12293

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UQ/LIS/2016/0054
Property	:	Flat 1. Stonerock House, High Street, Hawkhurst, Kent TN18 4AD
Applicant	:	Mrs Rachel Gold
Representative	:	
Respondent	:	Mr and Mrs Duncan Anderson
Representative	:	
Type of Application	:	Determination of service and administration charges
Tribunal Member(s)	:	Judge Tildesley OBE
Date and Venue of Hearing	:	Determined on the Papers
Date of Decision	:	31 July 2017

DECISION

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Decisions of the Tribunal

(1) The Tribunal is satisfied that Mrs Gold is entitled to bring an application on her own account under section 27A of the 1985 Act, and does not require the consent of Mr Howlett and Ms Harrison.

(2) The Tribunal is satisfied that it has jurisdiction to determine that part of the application relating to the service charges for 2010 to 2013 (inclusive).

(3) The Tribunal determines that Mrs Gold is not liable to pay the service charges for 2010-2017 until Mr Anderson sends demands specifying clearly the amounts due for each year and the required information regarding the name and address of the landlord. The demands must be accompanied with the correct notice of tenant's rights and obligations service charges.

(4) The Tribunal determines that Mr Anderson has not complied with the statutory consultation requirements in respect of the major works for 2010, 2011, 2012, 2014, 2015 and 2016. Mrs Gold's contribution towards the costs of those works for each year in question is limited to £250.

(5) The Tribunal is satisfied that Mrs Gold failed to demonstrate that the repairs to the car park were not carried out to a reasonable standard.

(6) The Tribunal is satisfied that the replacement of the conservatory roof was necessary and that Mrs Gold had failed to adduce reliable evidence that the works were not done to the required standard.

(7) The Tribunal is circumspect about forming a view on the standard of works to the main roof in view of the recent involvement of the Council and the requirement to submit a planning application for the works to the main roof. The Tribunal considers it premature to determine whether the works to the roof were completed to the required standard.

(8) The Tribunal finds that Mrs Gold had not established that the external decorations were not to a reasonable standard.

(9) The Tribunal holds that Mrs Gold is liable to pay a contribution of 18 per cent of the premium paid for insurance for 2010 to 2017 inclusive.

(10) The Tribunal determines that Mr Anderson's management charges (15 per cent on administering the insurance and water charges and a percentage charge for supervising works) were not recoverable through the lease as service charges.

(11) The Tribunal determines that Mrs Gold is not liable to pay the solicitors costs and the costs of Mr Anderson's time in dealing direct

with Mrs Gold over their dispute. The amounts involved were £125 (2013), £1,567.50 (2014), £2,928 (2015) and £2,925 (2017).

(12) The Tribunal determines that Mrs Gold's contribution towards the costs of the water and sewerage supplies. is 18 per cent of the costs.

(13) The Tribunal determines that Mrs Gold is liable to pay £810 in respect of the service charge for 2010.

(14) The Tribunal determines that Mrs Gold is liable to pay £820.94 in respect of the service charge for 2011.

(15) The Tribunal determines that Mrs Gold is liable to pay £797.78 in respect of the service charge for 2012.

(16) The Tribunal determines that Mrs Gold is liable to pay £565.65 in respect of the service charge for 2013.

(17) The Tribunal determines that Mrs Gold is liable to pay £866.93 in respect of the service charge for 2014.

(18) The Tribunal determines that Mrs Gold is liable to pay £1,175.36 in respect of the service charge for 2015.

(19) The Tribunal determines that Mrs Gold is liable to pay £557.33 in respect of the service charge for 2016.

(20) The Tribunal determines that Mrs Gold is liable to pay £500 for the estimated service charge for 2017.

(21) The Tribunal does not make an order under Section 20C of the Landlord and Tenant Act 1985 because there is no power under the lease for Mr Anderson to recover the costs of these proceedings through the service charge.

THE SCOPE OF THIS DECISION

The scope of this decision is limited to determining the liability to pay service charges and administration charges for flat 1 Stonerock House, High Street, Hawkhurst, Kent for the period 2010 to 2016, and the estimated service charge for 2017. The effect of this decision is that Mrs Gold is not liable to pay the service charges in the amounts specified in (13) to (20) until Mr Anderson sends demands in accordance with the Tribunal's finding at (2). Although the decision is binding on the parties, subject to appeal, the Tribunal has no powers to enforce its orders. Enforcement is a matter for the Courts.

This decision should not be interpreted as an assault on Mr Anderson's integrity or his competence as a professional surveyor. Mr Anderson clearly has the confidence of his commercial tenants. The Tribunal's principal's criticism of Mr Anderson is that he failed to recognise that

the service charge regime for residential leaseholders is very different from that which applies to commercial tenants. The following quotation from the *History of the Law of Landlord and Tenant in England and Wales* (2012) [Mark Wonnacott] is particularly appropriate:

> "Service charges cause more trouble between landlord and tenant than anything else. Commercial Service charges are still largely unregulated, and the parties are left to make their own arrangements. But the recovery of residential service charges is regulated by three statutes which make it all but impossible for an amateur landlord to recover it in the event of a dispute., page 106.

This decision does not deal with the underlying causes of the dispute between the parties. As such the parties' positions have become entrenched and reason has been abandoned. Mr Anderson's refusal to take up the Tribunal's invitation to apply for dispensation is a good example of the abandonment of reason.

The Tribunal hopes the parties can see a way through their differences and reach a mutually agreed settlement, otherwise it may prove costly for both parties.

The Application

1. This is a dispute between Mrs Gold and Mr Anderson in connection with the leasehold property at Flat 1, Stonerock House, High Street, Hawkhurst, Kent ("the property").

2. In 2003 Mrs Gold purchased a lease of the property with a term of 125 years from the 6 January 2003. The parties to the lease were Yew Tree Estates Limited and Mrs Gold under her maiden name of Miss Lamb. On 23 May 2007 Mrs Gold assigned a 42 per share of the leasehold to Mr Kieran Howlett and Ms Eleanor Harrison. The leasehold property is held on Trust as tenants in common between Mrs Gold of the one part and Mr Howlett and Ms Harrison of the other part. On 1 June 2007 Mrs Gold, Mr Howlett and Ms Harrison were registered as proprietors of the leasehold title under Title number K851976.

3. On 20 February 2004 Mr Anderson and his wife Mrs Anderson were registered as proprietors of the freehold title to Stonerock House and Flats 1 and 2 under title number K840795 ("the building"). Mr Anderson states that a family trust holds a 48 per cent share of the freehold interest.

4. Mrs Gold seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by her in respect of the service charge years for 2010-2017

5. Mrs Gold also makes an application for an order under section 20C of the Landlord and Tenant Act 1985.

6. A case management hearing took place on 11 January 2017 by conference call at which Mrs Gold and Mr Anderson participated. Mrs Gold had identified in her application the disputed charges for each year in question. After hearing from the parties the Tribunal directed Mr Anderson to respond to each matter raised by Mrs Gold. A right of reply was given to Mrs Gold. The Tribunal reconvened the case conference on 14 March 2017 to assess the status of the dispute. The parties were not close to settlement.

7. The Tribunal formed the view that the relationship between the parties was acrimonious. The parties accuse each other of harassment. Mr Anderson has reported Mrs Gold to the Police. Mrs Gold says that Mr Anderson has taken advantage of her trust and naivety. All correspondence between the parties had been directed through the Tribunal. Mr Anderson did not wish Mrs Gold to have details of his e-mail address. The Tribunal considered the parties' strong antipathy towards one another would compromise the fairness of the hearing if evidence was given in person. The Tribunal offered the parties the

opportunity for their dispute to be decided on the papers to which they consented.

8. At the case management hearing on 14 March 2017 the Tribunal identified the key areas of dispute. In order to keep the requirements on the parties for the production of papers proportionate the Tribunal directed supporting documentation for the key areas. The Tribunal did not require Mr Anderson to provide invoices for the charges in respect of insurance and water and sewerage for each year in question.

9. The Tribunal directed as follows:

"**By 1 June 2017** Mr Anderson to supply the Tribunal with two folders comprising hard copies of the various documents. The folders are to be indexed and paginated. The Tribunal will forward one folder of documents to Mrs Gold:

- Land Registry Copy of the Title to the Freehold together with a plan.
- A brief description of the property, its spatial relationship with the dental surgery and other buildings supported by a plan of the site together with any photographs.
- Copies of the spread sheets detailing the maintenance budget for 2010, 2011, 2012 and 2013.
- By way of example to supply a copy of the demand together with any accompanying documents for the service charges for 2015, and confirm that the demands in 2015 are typical for the other years in dispute.
- Copies of the consultation documents together with the invoices for the following:
    - o The major works totalling £13,704.87 for 2010
    - o The works in relation to the car park (£625 signage) and repairs (£675.47) for 2014.
    - o Decoration costs (£1,218.20) for 2015
    - o Roof works (£1,159) for 2016.
    - o The proposed works in 2017 Wall (£1,035) and £1,780.20)
- In respect of the charges of £125 Parking (2013), £1,250 Letters, (2014), Legal expenses (£2,928.20) (2015), Admin charges (£2,925) (2016), and administration fees for water supplies on various dates please comply with the following requests:
    - o Confirm that these charges have been raised against Mrs Gold and are not part of the service charge subject to 18% contribution.
    - o Provide the demands for these charges together with any supporting documentation.
    - o State the relevant provision in the lease that authorises these charges. If clause 3.13 is relied upon please demonstrate by documentation the connection these charges have with the preparation of a section 146 Notice.
- The charge for insurance increased significantly in 2015 from 2014, why is that, and if it is due to the addition of an administration fee please state how this has been calculated and the authority under the lease for making such a charge. Likewise provide the same information for the administration fee in 2016.
- Provide a copy of the insurance policy schedule for 2016 and receipt for payment of the premium.

By 1 June 2017 Mrs Gold to supply the Tribunal with two folders comprising hard copies of the various documents. The folders are to be indexed and paginated. The Tribunal will forward one folder of documents to Mr Anderson:

- Land Registry Copy of the Title to the Leasehold of Flat 1 together with a plan.
- To provide a statement of case dealing with the following issues:
  - The status of Eleanor Harrison and Kieran Howlett in relation to the property, and in relation to this application.
  - The Tribunal understands that the charges from 2010-2013 have been paid, and no complaints were made at the time. Is that correct, and if so why do you say the Tribunal should hear the application. Where charges have been admitted (payment is not necessarily an indication of admission) the Tribunal has no jurisdiction to hear the application (see section 27A(4)(a) of the 1985 Act.
  - Please respond to Mr Anderson's contention regarding the lease does not require the freeholder to provide and charge for water and sewerage services.
  - Please respond to Mr Anderson's application for dispensation if one is made and in particular state the prejudice you have suffered by Mr Anderson's non-compliance with consultation requirements.

- Provide copies of any correspondence, and notices to do with alleged breaches of the lease and if any, cross-reference them to the administration charges made by Mr Anderson
- Provide copies of documentation received from Mr Anderson consulting on major works, and cross reference them to the specific charges in dispute.
- Provide documentation including photographs to substantiate the allegations regarding poor standard of works in relation to car parking, roof repairs and external decoration. Please give a figure for the amount that you say you have overpaid for the poor quality of works with evidence to substantiate the figures.
- Copies of any alternative quotes for insurance and any other works".

10. The parties were given the right of response within 7 days from 1 June 2017.

11. Mr Anderson supplied one lever-arch file of submissions and supporting documentation, a reply comprising 22 pages together with photographs and a folder of invoices for the year 2010/11.

12. Mrs Gold supplied two lever-arch files. The first containing her submissions and other documentation in excess of 300 pages. The second file had approximately the same number of pages, and comprised her correspondence with Mr Anderson from 2003/04 to 2016. Mrs Gold also provided a response of nine pages plus additional documentation.

13. The parties put together bundles of good quality which were clearly referenced and well structured. The Tribunal, however, was unable to meet the deadline of delivering a decision by 1 July 2017 because of the sheer volume of the paperwork submitted. The Tribunal normally allows six weeks for the publication of the decision from the date of determination which would have taken the last date for publication of the decision as 3 August 2017. The Tribunal kept the parties informed of the progress with the written decision.

