produced copies of both documents (R3 pages 197-312).
77. We find that both items were reasonably incurred under clause 5(5) (h) (ii) as necessary for the proper safety of the Building and Common Parts.
78. The assessments carried out are entirely appropriate for a four storey building of this age. There is mixed residential user and no fire escape. The Tribunal entirely shares the Landlord's concerns in relation to fire and safety.
79. The 2013 assessment was a thorough report and evaluation. The 2015 assessment was an update only.
80. A number of significant issues have been highlighted. However it has not been possible to action every item due to non-payment of service charges by leaseholders. The landlord is currently challenging the need to install a full fire alarm system. However "the bare necessities" of emergency lighting, exit signage and smoke detector have been carried out facilitated by a loan to the service charge account by the Landlord.
81. We find expenditure in both service charge years 2013 and 2015 to be reasonable.

Repairs

82. We find the sum of £75 (R2 page 353) relating to the work done by PLH Electrical in March 2013 in investigating faulty lighting in communal stairway to be reasonable.
83. The only other item challenged under this head is the sum of £170 (R2 page 452) relating to work done in June 2014 by Xtralec Ltd. The work amounted to no more than replacing 3 bulbs and starter units in communal areas. We find that the amount of work involved was similar to that carried out by PLH Electrical and find that £170 is not reasonable. We allow £75 only as part of Total expenditure for service charge year 2014.

Interim Charge 2016

84. As set out at paragraph 28 of the Applicant's Statement of Case dated 18th October 2016 the Respondent has demanded two equal payments of £298.34 payable in accordance with the Lease on 25th December 2015 and 24th June 2016 (A1 pages 19-20).
85. We have to determine those payments in accordance with s19 (2) of the 1985 Act. Having regard to our findings in relation to Total Expenditure for the service charge years 2013-2015 we find that those demands are no greater amount than is reasonable.

Administration Charges

86. We have already determined that we have no jurisdiction in relation to any Administration charges up to 24th December 2013 as those charges have already been the subject of determination by a court.
87. Those administration charges that remain for determination are:
2014 Arrears charge £48
2014 Referral fee £90
88. Section 158 and Schedule 11 of the 2002 Act do not create an entitlement to charge for administration charges. There must be a provision in the Lease entitling the Respondent to levy default charges for non-payment.
89. Mr Sinclair for the Respondent argues that administration charges are covered by the catch all definition of Total Expenditure at paragraph 1(1) of the Fifth Schedule to the Lease: "any other costs and expenses reasonably and properly incurred in connection with the Building". We find that these words are insufficiently clear to establish liability to pay administration charges.
90. None of the provisions of Clause 5(5) allow the Respondent to levy default charges for payment. Clause 3(9) entitles the Respondent to recover costs but only in connection with s146 proceedings.
91. We find that administration charges are not payable under the terms of the Lease.

Legal Costs

92. The Respondent has incurred significant Legal Costs in relation to four separate sets of County Court proceedings. In each case solicitors for the Respondent have sent letter before action in relation to arrears of service charge. A Claim Form and Particulars of Claim have been prepared and issued. The Applicant has failed to respond to proceedings and judgement in default has been entered. Thereafter s146 Notice has been prepared and served. Solicitors for the Respondent have then prepared and issued a Claim Form and Particulars of Claim for possession. The Respondent has at the same time entered into correspondence with the Applicant's lender, Santander. On issue of the possession proceedings Santander have paid in full the claim for arrears, interest and legal costs. As a result the claim for possession has not been pursued further.
93. It was conceded at the hearing by Mr Sinclair that Legal Costs incurred in connection with those proceedings were administration charges under paragraph 1(1) (d) of Part 1 to Schedule 11 to the 2002 Act. Legal Costs were incurred under clause 3(9) of the Lease in or in contemplation of s146 proceedings and therefore are incurred in connection with a breach of covenant in the Lease.
94. We have no jurisdiction in relation to administration charges (Legal Costs) that have been the subject of determination by a Court. However it was further conceded by Mr Sinclair that the Tribunal can consider the reasonableness of Legal Costs incurred after the date of the default judgement. The Legal Costs in connection with s146 Notice and possession proceedings have not been the subject of determination by a Court.
95. Paragraphs 21, 30, 38 and 47 of Submissions on behalf of the Respondent dated 22nd December 2016 (R3) show the amounts paid by Santander. From those sums we must deduct the amount of the default judgements to obtain the amount of Legal Costs incurred after judgement. However in the fourth set of proceedings judgement was set aside. As there has been no determination by the Court the whole amount of Legal Costs are within the jurisdiction of the Tribunal.
96. Accordingly the sums for assessment of reasonableness are:

a) £2689.34 less £1280.42 =£1408.92
b) £4477.06 less £2556.63 = £1920.43
c) £3260.55 less £2416.72 = £843.03
d) £3654.60