Property

14. The Tribunal is indebted to Mr Anderson for the description of the property. Mr Anderson states that the freehold comprises the main building, the car park and the two leasehold flats (1 and 2) which are at the rear of the main building in a separate two storey rear extension.

15. The main building is Stonerock House which is a grade 11 listed stone building under a tiled and slate roof comprising cellars which extend below the flats, ground floor, first floor and two attic rooms.

16. The flats are a rear addition to the main building. Mr Anderson believes that the rear addition was formerly a barn. Mr Anderson stated that the ground floor flat (No. 2) is of brick construction, whilst the first floor flat (the property) is of timber frame construction and clad in timber under a slate roof.

17. The car park made of concrete is at the rear of the main building and accessed via a tarmac drive to the side of the building. This drive is also the sole means of access to the flats.

18. In 2005 the main building was converted into a dental surgery in accordance with planning permissions, and has been let on a business tenancy to Stonerock Dental Care. The dental practices also owned the leasehold for flat 2 but that has subsequently been purchased by Mr Anderson.

19. Mr Anderson supplied four photographs which showed the main house, the side access, the flats and the car park. Mr Anderson also provided a ground floor plan of the site.

The Lease

20. The Tribunal referred to the copy of the lease in Mrs Gold's document file [35-56].

21. Under the lease Mrs Gold holds the property on payment of rent of £100 per annum payable annually in advance on the 1 January in each year and by way of further or additional rent such sum or such sums shall be 18 per cent of the amount which the landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure in carrying out and performing the matters

more particularly set out in the Fourth Schedule (referred to as the service charge).

22. The lease also provides that all such sums whether for expenditure or on account of anticipated expenditure shall be paid within 14 days of being demanded. Further such payments are to be made quarterly in advance on the usual quarter days in each year. The quarter days are 25 March, 24 June, 29 September and 25 December.

23. Clause 3.2 of the lease provides that the landlord may charge interest of 5 per cent above the base rate of Barclays Bank PLC of 17 per cent whichever shall be greater if any rent due (whether demanded or not) or any other monetary due to the Landlord that remains unpaid for one month of the date on which such payment falls due.

24. Under Clause 3.13 the tenant covenants to pay all expenses including solicitors costs and disbursements and surveyors fees incurred by the Landlord and incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under section 146 or 147 of the Act notwithstanding in any such case that forfeiture is avoided otherwise than by relief granted by the Court.

25. Clause 4(1) of the lease sets out the Landlord's repairing covenant. The performance of this obligation is conditional on payment of the tenant's contributions. Clause 4(1) provides:

> "At all times during the term hereby created to take all appropriate steps to keep in good and substantial repair and in proper order and condition all parts of the Building which are not included in this demise or in a demise of any other part of the Building (without prejudice to the generality of the foregoing including the roof main walls foundations and services to an from the flat used jointly with other parts of the Building) but this obligation shall not oblige the Landlord to maintain or cultivate any areas of garden forming part of or adjoining the Building".

26. The Building is defined as the building known as Highgate Hawkhurst comprised in the title registered under the Title number K840795. It appears that the property has been renamed Stonerock House.

27. The demise is defined in The First Schedule, namely "all that first floor flat situate and known as Flat 1 being that part of the Building on the first floor together with the roof space above and for identification purposes edged red on Plan attached hereto". The Second Part to the First Schedule further defines the extent of the demise and includes "All windows window frames doors and door frames (including the entrance door to the flat in all respects except that the Landlord's decorating covenant only shall apply to the outside surface of the door and window frames) and all internal non-load bearing walls".

28. Clause 4.2 sets out the Landlord's covenant to keep the building insured against loss or damage by risks covered by the usual comprehensive buildings policy of an insurance company of repute in the full reinstatement value thereof. Clause 4.2.2 requires the Landlord to produce to the Tenant on 14 working days notice at the Offices of the Landlord or his solicitor a copy of the relevant policy of insurance maintained by the Landlord and confirmation as to the receipt of the last payment.

29. The Fourth Schedule sets out the costs which the Landlord can recover under the service charge:

    (1) In performing the Landlord's obligations as to repair, maintenance and insurance.
    (2) In payment of the proper fees of the Surveyor or Agent appointed by the Landlord in connection with carrying out of investigations leading to or in carrying out of any works, repairs or maintenance referred to in this lease and the apportionment of the cost of such matters and collection of the rents hereby reserved and the other payments paid by the Tenant in accordance with the lease.
    (3) In payment of all rents taxes rates and all and any service charges or outgoings whatsoever in respect of any part of the Building not included in this demise or a demise of any part of the Building.
    (4) In providing such services amenities and facilities in carrying out works or otherwise incurring expenditure as the Landlord shall in the Landlord's absolute discretion deem necessary for the general benefit of the Building and its Tenants whether or not the Landlord has entered a covenant to incur such expenditure or provide such services or facilities to carry out such works.
    (5) In complying with any of the covenants entered by the Landlord or with any obligations imposed by operation of law which are not dealt with by the preceding clauses.

Reasons

Jurisdiction

30. The Tribunal is dealing with an application to determine liability to pay service charges and administration charges. The dispute between the parties is much wider than the application which means that the Tribunal is not entitled to decide matters outside the application and beyond its jurisdiction.

31. The matters outside the scope of this application were the alleged breaches of covenant (Mr Anderson did not make a section 168(4) application), the ownership of the garden area, the rights to parking, and the landlord's obligations to supply water, sewerage and other utilities to flat 1. The Tribunal has no power to determine the amount of interest payable unless it is a variable administration charge, which it

is not in this case. The Tribunal's determination on Mrs Gold's liability to pay service charges, however, will impact on the amount of interest payable.

32. Under Section 27A of the 1985 Act the Tribunal can decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant or determined by a Court.

33. Mr Anderson questioned whether Mrs Gold could bring this application alone. Mr Anderson pointed out that Mr Howlett and Ms Harrison jointly owned the leasehold and were jointly and severally liable for any debt. Mr Anderson said that Mrs Gold told him in 2009 to direct all freehold expenses to Mr Howlett and Ms Harrison for payment. They paid the service charges until their departure in 2013.

34. Mrs Gold explained that Mr Howlett and Ms Harrison following the breakdown of their relationship in 2012 gave her authority to take on responsibility for the flat going forward. Mrs Gold stated that she made the application on her own account which was permitted under the Tribunal Procedure Rules and after having advised Mr Howlett and Ms Harrison of her intentions. In this respect Mrs Gold supplied a letter from Ms Harrison dated 6 June 2016 regarding the proposed sale of the flat in 2016 which named Mrs Gold as the sole beneficiary of the sale proceeds and the person responsible for any outstanding costs that otherwise would be borne by Ms E Harrison [86]. Mrs Gold also provided a letter from Mr Howlett dated 19 May 2017 which said that he had relinquished his beneficial rights in the property and had no objection to Mrs Gold's section 27A application [87].

35. Mr Anderson questioned the bona fides of the correspondence produced by Mrs Gold from Mr Howlett and Ms Harrison. Mr Anderson also noted that the correspondence did not confirm that Ms Harrison was aware of the Tribunal proceedings.

36. The Tribunal finds that Ms Gold is a tenant of the property within the meaning of section 30 of the 1985 Act. Further the Tribunal is satisfied that Mrs Gold is entitled to bring an application on her own account under section 27A of the 1985 Act, and does not require the consent of Mr Howlett and Ms Harrison.

37. Mr Anderson argued that Mrs Gold should not be allowed to question the service charges from 2010 to 2013. Mr Anderson said that she had not paid the charges when Mr Howlett and Ms Harrison were in occupation. Further Mrs Gold had settled the outstanding arrears up to the end of 2013. Mr Anderson said that the tenants including Mrs Gold had agreed or admitted their liability to pay the service charges for 2010 to 2013. In those circumstances, Mr Anderson contended the Tribunal

had no jurisdiction by virtue of section 27(4)(a) to hear that part of the application which related to the service charges for 2010 to 2013.

38. Mrs Gold challenged Mr Anderson's interpretation of the facts relating to the 2010-2013 charges. Mrs Gold asserted that she had queried the various charges for the said period. Mrs Gold argued that the payment of the arrears for the period up to the end of 2013 should not be taken as tacit agreement to the validity of the charges made, and to the amount of debt accrued.

39. The Tribunal finds the following facts:

- Mr Howlett and Ms Harrison were in arrears with the service charge payments. When they left in February 2012 the arrears outstanding were £2,278.29.

- On 5 March 2012 Mrs Gold requested from Mr Anderson a breakdown of the arrears. Mr Anderson supplied a copy of the spreadsheet for the period.

- Although Mrs Gold started to make payments to clear the debt, she still requested further information on the charges. Mrs Gold still owed arrears of £2,572.73 as at the end of 2012.

- In 2013 Mrs Gold raised a series of queries on the service charges, and on 23 April 2013 requested a set of accounts from Mr Anderson.

- During 2010 to 2013 Mr Anderson did not send Mr Howlett and Mr Harrison and Mrs Gold a Notice of Tenant's Rights and Obligations (Service Charges).

40. The Tribunal is satisfied that there was no admission of liability on the parts of Mr Howlett, Ms Harrison and Mrs Gold for the 2010-2013 service charges. Further the Tribunal holds that the mere fact that Mrs Gold cleared the arrears at the end of 2013 did not constitute an admission of liability. Finally the Tribunal considers that Mr Anderson is not entitled to plead section 27(4)(a) because he did not send the Notice of Tenant's Rights and Obligations (Service Charges) to the leaseholders advising them of their rights to challenge the service charges.

41. The Tribunal is satisfied that it had jurisdiction to determine that part of the application relating to 2010 to 2013 (inclusive).

42. Mr Anderson argued that the burden was upon Mrs Gold to prove her case. The relevance of burden of proof in service charge cases is best summed up by Sedley LJ in *Daejan Investments Limited v Benson* [2011] EWCA Civ 38 [2011] 1WLR 2330 at paragraph 86:

"Lastly, I would add a word to what Lord Justice Gross says in §76(ii) about the burden of proof. It is common for advocates to resort to this when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law. In nine cases out of ten this is sufficient to resolve the contest. It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out, and tribunals ought in my view not to be astute to do so: the burden of proof is a last, not a first, resort."

43. In this case the Tribunal did not have to resort to the burden of proof. The nature of this case was that essentially the evidence was largely agreed. Both parties relied on the same documentation but differed on the interpretation of the law, in particular the application of the statutory protections available to residential leaseholders. This was another compelling reason for this acrimonious dispute to be determined on the papers.

44. When determining liability, the Tribunal is guided by the terms of the lease dated 6 January 2003, and the statutory regulation which applies to residential properties.

45. Mark Wonnacott stated in the *History of the Law of Landlord and Tenant in England and Wales* (2012), page 106:

"Service charges cause more trouble between landlord and tenant than anything else. Commercial Service charges are still largely unregulated, and the parties are left to make their own arrangements. But the recovery of residential service charges is regulated by three statutes which make it all but impossible for an amateur landlord to recover it in the event of a dispute. The Landlord and Tenant Act 1985 contains provisions, originally introduced by the Housing Finance Act 1972, and amended by the Housing Act 1974 which imposes mandatory consultation requirements for all but the most trivial of works, and which absolve the tenant from paying unless the costs is reasonable and the works have been done or the services performed to a reasonable standard. It also imposes an eighteen months limitation period for making service charge demands, and invalidates any service charge demand that does not require information about the tenant's rights. The Landlord and Tenant Act 1987 requires any demand for service charge payable to the landlord to contain the landlord's address for service, and requires any sinking fund to be kept in a trust account. Any dispute about the service charge is fought out in the Leasehold Valuation Tribunal, where the tenant is at no risk of having to pay more than £500 towards the landlord's costs, no matter how unreasonable or trivial the complaints[1]. The landlord cannot simply forfeit the lease instead because the Housing Act 1996 prevents a landlord serving a notice under section 146 of law of Property Act 1925

[1] Disputes are now dealt with by the First-tier Tribunal (Property Chamber) which has the power to order costs unreasonably incurred in excess of £500.

or forfeiting for non-payment of service charge unless the arrears have first been admitted or determined by a court or tribunal".

46. The Tribunal interprets the lease in accordance with the principles that govern the construction of written contracts[2], namely, the Tribunal 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". Thus the lease has to be construed in the light of the following factors:

- The natural and ordinary meaning of the words
- Any other relevant provisions of the lease
- The overall purpose of the clause and the lease
- The facts and circumstances known or assumed by the parties at the time that the document was executed and
- Commercial common sense but disregarding subjective evidence of any parties' intentions.

47. The Tribunal characterises the lease for the property in the context of the service charge provisions as a mundane "repairing and insuring lease" which does not give the landlord a wide ambit in respect of the costs that can be recovered from the tenant through the service charge. Paragraph 4 of the Fourth Schedule to the lease appears to give the landlord unlimited discretion to enlarge the scope of the service charge clause. The Tribunal, however, considers that the wording of paragraph 4 has to be read against the overall purpose of the lease and the preceding paragraphs of the Fourth Schedule. In the Tribunal's view, the type of costs envisaged under paragraph 4 are those which are incurred on the repair and maintenance of the building which do not fall directly within the wording of the landlord's repairing covenant.

48. Equally the method laid down in the lease for collecting the service charge is unsophisticated. Under the lease the landlord is entitled to demand expenditure already incurred and on account. As the service charge is expressed in terms of additional rent, the service charge year runs from 1 January to 31 December. Under the lease the tenant pays the charges by quarterly instalments in advance on the quarter days of 25 March, 24 June, 29 September and 25 December. The tenant has 14 days from the quarter days in which to make payment.

49. The principal dispute on the construction of the lease was whether Mr Anderson could charge for his own time spent on supervising the works to the building, collecting the charges payable under the lease, and dealing directly with Mrs Gold in connection with a range of disputes. Mr Anderson at first did not charge for his own time but began to do so following the escalation of his dispute with Mrs Gold. Mr Anderson sought to recover the costs of his time via two different routes dependent upon whether the time was spent on the building or on the

[2] *Arnold v Britton and Others* [2015] UKSC 36

various disputes with Mrs Gold which included parking and use of the "garden area".

50. Where the building was involved Mr Anderson treated the costs of his time as a service charge. This entitled him to recoup 18 per cent of the costs of his time from Mrs Gold. In contrast Mr Anderson sought to recover the entirety of the costs of his time spent on the various disputes with Mrs Gold.

51. Mr Anderson relied on paragraph 2 of the Fourth Schedule to the lease for recovering a proportion of the costs of his time on the building. Mr Anderson said that the Landlord had appointed him as the surveyor and or agent for carrying out of works/ repairs to the building and the collection of charges. Mr Anderson said that the landlord was owned by a family trust (48%) and by Mr and Mrs Anderson (52% in equal shares of 26%). Mrs Gold argued that paragraph 2 of the Fourth Schedule only applied to the costs of the appointment of an independent surveyor or managing agent by the landlord. Mrs Gold said that there was no documentary evidence of Mr Anderson's appointment, and in any event the adoption of these roles by Mr Anderson constituted a conflict of interest.

52. Mr Anderson said clause 3.13 to the lease required Mrs Gold to pay the entirety of the costs of his time expended on the various disputes between them. Clause 3.13 only authorises the recovery of such costs if Mr Anderson can demonstrate that the costs were incurred in preparation of the service of a section 146 notice or in contemplation of such a notice.

53. The Tribunal will return to these arguments when it considers the specific charges in question.

54. The Tribunal decides to deal with the disputed issues in the following order: Demands; Consultation; Works not to the Required Standard; Insurance; Management Charges, Charges for Water and Sewerage, Charges for Individual Years, and Section 20C order.

Demands

55. The Tribunal directed Mr Anderson to provide by way of example a copy of the demand together with any accompanying documents for the service charges for 2015, and confirm that the 2015 demands was typical for the other years in dispute.

56. Mr Anderson supplied the necessary information in [C]. Mr Anderson confirmed that 2015 was typical of the manner in which service charges had been demanded with a few modifications since 2003. The Tribunal agreed with the accuracy of Mr Anderson's statement because the document bundles included copies of Mr Anderson's demands for earlier and subsequent years. Mr Anderson asserted that Mrs Gold and

the other leaseholders had not challenged his method for demanding service charges.

57. The process followed by Mr Anderson involved sending a letter at the beginning of each year to the leaseholders. This letter gave the balance owing in charges at the end of the previous year, and the amount required for the coming year. Mr Anderson provided a copy of the updated spreadsheet for freehold expenses to the letter. At the end of each year Mr Anderson would send a letter requesting payment of the ground rent with a statement (the updated spreadsheet) which showed the anticipated expenditure for the year as well as the carried over debt. Mr Anderson stated that he would request the tenants to check the statement and remind them to ask for copies of documents they did not have. Finally, Mr Anderson said that during the year he would send invoices received under cover of letter with explanation of the charges and as a rule include the updated statement with the letter.

58. Mr Anderson's accounting record for the service charges for the building was "the spreadsheet". Mr Anderson explained that the format of the spreadsheet had evolved over time. The spreadsheet had entries for each charge (date, amount and brief description), the contribution required of each tenant including the dental practice, the payments made by each tenant and the date, and the running balance owed by each tenant. Mr Anderson updated the spreadsheet on his computer whenever a payment or charge was made. Mr Anderson said he treated the spreadsheet as a working document and he did not save copies of the previous version of the spreadsheet.

59. Mr Anderson did not include in [C] a copy of the "summary of Rights and obligations for tenants (service charges/administration charges) which must accompany all demands for service charges and administration charges after 1 October 2007.

60. Mr Anderson's letter of 3 January 2015 to Mrs Gold (C1) stated that

> "As you now revert to your solicitor at every opportunity I attach a bill for the ground rent. No doubt he has made you aware of your rights but I refer you to the Leasehold Advice Centre's website and attach a summary. It is sad we have got to this stage as for the past 10 years we have dealt with each other reasonably. I attach guidance from the Leasehold Advice Centre summarising your rights and (mine)".

61. Mr Anderson included with a copy of a Rent Demand Notice of £100 for the period 1 January 2015 to 31 December 2015 issued against Mrs Gold, Mr Howlett and Ms Harrison under section 166 of the 2002 Act [C2]. This section 166 Notice included a section on "Notes for Leaseholders" and "Notes for Landlords" which related to the ground rent requirements not service charges [C1].

62. In her correspondence file Mrs Gold included a copy of the extract from the Leasehold Advice Centre referred to in Mr Anderson's letter dated 3

January 2015. The extract included the "Summary of Tenant's Rights and Obligations" for service charges. The Tribunal found no other example of a Summary of Rights attached to a service charge demand in the hearing bundles.

63. Mr Anderson's demands issued at the beginning of each year were set out in the form of a letter headed by the names of Mr and Mrs Anderson and an address at Swattenden Oast. They start with Dear Rachel or Dear Kieron and Ellie with a title of "Insurance", Freehold Expenses or End of Year Accounts, and ended with Yours sincerely Duncan Anderson. The quality of the information on the charges demanded varied from year to year. In the letters Mr Anderson as a rule expressed his disappointment with Mr and Mrs Howlett and or Mrs Gold about not keeping up with payments, sometimes pass comment, and make exhortations about when payment should be made. The intensity of Mr Anderson's comments and the number of letters increased with the escalation in the scale of dispute with Mrs Gold. By way of example the Tribunal sets out extracts from three of Mr Anderson's letters in 2011 and 2015 which were typical of his approach.

64. In the letter to Mr and Mrs Howlett dated 21 January 2011 entitled "Insurance" [B1], Mr Anderson said:

> "Thank you for the cheque for £100 just before Christmas for the ground rent.
> I attach the insurance renewal which I have paid for the entire property. Your share is £316.25 and with the maintenance costs carried over you the freeholder, me, is £2,284.83.
> I know you have made payments from time to but I would like it if you would make a regular commitment of say £150 per month which would clear it in about 2 years as I will be paying for the water and sewerage through the year and next years insurances.
> Please can you come back to me"

65. In the letter to Mr and Mrs Howlett dated 3 December 2011 entitled "Freehold Expenses" [B3], Mr Anderson said:

> "It has come to that time of year to review the freehold expenses which includes some charges for services being water and sewerage.
>
> Last year the cost was £4,57184 which your share was £822.93, and you paid £800 so your debt increased to £2,090.91.
>
> Under the lease I am supposed to collect at the beginning of the year the freehold expenses anticipated for the forthcoming year. Next year I anticipate the following expenses:
>
> 1) Water and sewerage etc 2011 £1,294 plus 10 per cent £1,500
> 2) Insurances 2011 £1,756 plus 10 per cent £2,000
> 3) Redecorate front and side elevation £2,500
> 4) Contingency for future expense £2,500
> 5) Total £8,500

Your contribution is £1,530 so if you commit to clear the debt of £3,670.91 next year you will need to pay £305.90. If I add interest this will add another £220.25 which I do not want to do but I am free holder not a free loan.

I think you will agree I have been tolerant but I want to move forward so please contact me to let me know how you would like to clear this debt".

66. In the letter to Mrs Gold dated 3 January 2015 entitled "End of Year Accounts" [C1], Mr Anderson said:

"I attach the schedule showing the expenses and costs I anticipate for 2015:

Under the lease I am meant to be paid in advance. This year I expect expenditure to be as follows:

1) £2,000 for insurances
2) £1,200 for water rates based on 2014 charges
3) £6,000 for decorations
4) Management charges 10 per cent say £1,000

This is a total of £10,000 and your proportion is 18% or £1,800.00 plus ground rent £100....
I attach last years schedule of expenditure and it shows you owe £1,778.02. To date you have not given any clear reason in writing or verbal why you have not paid this debt. I believe all charges have been correctly made under the lease and properly advised and substantiated. Since you do not specify what your payments cover I cannot allocate them and can only assume that they are spread evenly. Any payments I receive from you will be set against the general debt and interest in accordance with the lease will be levied if they remain unpaid.

Under the lease you have 14 days to pay this and with the money owed I need £3,678.02".

67. Mrs Gold said that she had not agreed with Mr Anderson the method for demanding and accounting for service charges. Mrs Gold contended that the procedures adopted by Mr Anderson were not consistent nor transparent which made it difficult to work out true expenses and her debt.

68. The Tribunal takes account of the following considerations when examining the lawfulness of Mr Anderson's demands:

- The terms of the lease
- The legal requirements
- The Code of Practice entitled Service Charge Residential Management Code issued by the Royal Institution of Chartered Surveyors ("RICS Code).

69. The Tribunal finds that the requirements under the lease for demanding service charges were unsophisticated and not onerous. The lease did not impose any specific controls on the uttering of demands, such as certification of accounts, and gave Mr Anderson the authority to collect monies already expended and on account. In the Tribunal's view the single concession given to tenants under the lease regarding payment was that they could pay them quarterly on the quarter days. Mr Anderson had not recognised this concession in the demands sent to the leaseholders of the property.

70. Under legal requirements the landlord is required to specify on any written demand for service charges the name and address of the landlord and must notify the tenant of an address in England and Wales where tenants can serve notices on the landlord (sections 47 and 48 of the Landlord and Tenant Act 1987). The landlord is also obliged to send with each demand for service charge and administration charge a summary of tenant's rights and obligations. The summary of rights must follow the prescribed form and is different from the one used for ground rent demands.

71. The Tribunal finds that Mr Anderson had not observed the legal requirements for demands. The Tribunals hold that the letters which constituted the demands did not contain an explicit statement regarding the name and address of the landlord. Mr Anderson stated that the Landlord was a family trust but the name of the family trust did not appear in any of the demands for service charges.

72. Mr Anderson did not exhibit in the hearing bundle a form that corresponded with the summary of tenant's rights and regulations as prescribed by the relevant regulations.[3] Mrs Gold included an extract from the website of the Leasehold Advice Centre which detailed the Summary of Tenant's Rights and Obligations which appeared to have been sent with the letter on 3 January 2015. There was no evidence that this extract had been sent with other service charge demands.