97. In accordance with Directions No4 the Respondent has produced Statements of Costs at R3 pages 75-78, 113-117, 144-148 and 186-190.
98. We deal firstly with "attendances". The amount claimed is very small, no personal attendances and a mere handful of letters and telephone calls. This demonstrates quite starkly that this was very routine work. There was no need for the solicitors to contact their client at all. The Applicant played no part at all in any of the proceedings. This was basic routine work with no unusual or unexpected matters arising requiring detailed instructions or engagement with the opposing party.
99. We have no information as to which attendances apply to pre or post judgement. We have therefore adopted a broad brush and apportioned attendances equally pre and post judgement.
100. All work has been carried out by Grade D fee earners, variously described as Paralegal, Trainee Legal Executive and Trainee solicitor. Generally those fee earners have been charged at £150 per hour with the exception of the Trainee solicitor at p144 who has been charged at £130 per hour, Trainee solicitors at p186 charged at £170 and £145 per hour and a Paralegal, also at page 186, charged at £145.
101. However those costs are inconsistent with the information given by the Respondent's solicitors in letters before action at R3 pages 49 (£120, £160 and £195 per hour), R3 page 86 (£120, £160 and £195 per hour), R3 page 125 (£120, £160 and £195 per hour) and at R3 page 156 (£130-£215 per hour).
102. We have looked at the Guideline Hourly Rates published by the Senior Courts Costs Office in 2010. We accept entirely the submissions of Mr Sinclair that those hourly rates are no more than guidelines and that they are considerably out of date.
103. The Respondent's solicitors are based in Nottingham and fall within National 2 for the purposes of the Guidelines. This would suggest a figure of £111 per hour.
104. Although we consider £111 per hour to be out of date we also consider £150 per hour to be too high. That figure is inconsistent with the figures indicated in letters before action which suggests £120 per hour for routine work.
105. We determine the amount of the hourly rate that is reasonable under Schedule 11 of the 2002 Act to be £120 per hour.
106. The Respondent's solicitors have also given an indication of the amount of their likely costs in the various letters before action sent to the Applicant. In 2012 R3 page 49 indicates:
S146 Notice £300 plus VAT
Possession proceedings £250 plus VAT.
107. By 2013 those estimates (R3 page 86) had increased to:
S146 Notice £360 plus VAT
Possession proceedings £600 plus VAT
108. Similar estimates are given for 2013 (R3 page 125), and 2014 (R3 page 156).
109. However the Respondent's solicitors have exceeded those estimates by a considerable margin:
R3 page 78 s146 Notice £360 and possession proceedings £600.
R3 page 117 s146 Notice £570 and possession proceedings £885.
R3 page 148 s146 Notice £615.
R3 page 190 s146 Notice £565.50 and possession proceedings £899.

110. Section 146 Notices are at R3 pages 64, 102, 142 and 182. The Notice is a single page document of 6 paragraphs. It recites the Lease and requires remedy. It is supported by a brief schedule referring to the default judgement and additional costs incurred.
111. The costs claimed for the section 146 Notice are substantially in excess of the Respondent's solicitors own estimates. The work involved is minimal and routine. We find the amount that is reasonable for the preparation of a Section 146 Notice is 1.5 hours at £120 per hour, totalling £180 plus VAT.
112. In relation to possession proceedings the Respondent's solicitors have again exceeded their own estimate by a wide margin. The amounts claimed are not reasonable. The Claim Form and Particulars (R3 pages 69- 72, 104-107 and 176-179) consist of a two page court form and particulars of less than 2 pages reciting the judgement and details of the Mortgagee.
113. We find the amount that is reasonable for preparing possession claim is 2.5 hours at £120 per hour, totalling £300 plus VAT.
114. Having dealt with general matters in relation to Legal Costs we now determine the amount that is reasonable in relation to the four sets of proceedings.