73. It would appear that Mr Anderson relied on the section 166 Notice at [C1a] which related to the demand for ground rent to demonstrate his compliance with the statutory requirements regarding notice of rights. If that was so, Mr Anderson was mistaken. The notice attached to the section 166 Notice was confined to ground rent and did not extend to service charges even though the charge is described as additional rent in the lease. Mr Anderson was required to send out separate notices of rights in the prescribed form for service charge and administration charges with every service charge demand. The Tribunal is satisfied that Mr Anderson adduced no evidence that he had complied with the separate requirements for the notices.

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[3] Service Charges (Summary of Rights and Obligations and Transitional Provisions (England) Regulations 2007) (SI 2007/1257) & Administration Charges (Summary of Rights and Obligations (England) Regulations 2007) (SI 2007/1258).

74. Mr Anderson in correspondence dated 30 January 2015 shortly after the letters of 3 January 2015 to Mrs Gold gave his own interpretation of tenants' rights and obligations which would have compromised the purpose of sending the information in the first place if the correct notice had been sent. Mr Anderson said

> "If you want to question the charges the first thing you must do is give me the reasons why you object. To date I have answered and you have agreed every query you have raised.
>
> Then if you still object you could go to a tribunal which would probably cost 5 times the freehold debt in legal expenses. I recently acted as an expert witness on freehold expenses cases where the leaseholder was told that anticipated repair costs were going to be between 5 and £10,000. In the end he got a bill for over £50,000. This was negotiated down but the Tribunal made him pay £38,000 plus interest plus the freeholder's legal costs plus his own. In the end it cost him in excess of £100,000 and he lost his property.
>
> If you apply to a tribunal I will seek termination of your lease due to your other breaches".

75. Under section 87(7)(b) of the Leasehold Reform, Housing and Urban Development Act 1993, the Tribunal shall take into account any provision of the RICS Code that is relevant to any question arising in the proceedings. The provisions of the Second Edition of the RICS Code was effective from 6 April 2009 to 1 June 2016 which covered the majority of the period under dispute.

76. Paragraph 6.2 of the RICS Code requires service charge demands to be clear and be understandable to tenants. Paragraph 8.7 obliges careful preparation of budgets for estimated expenditure using the best possible information. Paragraph 10.2 requires accounts to be transparent and reflect all the expenditure of the accounting period whether paid or accrued.

77. The Tribunal considers Mr Anderson's method of demands and accounting unclear and only properly understandable by him. In the Tribunal's view, Mr Anderson should have avoided incorporating demands and final year accounts in correspondence, which meant that the neutrality of the financial information was lost in a barrage of comment and exhortation. Instead Mr Anderson should have issued a formal notice of demand at the start of each year which followed a consistent format from year to year stating the items of proposed expenditure, broken down into heads of expenditure, the amount demanded and the dates when payments were expected. Likewise, the end of year account should have been limited to the activity in that year, and should not have contained information about next years budget, and the running balance.

78. The Tribunal agrees with Mrs Gold that the spreadsheets were confusing. In 2014 there appeared to four versions of the spreadsheet

one in Mr Anderson's bundle [R:E2] and three in Mrs Gold's file [A: 274-276]. The spreadsheets included all the charges and did not separate out the service charges from the administration charges.

79. The Tribunal concludes that Mr Anderson had not issued valid demands for the service charges for the years in question. The Tribunal finds that the demands did not contain the required information and were not clear and understandable. The Tribunal is also satisfied that Mr Anderson did not send a copy of the Tenant's Rights and Obligations (Service Charges) with the demands. The Tribunal does not consider that an extract from the Leasehold Advice Centre website fulfilled the statutory requirement under section 21B of the 1985 Act. In any event the evidence showed that this extract was only sent with the 2015 demand and not with the demands for other years.

80. The Tribunal, therefore, determines that Mrs Gold is not liable to pay the service charges for 2010-2017 until Mr Anderson sends demands specifying clearly the amounts due for each year and the required information regarding the name and address of the landlord which are accompanied with the correct Notice of Tenant's Rights and Obligations.

Section 20 Consultation

81. Section 20 of the 1985 Act requires the landlord to consult tenants on qualifying works exceeding the prescribed limits. Under the Regulations the consultation requirements will apply if the costs result in the relevant contribution of any tenant being more than £250. Qualifying works means works on a building or other premises.

82. The consultation requirements in relation to the building and repair works carried out by Mr Anderson are found in Service Charge (Consultation Requirements) (England) Regulations 2003 Schedule 4 Part 2 (Qualifying Works for which public notice is not required)[4].

83. Essentially the requirements are that the landlord must give notice in writing of his intention to carry out qualifying works to each tenant. The notice must comply with the requirements set out in the 2003 Regulations. The notice must, amongst other things, describe the proposed works or specify when and where a description of them may be inspected, state the landlord's reasons for considering it necessary to carry out the proposed works, invite observations and specify the time within which and address at which such observations should be made. The notice must also invite each tenant to nominate other persons from whom the landlord should try to obtain estimates (Notice of Intention).

84. If observations in relation to the proposed works are made by a tenant within the relevant period the landlord must have regard to those observations. If any nominations are made the landlord must try to obtain an estimate from the nominated person.

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[4] Hereinafter referred to as the 2003 Regulations

85. The landlord, following this initial consultation process, must obtain estimates for the carrying out of the proposed works and supply, free of charge, a statement setting out:

(a) as regards at least two of the estimates the amount specified in the estimate as the estimated cost of the proposed works; and
(b) where the landlord has received observations to which he is required to have regard, a summary of the observations and his response to them.

86. The landlord must make all the estimates available for inspection and at least one of the estimates must be that of a person wholly unconnected with the landlord. Where the landlord has obtained an estimate from a nominated person, that estimate must be dealt with in the statement. The statement must be supplied to (and the estimates made available for inspection by) each tenant. (Notice of Estimates).

87. The landlord is also required to give a notice to each tenant specifying the place and hours at which the estimates may be inspected and invite written observations in relation to them. In this regard the landlord must specify an address and time limit for the delivery of such observations[2]. The landlord is under a duty to have regard to any observations made in accordance with the regulations.

88. Where the landlord enters into a contract with a person for the qualifying works (other than a nominated person or the person who submitted the lowest estimate) he must, within 21 days of entering into the contract, give notice in writing of entering into the contract to each tenant (Notice of Contract).

89. Mr Anderson asserted that he had complied with the section 20 requirements in respect of the building works to the property. Mr Anderson said the consultation requirements only applied to car park repairs which he said were paid in full by Mrs Gold, the external decorations and the roof works. According to Mr Anderson, Mrs Gold had never stated in writing that the section 20 requirements had not been complied with or used the non-compliance as a reason for not paying her share of the costs.

90. Mr Anderson produced a copy of a letter from the dental practice signed by Mr Blanchard, a partner stating that

> "They had been tenants of Mr Anderson for approximately 12 years. In that time we have and continue to have a very good working relationship. Any necessary upkeep to the building is carried out with good consultation time, and a visible quoting process prior to commencement of any works. We have regular statements of maintenance costs and understand our contribution percentage of the freehold, Mr Anderson is always keen to assess the work is carried out successfully and available to discuss any concerns we may have".

91. The Tribunal at the case management hearing on 14 March 2017 released 3 April 2017 invited Mr Anderson to make an application for

dispensation from consultation requirements by 19 April 2017. Mr Anderson decided not to take up the invitation.

92. Mrs Gold argued that Mr Anderson historically had not fully complied, if at all, with section 20 requirements for the consultation on building and repair works. Mrs Gold said that prior to 2014 Mr Anderson did not advise her of her right to nominate a contractor and failed to provide estimates and invoices. Mrs Gold stated that once she had forced the issue with Mr Anderson, he began from 2014 to supply estimates but failed to get quotations from the nominated contractors put forward by Mrs Gold. Finally, Mrs Gold challenged the authenticity of some of the quotations obtained by Mr Anderson.

93. The Tribunal intends to examine the major building and repairs works[5] for each year in turn[6], and form an assessment on whether Mr Anderson has complied with the statutory requirements. The Tribunal refers to Mrs Gold's helpful analysis at [203-210], and Mr Anderson's evidence at [D, E and F].

2010 Major Works

94. Mr Anderson said that the original cost for major works in 2010 was £13,704.87. Mr Anderson in his evidence said that he did not know the origin of that figure. Mr Anderson states now that the correct figure was £15,260.05 not £13,704.87. Mr Anderson gave two figures for Mrs Gold's contribution: £2,588.72 [D introduction] or £2,746.81.

95. The repairs and maintenance comprised

- External decorations.
- Scaffolding around flat 1.
- Resurfacing car park by Coppards.
- Refurbishing of the cellar under flat 1.
- Replacement of the floor joists to flat 2 which were infested and rotten as were the timber beams.
- Replacement of manhole covers.

96. The breakdown of the costs of the repairs and maintenance were [D8]:

Unspecified	£ 3,997.05
Labour	£ 7,080.00
Coppards	£ 2,479.25
Scaffold	£ 1,703.75
Total	£ 15,260.05

[5] Defined as building works which require Mrs Gold to contribute more than £250.
[6] There were no major works in 2013.

97. On 16 December 2009 Mr Anderson sent a letter requiring payment of 2010 service charge to Mr and Mrs Howlett. Mr Anderson proposed a contribution of around £2,750 to the repair and maintenance costs [D5]. Mr Anderson provided Mr and Mrs Howlett with updates on the progress of the maintenance works which culminated in a letter of 15 June 2010 in which he advised Mr and Mrs Howlett that their contribution for the maintenance works would be £2,746.81.

98. Mr Anderson appeared to rely on correspondence dated 13 August 2009 [D3] and 9 October 2009 [D4] to meet the statutory consultation requirements in respect of the repair and maintenance works. The letter of 13 August 2009 provided a detailed description of the works proposed, and the various options for completing the works together with costs. A schedule of the proposed works was attached. The letter of 9 October 2009 set out the updated position. The dental practice had requested deferment of some of the works.

99. The correspondence was sent to Mr and Mrs Howlett with a copy to Mrs Gold. The letters contained no invitation for comments or to submit a name of the contractor. The correspondence gave the impression that the works were a fait accompli, and that Mr Anderson would make the necessary decisions to achieve value for money. In the Tribunal's view the purpose of the correspondence was to elicit the tenants' contribution to the works which was summed up by Mr Anderson's comment in his letter of 6 April 2010: "I would appreciate another contribution as I am subsidising this work quite heavily".

100. The Tribunal is satisfied that Mr Anderson had not complied with the statutory consultation requirements in respect of the major building and repairs works for 2010. The Tribunal also finds that Mr Anderson treated these works as one set of qualifying works (*Francis and another v Phillips and Another* [2014] EWCA Civ 1395). The Tribunal, therefore, limits Mrs Gold's contribution for these works to £250.

2011 Major works

101. Mr Anderson installed a new roof to the conservatory at the rear of the building. Mr Anderson provided an invoice for supply only of one lean-to conservatory roof in sum of £1,400 from Pattendon Windows and Conservatories LLP [B5]. Mrs Gold's contribution to the costs of these works was £252. Mr Anderson accepted that he had not carried out the necessary consultation. The Tribunal, therefore, restricts Mrs Gold's contribution to £250 in respect of the costs for the conservatory roof.

2012 Major Works

102. The 2012 spreadsheet included £1,650 (external decorations), and £650 for additional works making a total of £2,400. It appeared that the costs related to external decorations, and the replacement of gutters and down pipes for flat 1. The external decorations comprised stripping the weatherboarding to the end wall, checking the insulation and

flashings, and replacing with a breather membrane under the boarding and installing new weatherboarding.

103. Mr Anderson's correspondence on these works was a letter dated 3 December 2011 to Mr and Mrs Howlett and an e-mail dated 3 September 2012 to Mr and Mrs Howlett, and Mrs Gold. The letter advised Mr and Mrs Howlett that their contribution to the service charge was £1,530 and that the costs of redecoration of the front and side elevation of Flat 1 would be in the sum of £2,500[B3]. In the e-mail Mr Anderson said that he had obtained two quotations for the redecorations which were pence apart. Mr Anderson stated that the estimate was £1,600 plus VAT which would go on the maintenance budget.

104. The Tribunal is satisfied that Mr Anderson had carried out no consultation in respect of these works. Mr Anderson simply informed the tenants what he intended to do and that he expected them to pay their contribution. Mr Anderson did not seek the tenants' views on the proposed works and did not invite them to nominate contractors. The Tribunal decides that the external decorations and additional works comprised one set of works and limits Mrs Gold contribution to the costs at £250.

2014 Major Works

105. The major works concerned repairs to the car park. Mrs Gold cited a cost of £3,777.58 (£679.96 contribution) for these works which corresponded to the amounts given by Mr Anderson of £3,573.82 and £203.76 in [E2 & E3].

106. Mr Anderson's communications on the car park commenced with an email to the dental practice and Mrs Gold dated 6 January 2014 advising on the dispute with Mrs Gold's tenant over parking and on the large puddle in the car park. Mr Anderson suggested that eradication of the puddle required the car park to be broken up and the laying of new drains. Mr Anderson also suggested that parking bays could be marked out or alternatively a barrier erected across the car park. Mr Anderson said he was keen to find out what they would like him to do. Mr Anderson gave no timescale for responses from the tenants.

107. Mr Anderson's next letter was to Mrs Gold's solicitors, Heringtons, dated 7 April 2014 in which he informed the solicitors that he would be carrying out the work to the car park in early May and that the solicitors should advise Mrs Gold's tenant not to park her car on the car park and not to harangue him or his workers. Mr Anderson then sent out an e-mail on 17 April 2014 confirming that he would be starting the work on the car park in early May 2014.

108. On 8 May 2014 Heringtons, advised Mr Anderson of Mrs Gold's rights to be consulted about the works if he wished Mrs Gold to contribute to

the costs of those works. The solicitors also supplied Mr Anderson with a web-link to enable him to access the relevant information.

109. On 9 May 2014 Mr Anderson replied [E1] saying that he disagreed with the solicitors regarding their advice on consultation saying:

> "I do not agree with you as the lease clearly states that I can claim additional rent to expend as reasonably required on account of anticipated expenditure. My letter dated 14 January clearly sets out the anticipated expenditure on the car park and its drainage. Your client had 14 days to pay the demand or disagree with the demand. She did neither"

110. Mr Anderson then went onto state:

> "However, in the spirit of helpfulness which you say Miss Lamb wishes to promote I will delay the works to the car park until the week commencing 9 June 2014 which gives your client a full 28 days to either come up with an alternative contractor or disagree with the estimate. Should she ask me to do further work by getting more prices I as a professional surveyor will charge for my time"

111. On the 19 May 2014 Mr Anderson wrote to Mrs Gold detailing the works to the car park and saying that they would go ahead on 9 June 2017.

112. On 28 May 2014 Mrs Gold nominated a Mr Patrick Joseph to give a quotation for the works.

113. On 28 May 2014 Mr Anderson emailed Mr Joseph saying that he would be commencing work on the car park at Stonerock House. Further he wanted to break out some defective concrete, install an additional gully and reinstate with reinforced concrete. Mr Anderson advised Mr Joseph to suggest a day work rate under his supervision.

114. On 2 June 2014 Mr Anderson informed Mrs Gold that he had heard back from Mr Joseph who could not start on 9 June and according to Mr Anderson his rate was more expensive than the builders he would use. Mr Anderson further said that

> "I find it odd that someone who does not comply with a simple lease that they signed refers to the Landlord and Tenants Act. Please can you be more specific about your query as I do not think your comment has purpose. What is your actual query. Is it about the works, the cost of works, who is carrying out the works, or length of works or something else. Please be specific. Also are you asking as a leaseholder and if so do you have the agreement of the other owners of the lease as you are a minority. By the way you need to pay your contribution in accordance with the lease which was due last January"

115. Mr Anderson ended the letter: "Finally since all the other tenants are expecting work to start on Monday I do not propose postponing it again for you unless you have good reason".

116. The Tribunal finds that Mr Anderson did not follow the correct procedures for consulting on the proposed works to the car park. The Tribunal holds that Mr Anderson did not issue a notice of intention and a notice of estimates within the meaning of the 2003 Regulations. Further the correspondence cited above demonstrated Mr Anderson's complete lack of understanding of Mrs Gold's right to be consulted on the works. Mr Anderson was not prepared to enter into meaningful consultation with Mrs Gold and did not give due regard to her views. In the Tribunal's view, Mr Anderson was intent on going ahead with his planned scheme, and was simply going through the motions in his dealings with Mr Joseph.

117. The Tribunal, therefore, determines that Mrs Gold's contribution to the costs of the works to the car park be limited to £250.

2015 Major works

118. The major works in 2015 involved external redecorations to the main building, the two flats, and the conservatory. The redecoration involved the painting of all windows, doors, joinery, gutters, fascias and soffits but excluded the weatherboarding which was washed down.

119. The cost of these works was £6,767.75 of which Mrs Gold's share was £1,218.20. Mr Anderson carried out other repairs during the year which were not part of the external decorations works, and the costs of those repairs did not exceed the threshold for triggering the consultation requirements. The other repairs were fencing in the sum of £520 plus 15 per cent management fee making a total of £598 (leaseholder's contribution £107.64) [C3] and sundry items in the sum of £191 ((leaseholder's contribution £34.38) [C4].

120. In his bundle Mr Anderson supplied three invoices from Hawk Industrial Abseiling for the cost of the redecorations which totalled £5,885 to which Mr Anderson added a supervision fee of 15 per cent in the sum of £882.75 producing the final total for the works in the sum of £6,767.75.

121. Mr Anderson supplied Mrs Gold with the following correspondence on the major works:

- 28 October 2014: Mr Anderson sent a letter to Mr Gold attaching a schedule of decorations which required to be undertaken next year. Mr Anderson asked Mrs Gold to let him know if she would like to recommend a decorator, and if there was anything she wanted him to know.
- 10 November 2014: Mrs Gold nominated a Ritchie Prior

- 24 February 2015: Mr Anderson requested a quotation from Mr Joseph (the person nominated by Mrs Gold for the car park repairs in 2014) for the works by 30 March 2015. A specification for the proposed works was included.
- 10 March 2015: Mrs Gold asked Mr Anderson whether he had got hold of Ritchie Prior with regards to the decoration works.
- 7 April 2015: Mr Anderson writes to Mrs Gold: "This year we need to carry out the external decorations which I would have just got done. However, to please you I have written a specification, gone out to tender and met your proposed builder. I await another price as I need three".
- 13 April 2015: Mr Anderson supplied Mrs Gold with three quotations for the external decorations: Hawk (£5,250), CPM £5,780, and Paul Archibald (£7,890). Mr Anderson stated: "The actual cost is £6,250 plus 10 per cent for supervision of £6,875 so your share is £1,237.50. **This is due now**. .... I would appreciate having your agreement and payment as I want to start now while the weather is good and especially get the repairs done before they deteriorate further. Please let me know if you require any further information and please inform your tenant".
- 14 April 2015 at 0940 hrs: Mr Anderson sends an email to Mrs Gold stating: "I posted a letter with the painting quotes yesterday and the best price is Matt Bates of Eagle[7] and since it has got sunny he is keen to start. I would like to meet him there tomorrow morning 8.30am to start preparation, sorry about the short notice, but I am minded to strike while the iron is warm and make use of the good weather. Also be a shame to miss the chance as it may be weeks before he has another slot....."
- 14 April 2015 at 1638 hours: Mr Anderson sends a text to Mrs Gold: "Meeting painter tomorrow 8.30 do you want to come? Do you have any objections to going ahead or any questions".
- 14 April 2015: Mrs Gold sends a text to Mr Anderson: "Is this Ritchie Prior you refer to (the one I recommended to be given the opportunity to quote) or another painter? This is too short notice for me. I'm afraid but I would like to discuss any works please. I know Ritchie mentioned he had not heard from you when I last spoke with him but this was couple of weeks ago".
- 14 April 2015: Mr Anderson sends a text to Mrs Gold: This is the third price received from Eagle I posted the results to you yesterday. Your man came 2nd by just over £500. Eagle are keen to start. Ring me to discuss what you want to know".
- According to Mrs Gold, she telephoned Mr Anderson following the last text and was told by Mr Anderson that he would go ahead regardless of her views and that Mrs Gold had no choice on the matter.

[7] Mr Anderson kept referring to Eagle which was not mentioned as one of the contractors which had submitted a tender. Mrs Gold assumes that Mr Anderson has confused Eagle with Hawk.

122. The Tribunal finds that Mr Anderson has given Mrs Gold more information in connection with the 2015 major works compared with the major works for previous years but again has fallen far short of the statutory requirements for consultation. Although his letter of 28 October 2014 invited Mrs Gold to nominate a contractor, Mr Anderson did not explain the purpose of the works and request her views on the scope of the works. Further it would appear that Mr Anderson did not get a quotation from Mrs Gold's nominated contractor, Mr Prior. Finally Mr Anderson purported to give Mrs Gold an opportunity to comment on the quotations received but it was clear from the tone of the correspondence and the content of the email, texts and phone call the following day that Mr Anderson had made up his mind and was going ahead with his preferred contractor regardless of Mrs Gold's view.

123. The Tribunal, therefore, determines that Mr Anderson has not complied with the consultation requirements, and that Mrs Gold's contribution to the costs of the external decorations should be limited to £250.

2016 Major Works

124. The Tribunal intends to proceed that the costs incurred on the roof in 2016 were £9,410 (the total amount for the invoices set out in the paragraph below) plus £1,411.50 (Mr Anderson's administration charge) which equalled £10,821.50. The Tribunal calculates Mrs Gold's contribution at £1,947.87[8].

125. The invoices of MPS Developments submitted by Mr Anderson at [F6] and [F8] in respect of the costs of the roof repairs in 2016 were:

- £1,700 overlay of existing roof dated 2 September 2016
- £820 remove section of rotten roof board and joist and renew fibre glass between joists dated 9 September 2016.
- £500 for scaffolding dated 21 September 2016
- £2,200 install fibre glass valleys along the long valley dated 21 September 2016, of which £1,100 was paid.
- £4,990 for a range of works which apparently included the balancing payment of £1,100 for the £2,200invoice above. This invoice was undated.
- £300 to remove and rerun concrete hip. This invoice was undated.

126. On 8 December 2015 Mr Anderson sent a letter to Mrs Gold dealing with a range of matters. In that letter Mr Anderson mentioned problems with the lead roof to the main building which would need replacing. Mr Anderson said the works were expensive in the region of £15,000 and that he was giving notice under section 20 that he needed

[8] Mrs Gold gives a figure of £12,086.50. The Tribunal is unable to understand the basis for this calculation.

to collect the money and put the work in hand. Mr Anderson requested Mrs Gold to let him know a contractor to price this work.

127. On 16 December 2015 Mr Anderson wrote to Mrs Gold attaching photographs of the lead roof stating that "if you want an independent surveyor to meet me to corroborate the above or wished to suggest a specialist contractor with references please let me know and I will meet them. I point out I can charge for my time if you want to meet".

128. On 26 January 2016 Mrs Gold replied to Mr Anderson asking him to clarify the extent of the repairs to the roof. Mrs Gold also said that she expected Mr Anderson to invite tenders from the contractors nominated by her, and to allow them to inspect the building.

129. On 19 May 2016 Mr Anderson told Mrs Gold that he had now been on the roof and that the lead valley and ridges had reached their end of their lives. Mr Anderson said he had met with roofers to get prices and wondered if Mrs Gold wanted to recommend someone.

130. On 24 May 2016 Mrs Gold nominated a Mr Graham Hillier and a Mr Stanley Brzozowski as potential contractors.

131. On 10 August 2016 Mr Anderson informed Mrs Gold that he had been on the roof and inspected the problems more closely with the four roofing contractors. Mr Anderson said that a full temporary roof should be installed in order to carry out the main roof works, however, according to Mr Anderson the costs of a temporary roof would be prohibitive. Instead Mr Anderson told Mrs Gold that he would arrange for a temporary fibreglass roof over the flat roof valley which would stem the leak and cost considerably less than a full temporary roof. Mr Anderson said he had received an additional price of £1,700 from MPS Developments for this work which would be started on 22 August 2016. Mr Anderson stated that Mrs Gold's share of the costs of the temporary was £306, more than £250 which he said he was allowed to spend before issuing a section 20 Notice but this was an emergency. Mr Anderson stated that all other leaseholders had approved the works and tenders and wanted to proceed with the quotation from MPS Developments which was the cheapest. Mr Anderson ended the letter by saying that the majority of the works would be held back until the consultation period had elapsed. Mr Anderson attached the section 20 Notice and all the written quotations.