Legal Costs First Set of Proceedings

115. Statement of Costs is at R3 page 75-78. In addition to costs awarded in the default Judgement we allow £552 plus VAT plus court fee of £175 totalling £837.40
116. We allow 0.6 hour for attendances (50%) totalling £72 plus VAT
117. We allow possession issue fee of £175.
118. We find the amount that is reasonable for work done on documents to be 1.5 hours for s146 Notice and 2.5 hours on possession claim at £120 per hour totalling £480 plus VAT

Legal Costs Second Set of Proceedings

119. Statement of Costs is at R3 page 113-117. In addition to costs awarded in the default Judgement we allow £540 plus VAT plus court fee of £175 totalling £823.
120. We allow 0.5 hour for attendances (50%) totalling £60 plus VAT
121. We allow possession issue fee of £175.
122. We find the amount that is reasonable for work done on documents to be 1.5 hours for s146 Notice and 2.5 hours on possession claim at £120 per hour totalling £480 plus VAT

Legal Costs Third Set of Proceedings

123. Statement of Costs is at R3 page 144-148. In addition to costs awarded in the default Judgement of we allow £264 plus VAT totalling £316.80
124. We allow 0.7 hour for attendances (50%) totalling £84 plus VAT
125. We find the amount that is reasonable for work done on documents to be 1.5 hours at £120 per hour for s146 Notice totalling £180 plus VAT.

Legal Costs Fourth Set of Proceedings

126. As Judgement was set aside the whole claim in the sum of £3654.60 as set out in Statement of Costs at pages R3 186 -190 is for determination.

127. We allow 1.4 hours at £120 per hour for attendances totalling £168 plus VAT.
128. We allow issue and land registry fees of £405.
129. In relation to work done on documents we find items 1,2,3,5 and 6 to be reasonable in amount and broadly consistent with the amounts awarded for comparable work by the Court. We allow 3.3 hours at £120 per hour totalling £396 plus VAT.
130. We also allow the claim for 3.2 hours for preparing claim form and particulars totalling £384 plus VAT.
131. In relation to items 7 and 8 we allow £480 plus VAT for the same reasons as given in the first three sets of proceedings.
132. The claim for supervision is not reasonable. Supervision is an important part of the duties of Partners in solicitors firms. They are obliged to supervise their junior staff. However the claim for 30 minutes in relation to this single routine and uncontested file is wholly unreasonable. We find the amount that is reasonable here is nil.
133. We find the amount of Legal Costs in relation to the Fourth Set of Proceedings that is reasonable is £1428 plus VAT together with £405 issue and other fees totalling £2118.60

Section 20C

134. Under section 20C (3) of the 1985 Act the Tribunal may make such order on the application "as it considers just and equitable in the circumstances".
135. We have had regard to all the circumstances, the degree of success achieved by the parties, proportionality and the conduct of the parties.
136. Brady solicitors for the Respondent have produced Statement of Costs for the hearing on 9th November 2016 in the sum of £4003.20 inclusive of VAT. A further Statement of Costs was also produced for the hearing on 25th January 2016 in the sum of £12411.36. The Tribunal expresses its concern that the Respondents costs appeared to have tripled during the period that the case went part heard.
137. We find the distinction between the period up to and including the hearing on 9th November 2016 and the subsequent period up to the resumed hearing on 25th January 2017 helpful when considering whether to make an order under s20C.
138. The Respondent has been generally successful in relation to the service charge application. With the stark exception of the claim made by Mr Marcroft we found Block Management Limited to have managed the service charge well and incurred broadly reasonable costs. However this is contrasted with the administration charges (which includes Legal Costs) incurred by the Respondent's solicitors which exceeded their own estimates and were, we have found, wholly unreasonable.
139. Accordingly for the period up to and including 9th November 2016 we make a s20C Order for 50% of the Respondent's costs reflecting its contrasting fortunes in relation to the service charge application on one hand and the administration charges on the other. Adopting round figures we make an order limiting costs recoverable as service charge to £2000 inclusive of VAT.
140. For the period following that hearing and up to the final hearing on 25th January 2016 different considerations apply. The hearing on 9th November 2016 was entirely due to failings on the part of the Respondent. The explanation given in relation to Mr Marcroft was wholly unconvincing and the Respondent was given time to produce further evidence. Above all the disclosure and information given by the Respondent in relation to Legal Costs, which formed much the largest financial items before us, was wholly inadequate. It was simply not possible for the

Tribunal to make any sensible determination on the evidence as it stood on 9th November 2016. To compound matters the Respondent then made an application for the striking out of the proceedings. That application, which should have been made at the outset of these proceedings, was woefully late. Finally we repeat our concerns at the tripling of the Respondents costs during this period.