132. The section 20 Notice said that the notice was given pursuant to the notice of intention to carry out the works issued 8 and 16 December 2015. Further Mr Anderson had obtained three estimates MPS Construction £13,201 plus VAT, R Heather Roofing £18,930 including VAT and Crane Construction £16,570 plus VAT. Mr Anderson gave Mrs Gold 30 days in which to make observations from date of the notice, namely be 9 September 2017.

133. On 20 August 2016 Mrs Gold responded to the section 20 notice. Mrs Gold was surprised that Mr Anderson had not obtained a quotation from her nominees. Mrs Gold pointed out that she was led to believe that some of the quotations were not obtained from roofing specialists and that their estimates did not state the VAT registration numbers. Mrs Gold insisted on an independent second opinion because it would appear that the quotations were based on Mr Anderson's diagnosis and specified remediation. Mrs Gold also questioned the need for a temporary fix.

134. Mr Anderson replied on 28 August 2016 saying that he did not receive details of the nominee contractors from Mrs Gold. Mr Anderson invited her to get a second opinion at her own expense. Further Mr Anderson advised that the fibreglass roof was temporary repair and that MPS Contractors would not be adding VAT.

135. On 30 August 2016 Mrs Gold asked Mr Anderson to recalculate the cost of actual work being done, remove costs for any improvements, remove the VAT and advise on what happened to the lead that was in situ.

136. On 5 September 2016 Mrs Gold also informed Mr Anderson that she wished to arrange for a surveyor to inspect the property and asked whether she should organise it through a third party or wait until Mr and Mrs Anderson returned from holiday.

137. On 7 September 2016 Mr Anderson acknowledged receipt of Mrs Gold's letter of 30 August 2016 which he described as misleading. He said that he was away until 18 September 2016 and on his return he would be sending Mrs Gold the invoices for the repairs to the main roof and lower roof leaks.

138. On 24 September 2016 Mr Anderson attached a letter that he had sent to the dental practice regarding the roof works. Further, he confirmed that as the time period on the section 20 Notice had elapsed on 9 September 2016, he had put in place the works in hand starting on 26 September 2016

139. On 16 October 2016 Mr Anderson informed the partners at the dental practice that the works had been completed and the roof repaired except the lead work which he had not commenced because he was awaiting Mrs Gold's confirmation that she was going to accept her share of the cost.

140. The Tribunal finds that the "emergency works" as set out in the invoice dated 2 September 2016 involving the overlay of the main roof was part of a single set of roof works. The Tribunal reaches this conclusion because they were a necessary preparatory step before the main works to the roof were started and all the roof works were carried out by the same contractor at more less the same time. The costs of this "emergency work", therefore, formed part of the overall costs of the

roofing works, and did not have a separate threshold of £250 from the threshold for the main roof works as suggested by Mr Anderson.

141. The Tribunal is satisfied that Mr Anderson has not followed the correct procedures when consulting with Mrs Gold on the proposed roof works:

- Mr Anderson relied on the letters of 8 and 16 December 2015 as his notice of intention to carry out the works. Those letters did not specify a date by which observations on the works should be received.

- Mr Anderson did not obtain quotations from Mrs Gold's nominated contractors. Mr Anderson said he did not receive their details when Mrs Gold sent them on 24 May 2016. Mr Anderson, however, was aware that Mrs Gold had nominated contractors following her response on 20 August 2016 to the notice of estimates dated 10 August 2016. In the Tribunal's view Mr Anderson still had time on the 20 August 2016 to get quotations because the consultation did not end until 9 September 2016.

- Mr Anderson ignored Mrs Gold's observations about the status and competence of the contractors who had purportedly bid for the roofing works. Mrs Gold's raised valid questions about whether they were roofing specialists and their VAT registrations.
- Mr Anderson had already made up his mind to give the contract to Mark Strutt of MPS Developments well before the closing date for responses to the consultation. In the letter of 20 August 2017 Mr Anderson stated that Mr Anderson stated that "all other leaseholders (the dental practice and Mr Anderson) had approved the works and tenders and wanted to proceed with MPS Developments the cheapest". Mr Anderson had an established business relationship with Mr Strutt, having engaged him on various other repairs to the building.

142. The Tribunal, therefore, determines that Mr Anderson has not complied with the consultation requirements, and that Mrs Gold's contribution to the costs of the roofing works should be limited to £250.

Planned Major Works for 2017

143. Mr Anderson stated that the charges for 2017 comprised the following: completion of lead roof as per section 20 notices: £7,100 MPS Developments quotation; completion of decoration to external

boarding: £1,500; Mr Anderson's supervision 15 per cent: £1,290 making a total of £9,890 with Mrs Gold's contribution being £1,780.20.

144. Mr Anderson said that Mrs Gold reported him to the planning department of Tunbridge Wells District Council (the Council) with the result that the Council now required him to submit an application for planning permission to put a lead roof on top of the existing lead roof which in Mr Anderson's view would increase the costs of the remaining works to the roof by £3,000.

145. The Tribunal observes that the figures relied on by Mr Anderson were no longer valid because of the consultation process was flawed, and that the quotation did not now reflect the additional costs arising from the Council's intervention. The Tribunal considers that Mr Anderson should start afresh on the consultation for the remaining roofing repairs and decorating works or apply for dispensation from consultation if the works have already been done, and he seeks a contribution from Mrs Gold to the costs of these works.

Works not to the Required Standard

146. Mrs Gold at [211-265] sets out her case in respect of the standard of works in connection with the car park, the roof, and external decorations.

147. Mr Anderson's reply dated 15 June 2017 dealt with Mrs Gold's allegations on the standard of the completed works to building.

148. In his reply Mr Anderson referred to a letter from Mr Blanchard BDS, a partner of the dental practice, who stated that the practice had a very good working relationship with Mr Anderson, and that Mr Anderson keeps them informed of the maintenance costs and was responsive to any concerns that the practice had. Mr Anderson makes the point that the dental practice had always paid their full share of the freehold expenses which comprised 79 per cent until 2014 and 63 per cent thereafter following the sale of flat 2. Mr Anderson considered the dental practice's willingness to pay provided affirmation that the works were carried out to a high standard, and that there were no false charges.

149. Mrs Gold's principal complaint regarding the car park was that when it rained large puddles formed in numerous areas of the car park across the old and newly laid concrete. In Mrs Gold's view, the persistence of the problem demonstrated that the repairs carried out by contractors instructed by Mr Anderson were not to the required standard.

150. Mrs Gold produced a letter from GWF (Groundworks and Construction) dated 30 May 2017 in which Mr Fairbrass gave his professional opinion [215]. Mr Fairbrass' main criticism of the works was that he did not understand why the contractor had not put in a new bottle gulley into the existing manhole and have the gulley as central as

possible to enable the water to flow towards the gulley instead of the bins in the back area of the car park. Mrs Gold also supplied photographs of the car park [216-220] in 2014, April 2015, 4 January 2016 and current which showed the state of repair of the car park, and the presence of puddles.

151. Mr Anderson disputed Mrs Gold's allegations of poor workmanship in relation to the car park. Mr Anderson considered the photographs produced by Mrs Gold showed that the car park was in a reasonable state of repair. Mr Anderson said that when it rained small puddles inevitably formed on concrete because of its impervious nature. According to Mr Anderson, these puddles would quickly evaporate and could easily be walked around. Mr Anderson pointed out that the puddle in photograph 1 had now been drained. Mr Anderson stated the installation of a bottle gully into a foul water manhole would not be in accordance with Building Regulations.

152. The Tribunal is satisfied that Mrs Gold had not demonstrated that the works to the car park were not carried out to a reasonable standard. The Tribunal notes that the parties accepted there were problems with the drainage of the car park, and that the works carried out by Mr Anderson were necessary to repair the collapsed drain. The Tribunal agrees with Mr Anderson's view that the photographs on the whole showed the car park to be in a reasonable state of repair. The Tribunal also accepts Mr Anderson's reservations regarding the views expressed by Mr Fairbrass in the letter dated 30 May 2017. Mr Anderson was not given the opportunity to discuss the works with Mr Fairbrass. Mr Anderson had been placed at a disadvantage by being presented with this letter late in the day. In any event the Tribunal considers that Mr Fairbrass was simply expressing a difference of opinion and that he would have done the works differently from Mr Anderson.

153. Mrs Gold stated that Mr Anderson has throughout the years carried out numerous roof repairs albeit small ones. Mrs Gold said she questioned the repair work to the conservatory roof which was completed around 2011. Mrs Gold pointed out that Mr Anderson recently undertook major repairs to the roof of the main building without consulting her properly and for which he failed to obtain the correct planning permission. Mrs Gold stated that Mr Anderson's retrospective planning application had been refused by the Council because he specified the use of inappropriate materials for the age and listed status of the building.

154. Mrs Gold asked the Tribunal to have regard to the opinion of a professional third party acting pro bono. The third party formed his opinion on the standard of the works by referring to the photographs supplied by Anderson and some drone footage which Mrs Gold commissioned during the repairs. Mrs Gold supplied photographs of the roof at [229-231]. Mrs Gold believed that the works to the roof were inappropriate based on the details supplied by the third party and the refusal of Mr Anderson's retrospective planning application.

155. Mr Anderson questioned the status and authority of an unnamed expert. Mr Anderson pointed out that Mrs Gold declined his invitation to appoint a surveyor to inspect the roof back in 2015. Mr Anderson noted that the unnamed expert agreed with his analysis that there were insufficient steps for expansion joints on the lead roof which would have caused the ingress of water. Mr Anderson said that the Council had accepted that he had done nothing wrong because the lead roof was still in place, and that he had now resubmitted his planning application to incorporate the steps for a lead roof.

156. The Tribunal places no weight on the views of an unnamed expert. The Tribunal finds that Mr Anderson spent a considerable amount of time doing his best to identify the source of the water ingress in the conservatory and later in the main roof. The Tribunal is satisfied that the replacement of the conservatory roof was necessary and that Mrs Gold had failed to adduce reliable evidence that the works were not done to the required standard. The Tribunal notes Mr Anderson's full response to Mrs Gold's original statement of case regarding the water ingress problems associated with the rear conservatory [15].

157. The Tribunal is circumspect about forming a view on the standard of works to the main roof in view of the recent involvement of the Council and the requirement to submit a planning application for the works to the main roof. The Tribunal advised Mr Anderson that he would need to consult afresh on these works, which would then give Mrs Gold an opportunity to give a considered opinion. The Tribunal considers it premature to determine whether the works to the roof were completed to the required standard. In any event the Tribunal has limited Mrs Gold's contribution to £250 for the works already done because of Mr Anderson's failure to comply with the consultation requirements.

158. Mrs Gold's final challenge related to the standard of the external decorations to the flat [250-265]. Mrs Gold complains about the problems of water ingress through the windows to the property, the failure to decorate the weatherboard which was only washed down, the quality of the painting to the front door of the flat which was decorated whilst shut and the paint work to flat 2 and two windows of Stonerock.

159. Mrs Gold produced an undated letter from a Mr Hillier, a carpenter, general building and decorating contractor [255]. Mr Hillier stated that the use of pressure washer on the weatherboard was too harsh a treatment if it was not subsequently painted. Further Mr Hillier said that painting a front door whilst shut was ridiculous, and that the large window had lost a lot of wood over the years and had been replaced with putty to such an extent that it was bowing out.