141. We attach particular weight to the conduct of the Respondent during this second period and find that it is just and equitable to make an order that none of the costs incurred by the Respondent for the period from 10th November 2016 to 25th January 2017 shall be added to the service charge.

Rule 13

142. We follow the guidance of the Upper Tribunal in **Willow Court Management Company (1985) Limited v Alexander and others** [2016] UKUT 0290 (LC). Rule 13 should be reserved for the clearest cases and in every case it will be for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct has been unreasonable.
143. At the hearing Mr Sinclair conceded that there was no example of unreasonable conduct that he could "pin it to". The shifting of the application from the assertion in the application form that service charges were limited to £286.25 "was as far as I can get".
144. Mr Rogers did not seek to expand further on the question of costs beyond that set out in paragraphs 15-17 of Applicant's Submission in Reply dated 17th January 2017.
145. We find that neither party has passes the first essential precondition necessary to succeed under Rule 13 as identified by the Upper Tribunal at paragraph 28 of **Willow Court**.
146. The applications made under Rule 13 by both parties are refused.

Decision

147. The application in relation to service charge year 2010 is withdrawn.
148. That part of the application as relates to service charge years 2011 and 2012 is struck out.
149. Total Expenditure for service charge year 2013 is reduced as follows:
    a) Buildings Insurance is reduced from £1359 to £1205.54.
    b) Legal fees: re debt collection in the sum of £450 are not to be included within Total Expenditure.
150. Total Expenditure for service charge year 2014 is reduced as follows:
    a) Legal and professional services in the sum of £576 are not to be included within Total Expenditure.
    b) Legal fees: re debt collection in the sum of £48 are not to be included within Total Expenditure.
    c) Cost of repairs carried out by Xralec Ltd are reduced from £170 to £75.
151. Total Expenditure for service charge year 2015 is reduced as follows:
Legal fees: re debt collection in the sum of £144 are not to be included within Total expenditure.
152. We direct that within 28 days of the date of this decision that the Respondent shall recalculate Total Expenditure for service charge years 2013-2015 and in consequence the one third Service Charge payable by the Applicant. The Respondent shall send a copy of such recalculation to both the Applicant and the

Tribunal. The Applicant may apply within 14 days of receipt of the recalculation apply to the Tribunal for determination as to correctness of that calculation only.

153. The Interim Charge of two equal payments of £298.34 for service charge year 2016 is reasonable and payable under s19(2) of the 1985 Act.
154. That part of the application as relates to administration charges for the period 25th December 2010 to 24th December 2013 that have been determined by the Court is struck out.
155. Administration charges in the sums of £48 (arrears charge) and £90 (referral fee) levied in 2014 are not payable by the Applicant.
156. Legal Costs are reasonable and payable as follows:
    a) In relation to the First Set of Proceedings, the sum of £837.40 (In addition to legal costs of £739.08 included within the judgement of the County Court dated 21st August 2012).
    b) In relation to the Second Set of Proceedings, the sum of £823 (In addition to legal costs of £1391.57 included within the judgement of the County Court dated 25th February 2013).
    c) In relation to the Third Set of Proceedings, the sum of £316.80 (In addition to legal costs of £1373.97 included within the judgement of the County Court dated 11th October 2013).
    d) In relation to the Fourth set of Proceedings, the sum of £2118.60.
157. We make an Order that costs incurred by the Respondent in connection with these proceedings to the extent that they exceed £2000 are not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
158. No Order for costs under Rule 13 of the Tribunal Procedure Rules is made against either party.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing stating grounds relied upon and be received by the First-tier Tribunal no later than 28 days after the date on which the Tribunal sends this written Decision to the party seeking permission to appeal.