160. Mrs Gold supplied a series of photographs showing the state of decoration at [256-265].

161. Mr Anderson stated that the weatherboarding was not included in the programme for external decorations in 2015 because the extent of the flaking paint and cause were not known until after the weatherboard had been power washed. Once he knew the state of decoration of the weatherboard Mr Anderson said he supplied Mrs Gold with an estimate of £1,000 for the painting from Eagle *(presumably Hawk)*. According to Mr Anderson, Mrs Gold refused to pay more than £400 for the external decorations already done, so he decided not to instruct the decorators to paint the weatherboard until Mrs Gold paid her contribution.

162. Mr Anderson asserted that the front door was painted closed because Mrs Gold's tenant refused to co-operate with the decorators who were on site for two weeks. Mr Anderson stated that Mrs Gold had not mentioned the damage before as a result of water ingress through the rotten windows. Mr Anderson noted that Mrs Gold had produced no photographs and no invoices to substantiate her claims.

163. Mr Anderson pointed out that the partners at the dental practice were happy with the standard of the external decorations and had paid the major share of the costs. Mr Anderson stated he had not seen the letter of Mr Hillier before.

164. The Tribunal considers that the dispute on the standard of the external decorations was symptomatic of the deteriorating relationship between the parties and the high degree of mutual mistrust between them.

165. On the face of it, the Tribunal considers it ridiculous that the front door was painted whilst closed. However, if Mrs Gold's tenant refused to co-operate it is difficult to determine what else Mr Anderson could have done in the circumstances. The Tribunal considers that Mr Anderson has given a plausible explanation for jet washing the weatherboarding, and under the terms of lease the performance of landlord's repairing and maintenance covenant is subject to the tenant making her contributions under the lease.

166. Although Mr Anderson claimed he was not aware of water damage to the flat, he knew there were concerns about the possibility of water ingress because he made various inspections of the property in connection with the problem. Mr Anderson formed the view that it was condensation because of inadequate ventilation. Mrs Gold contends that the water ingress was due to the state of disrepair of the windows. If that is the case, the tenant is liable under the lease for the repair and maintenance of the windows and frame. The landlord is only responsible for decorating the outside surface of the door and window.

167. Mrs Gold raises concerns with the external decoration of parts of the main house. The Tribunal notes that the dental surgery has not complained about the standard of the external decorations.

168. The Tribunal finds that Mrs Gold has not established that the external decorations were not to a reasonable standard.

Insurance

169. At the case management hearing on 14 March 2017 the Tribunal formed the view that Mrs Gold had accepted that Mr Anderson had paid the premiums claimed in the service charge account and that she had seen the certificates of insurance. Mrs Gold challenged the insurance premium on three grounds Mr Anderson had not consulted the tenants in accordance with section 20 of the 1985 Act, Mr Anderson had not obtained the best price for insurance by seeking alternative quotations, and Mr Anderson was not entitled to levy a charge for arranging the insurance.

170. Given the above circumstances the Tribunal limited the information requirements in the directions on Mr Anderson to providing a copy of the insurance policy schedule for 2016 and the receipt for payment of the premium. In their respective bundles and responses the parties have supplied additional information about the insurance and the premium paid: Mrs Gold [266 & 267] and Mr Anderson [C & H].

171. Dealing with each challenge in turn. There is no legal requirement upon Mr Anderson to consult on the provision of insurance which does not fall within the definition of qualifying long term agreement for services.

172. Equally there is no obligation upon Mr Anderson to shop around for insurance to see if he can get a better price. In this respect the Higher Courts have approached the reasonableness of insurance costs in a different manner from the costs of services provided by the landlord in this lease. The Higher Courts focus on the wording of the lease when it comes to insurance, and if the landlord has complied with the terms of the lease the Higher Courts generally uphold the right of the landlord to recover the costs of the insurance from the tenant.

173. The authorities on reasonableness of insurance charges[9] establish the following general propositions:

> "The fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to "shop around". If he approaches only one insurer, being one insurer of "repute", and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind, the landlord is entitled to succeed. The safeguard for the tenant is that, if the rate appears to be high in comparison with other rates that are available in the insurance

[9] See Havenbridge v Boston Dyers Ltd [1994] 49 EG 111(CA)) & Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd (1997) 29 H.L.R 444 CA

markets at the time, then the landlord can be called upon to prove that there was no special feature of the transaction which took it outside the normal course of business".

174. Under the terms of the lease Mr Anderson was required to keep the building insured against loss or damage by risks covered by the usual comprehensive buildings policy of an insurance company of repute in the full reinstatement value thereof.

175. From acquiring the freehold in 2003 until 2016 Mr Anderson insured the building with NFU Mutual. Mr Anderson contended that he had made efforts to get better prices but was unable to do so until 2016. Mr Anderson said that other insurance companies would not quote because the building was part timber frame and grade 11 listed, and the leasehold flat (flat 1) was sub let to a DHSS tenant. Mr Anderson also stuck with NFU because it met several claims for water damage in full less the £250 excess. Mr Anderson believed it was far better to insure with a company that pays its claims rather than just having a piece of paper. Mr Anderson, however, did eventually find a policy with another company, Zurich, which delivered a substantially lower annual premium of £753.01 for 2016 compared with the premium of £2,472.79 paid the previous year in respect of the NFU policy.

176. Although there was a substantial reduction in the premium paid for insurance in 2016, that in itself was not a ground for demonstrating that the premiums paid in previous years were unreasonable. In the years up to 2015 Mr Anderson insured with NFU Mutual, an insurance company of repute. Mrs Gold had not established that the risks covered by the NFU policy were outside the range of risks covered by the usual comprehensive buildings policy. Mrs Gold supplied no alternative quotations for insurance. The Tribunal holds that Mrs Gold is liable to pay a contribution of 18 per cent of the premium paid for insurance for 2010 to 2017 inclusive.

177. On the question of Mr Anderson's charge for arranging insurance, the Tribunal notes that Mr Anderson only began making this charge in 2015. The Tribunal will consider whether Mr Anderson has the authority to make these charges under the heading of management charges.

Management Charges

178. Mr Anderson makes two different types of charges for his time on the property. Mr Anderson insisted that he had authority under the lease to recover the costs of his time from Mrs Gold [G].

179. The first charge related to the arrangements Mr Anderson made for providing a service in connection with the building such as supervising repairs and maintenance of the property, organising the building insurance, and payment of the water and sewerage charges. As a rule Mr Anderson's charge was 15 per cent of the cost of the service. Mr

Anderson treated these charges as service charges and required Mrs Gold to pay her 18 per cent contribution.

180. The second charge was an hourly charge of £125 which Mr Anderson levied in full on Mrs Gold for the time he spent in dealing with their various disputes.

181. In connection with the service charge, Mr Anderson stated that he did not charge for his time until he had retired from professional surveying to run his properties. Mr Anderson said following retirement he and his wife sold part of the freehold of Stonerock to a family trust. According to Mr Anderson, the family trust now owned 48 per cent of the freehold with he and his wife owning the remaining 52 per cent in equal shares. Mr Anderson asserted that the Trustees had appointed him to be the surveyor under the lease. According to Mr Anderson, paragraph 2 of the Fourth Schedule enabled the landlord to recover the costs of his services from Mrs Gold.

182. Mrs Gold challenged whether the lease gave the landlord the authority to recover Mr Anderson's charges [115-183]. According to Mrs Gold, paragraph 2 of the Fourth Schedule envisaged the person appointed as a surveyor or agent would be someone who was independent of the landlord so as to avoid potential conflicts of interest. Mrs Gold said her construction of paragraph 2 was supported by another term of the lease which required disagreements on the amounts payable under the lease to be referred to the surveyor or agent for the time being of the landlord, whose decision would be final. Mrs Gold believed that with Mr Anderson acting as the surveyor/agent she had been placed at an unreasonable disadvantage when it came to disputing costs and actions.

183. Mrs Gold also contested the standard of services provided by Mr Anderson. Mrs Gold questioned Mr Anderson's suitability to be appointed as a surveyor or agent because he was now retired from the surveying profession and his expertise was as a quantity surveyor which was different skill set from that of a building surveyor and manager. Mrs Gold said that Mr Anderson's lack of suitable experience and expertise was aptly demonstrated by his inability to manage works on the property in a professional way which included specifying inappropriate works and his failure to apply for planning permission in respect of the roof.

184. Mr Anderson pointed out that he had an unblemished professional career as a Chartered Surveyor and Chartered Builder for 45 years, and had acted as an expert witness on several occasions. Mr Anderson maintained that Mrs Gold's assertion that after 45 years experience he was incapable of supervising the external decoration of the building was plainly ridiculous. Mr Anderson considered Mrs Gold's statements of professional incompetence on his part were unproven and irrelevant.

185. The Tribunal starts with the wording of paragraph 2 of the Fourth schedule. The Tribunal holds that paragraph 2 does not enable a landlord to charge for his time spent in managing the property and supervising works to it. In the Tribunal's view, paragraph 2 only enabled a landlord to recover through the service charge the proper fees of a surveyor or agent appointed by the landlord for carrying out investigations, leading to or carrying out works and the collection of rents and other payments in the lease.

186. The Tribunal considers that Mr Anderson gave conflicting accounts of his status in connection with the building. Mr Anderson described himself as the landlord and the freehold owner of the property in correspondence until around mid 2014 after which he described himself as the property manager, managing agent or surveyor. Later Mr Anderson referred to his appointment by the other owners of the building as a professional surveyor. It appears to the Tribunal Mr Anderson's change of mind was prompted by Mrs Gold's solicitors challenge to the recovery of his costs under the lease, and after taking legal advice.

187. The Tribunal refers to the following extracts from Mr Anderson's correspondence to Mrs Gold:

> **Letter in 2014 about Car Parking**
> "I have owned the freehold property for 10 years, and the Dentists who are gentlemen have leased the building for 9 years. I remind you that the Dentists and I are running businesses and cannot accept disturbances in the future. In future I will charge you for my time, and perhaps you may try and resolve your own problems. I also point out under the lease I can recover my costs and if you continue not to comply with the lease I will hand the matter, reluctantly, over to my solicitor" [91 & 92].
>
> **Letter in 2016 about Insurances and alleged Breach of Lease**
> "We do not agree that we cannot charge for administration and you have paid this in the past. For the record I can charge for my administration and we have taken legal advice on this. The freehold is owned by three parties and Duncan Anderson only owns 30 per cent. The other owners have appointed Duncan Anderson to manage the property as he is a professional surveyor. Whatever advice you received on this matter you were ill-informed. Do you really think a chartered surveyor could not charge for his professional time running the property and in particular sorting all the problems you cause by your breaches of lease" [127].

188. The Tribunal is not convinced by Mr Anderson's change of mind regarding his status in respect of the property. Mr Anderson has produced no written evidence of his appointment as a surveyor or managing agent by the trustees of the family trust. As identified earlier the demands did not identify the name and address of the landlord to support Mr Anderson's assertion that the trust was the landlord. Further Mr Anderson supplied no copy of an agreement setting out the

scope of his appointment, and the agreed charges for his services, In short the Tribunal finds there is no persuasive evidence of Mr Anderson's appointment by the landlord, in which case, the landlord has no authority under paragraph 2 of the Fourth Schedule to recover the charges of Mr Anderson[10] through the service charge.

189. The Tribunal deals with the other challenges raised by Mrs Gold in connection with Mr Anderson's charges through the service charge. The first one concerned whether under the terms of the lease the managing agent or surveyor should be independent of the landlord so as to avoid potential conflicts of interest.

190. The Court of Appeal in *Finchbourne Ltd v Rodrigues* [1976] 1EGLR 51 decided that under the terms of lease the managing agent certifying the service charge expenditure had to be a third party independent of the landlord, and not the landlord himself under the guise of a firm purporting to be a firm of managing agents where the landlord himself was the sole proprietor of the business.

191. In contrast the Court of Appeal in *Skilleter and others v* Charles [1992] 1 EGLR 93 decided that a landlord could employ a company as a manging agent, and recover the costs of that managing agent through the lease even though the company was owned by the landlord and his wife provided the company was not a sham. In this case the company also managed several properties owned by the landlord.

192. The facts of this case differ from the facts in *Finchbourne,* in that there was no requirement in the lease for certification of the service charges by an expert. The lease in this case had a clause regarding referral of disagreements to the surveyor or agent which is void by virtue of section 27(6) of the 1985 Act. The Tribunal, however, considers that Mrs Gold's argument regarding conflict of interest has traction from the wording of paragraph 2 to the Fourth schedule. In the Tribunal's view the use of the word "appointment" connotes a sense of transparency and consideration by the landlord. This does not mean that Mr Anderson cannot be appointed as the surveyor or agent but the appointment must be seen to be made by the landlord and on bona fide terms. As indicated earlier there was no transparency with Mr Anderson's appointment.

193. The final issue on the service charge aspect of the management charges concerned the standard of services provided by Mr Anderson. The Tribunal determined there was insufficient evidence to demonstrate that Mr Anderson's supervision of the building works fell below the required standard. The Tribunal's only doubt concerned the failure to apply for planning permission for the roof works. The Tribunal decided that it did not have a complete picture of the facts and that this was a matter best left until after the fresh consultation on these works.

[10] Normally 15 per cent of the cost of the services.

194. The Tribunal considers that the 15 per cent charge for administering the water bills and insurance was arbitrary, and that if Mr Anderson was the managing agent the time spent on these matters would be covered by a flat fee rather than a percentage of the costs. The Tribunal, however, found that Mr Anderson did not understand fully the legal requirements for service charge demands and consultation on major works which meant that the standard of service for this aspect fell below that expected of a professional managing agent.

195. The Tribunal, therefore, determines that Mr Anderson's management charges (15 per cent on administering the insurance and water charges and a percentage charge for supervising works) were not recoverable through the lease as service charges.

196. Turning now to the second category of management charges which were not part of the service charges and for which Mr Anderson has demanded Mrs Gold pay the entire amount. Mr Anderson's case was set out in [G], whilst Mrs Gold's case was in 189-191.

197. Mr Anderson's rationale for the charges was as follows:

> "This begs the question why are there so many charges and for so much? This is because Mrs Gold is hard work and is never satisfied and makes promises she does not keep. I have counted over 130 letters I have written to Mrs Gold and her solicitors in the last three years. As a chartered surveyor I am professionally bound to keep all parties informed and answer questions raised. To this end I have replied to every letter Mrs Gold has ever written to me".
>
> "Accordingly I have charged for writing letters and attending meetings, which I said that I would do in advance".

198. The charges were as follows:

2013

199. A charge of £125 related to the time taken by Mr Anderson in dealing with the parking dispute. The £125 equated to Mr Anderson's hourly rate. The Tribunal finds no formal demand for the £125. The charge was mentioned in e-mail exchanges between the Applicant and Respondent which were exhibited in the Applicant's correspondence

2014

200. £250 for arranging to fix signs in the car park [G2].

201. £67.50 for again sorting out the signage in the car park. Mr Anderson originally charged £375 but this amount was removed by Mr Anderson in later editions of the spreadsheet for 2014.

202. £250 in respect of a letter to Mrs Gold dated 13 March alleging various breaches of covenant [G6]. Mr Anderson stated that "if this behaviour

continues (tenant) I will prepare and serve notice under section 146 of the Law of Property Act 1925 and I am afraid you will have to bear all the costs of that and risk having the lease terminated". Mr Anderson sent a further letter to Mrs Gold on the same day saying that he had just been harangued by Mrs Gold's tenant insisting that the tenant's action must stop otherwise he would instruct a solicitor [G6A]. Mr Anderson described the letters as section 146 Notices.

203. £500 for writing a letter to Mrs Gold's solicitors on 7 April 2014 [G7] setting out Mr Anderson's understanding of the situation in respect of parking and other matters.

204. £250 for attending a meeting on 8 May 2014 to discuss the parking with Mrs Gold and her legal representative.

205. £250 for meeting with Mrs Gold on 29 August 2014. According to Mrs Gold this meeting took place on 13 August 2014 at Mr Anderson's office. Mrs Gold pointed out that she was at Mr Anderson's office for about 30 minutes and the purposes of that meeting were to enable her to view documents relating to the service charge, and to pay her contribution to the costs of the work to the car park. Mrs Gold asserted that Mr Anderson did not produce the necessary documents [text messages 6 and 7 August 2014].

2015

206. £2,928, which comprised Mr Anderson's professional fees of £1,800 (12 hours at £125) and disbursements of £1,080 (solicitors fees) and £48.20 copying [G11]. Mr Anderson calculated his fees by applying his hourly rate to the time spent in dealing with the problems over the garden area, reading the submission from Heringtons (Mrs Gold's solicitors), copying documents, instructing Buss Murton (Mr Anderson's solicitors) and contacting HM Land Registry. The invoice of Buss Morton detailed professional charges of £900 plus £180 VAT for advice regarding breaches by Mrs Gold and her application to amend title at the Land Registry.

207. Mr Anderson sent an invoice for £2,928 payment terms net 14 days dated 24 February 2015 to Heringtons under a covering letter [G11]. The covering letter was addressed to Mr Fisher, a solicitor at Heringtons, and headed Mrs Rachel Lamb, Flat 1 Stonerock. Mr Anderson in the letter said:

> "We gave you 14 days to decide if you were proceeding with your right to go to adjudication over Land Registry's impartial and correct decision that the garden area belongs to the freehold not flat 1. You have not and therefore your client must now accept that she has no title to the garden area".
>
> It is a pity that you did not go to adjudication as I am certain that you would lose and then at last you and your client would have no option

but to accept the situation as it is. However not applying for adjudication is acceptance of Land Registry's documentation.

We also expect your client to comply with clause 6 in the second schedule to the lease where it states that they can "park one motor vehicle on such part of the area ...... as the Landlord may from time to time designate for that purpose but not so the Tenant shall have the exclusive right to park in any particular area". We believe this could not be clearer and as your client does not own the garden in her lease there can be no argument.

In our previous letter we asked for our legal costs from Buss Murton to be met, since you advised us to use a solicitor and have just dropped the case you should reimburse us. We also require our personal charges to be met where Mr Anderson, a chartered surveyor has wasted many hours on your claim which should have been directed to Land Registry or Yewtree Property or indeed yourselves.

Since you are the party at fault we include our invoice for these charges and give 14 days for them to be paid".

208. Mr Anderson had sent an earlier letter to Mr Fisher dated 29 January 2015 [G2] enclosing the invoice of Buss Murton. In that letter Mr Anderson said to Mr Fisher that he should pay the invoice because he failed to respond to Mr Anderson's letters which forced Mr Anderson to employ a solicitor.

2016

209. The budget for 2016 included an entry of £2,925 which was for Mr Anderson's time spent on administration (42 hours at £65 per hour) and £195 for a letter Ash Clifford relating to the sale of Flat 1 dated 13 July 2016.

210. Mrs Gold did not know the breakdown of the administration charge because Mr Anderson had not supplied an invoice. Mr Anderson in his documents bundle supplied a copy of undated letter [G13] which was headed Flat 1 Stonerock Management Charges. This letter gave an analysis of the 42 hours which was 19 hours spent on correspondence with Heringtons from 3 March 2015 to 6 November 2015 and 23 hours spent on correspondence and preparing the spreadsheet with Mrs Gold from 5 December 2014 to 19 May 2016.

211. The charge of £195 related to a letter sent by Mr Anderson to Ash Clifford, Mrs Gold's solicitors, dated 13 July 2016, regarding the proposed sale of flat 1 which later fell through.

Consideration

212. The Tribunal now considers whether the management charges cited above were payable by Mrs Gold. The charges were for Mr Anderson's time which he spent on dealing with matters raised by Mrs Gold and for

solicitors' costs. The Tribunal considers that the profile of these charges changed from 2013 to 2016. At first Mr Anderson restricted his charges to the time spent on the parking dispute. In 2015 Mr Anderson sought to recover his costs in connection with the dispute on whether the garden area was included in the lease. In 2016 Mr Anderson demanded costs going back to 2014 which covered a broad area of his dealings with Mrs Gold and Heringtons including sending demands and preparing spreadsheets.

213. Mr Anderson maintained that he was entitled to recover the costs of his time and solicitors' costs under the terms of the lease. Mrs Gold disagreed with Mr Anderson's assertions.

214. The Tribunal is satisfied that the lease did not give the landlord a wide authority to charge solicitors' costs and Mr Anderson's costs of his time across the complete spectrum of the landlord's dealings with Mrs Gold.

215. Mr Anderson relied on clause 3.13 of the lease as the authority for recovering the charges levied against Mrs Gold from 2013 to 2016. Clause 3.13 provides:

> "Under Clause 3.13 the tenant covenants to pay all expenses including solicitors costs and disbursements and surveyors fees incurred by the Landlord and incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under section 146 or 147 of the Act notwithstanding in any such case that forfeiture is avoided otherwise than by relief granted by the Court".

216. In *Barrett v Robinson* [2014] UKUT 0322 (LC) the Upper Tribunal considered the circumstances in which costs incurred in proceedings would be recoverable under a covenant such as clause 3(13):

> "Costs will only be incurred in contemplation of proceedings, or the service of a notice under section 146 if, at the time the expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not in fact contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on a clause such as clause 4(14) as providing a contractual right to recover its costs."

217. In order for Mr Anderson to recover the charges under clause 3(13) he has to establish a clear and close connection between the expenditure incurred and forfeiture proceedings.

218. The Tribunal finds the following facts:

a) Mr Anderson's claim in 2016 covered a wide range of matters dating back to 5 December 2014 including freehold expenses, water charges, and the proposed sale of the flat and were not restricted to alleged breaches of the lease.

b) The characterisation of Mr Anderson's correspondence dealing with alleged breaches of the lease was discursive and argumentative. Mr Anderson used the correspondence to set out his views on the lease and his expectations for the future conduct of Mrs Gold and his tenant. In some correspondence Mr Anderson would express a general intention to enforce the lease, for example: "Please will you take control of your tenant or I will have to enforce the lease, and you are liable for my legal costs". The Tribunal's overall impression of Mr Anderson's position given in the correspondence was that he was "in the right", "was not going to budge from his position", "it was up to Mrs Gold to take action if she disagreed", and "he would charge for his time". The Tribunal is satisfied that the correspondence did not constitute a preliminary step to forfeiture procedures.

c) Mr Anderson did not take proceedings in the Tribunal for breach of covenant or to determine liability for service charges. Mr Anderson did not prepare or issue a section 146 Notice. Mr Anderson did not instruct solicitors to start forfeiture proceedings.

d) Mr Anderson stated that he sent section 146 notices on 13 March 2014 [G6] and [G6A]. The Tribunal is satisfied that the letters were not section 146 Notices which were self evident from their contents. In the first letter Mr Anderson said that "if this behaviour continues he would prepare and serve notice under section 146". In the second, Mr Anderson said that "it must stop and stop now and I am instructing my solicitor to start proceedings under section 146". Also the letters were addressed to Mrs Gold and not to all the leaseholders. Mr and Mrs Howlett were not named on the letters.

e) Mr Anderson had no intention of taking the dispute to the Tribunal and or Court. Mr Anderson stated that it was no use applying to a Tribunal because Mrs Gold would or not pay if she lost. Mr Anderson also discouraged Mrs Gold from going to Tribunal. In a letter dated 30 January 2015 Mr Anderson said to Mrs Gold "If you apply to a Tribunal I will seek termination of your lease due to your other breaches"

f) Mr Anderson presented no clear evidence that the solicitors (Buss Morton) costs of £900 plus £180 VAT were incurred in connection with the preparation of a section 146 Notice. The invoice merely stated that the charges were for advice regarding breaches by Mrs Gold and her application to amend title at the Land Registry.

219. The Tribunal is satisfied that the management charges and the solicitors costs claimed by Mr Anderson for 2013 to 2016 were not authorised by clause 3(13) by the lease.

220. If the charges had been authorised by clause 3(13), Mr Anderson did not follow the correct procedures for demanding these charges which

would have met the definition of variable administration charges (see paragraphs 1 & 2 of schedule 11 of the 2002 Act). The amount demanded was generally included in a body of a letter and was not accompanied by a summary of rights and obligations of tenants in relation to administration charges. Also the charge of £2,918 in 2015 was demanded of Mr Fisher of Heringtons solicitors and not of Mrs Gold.

221. The Tribunal decides that Mrs Gold is not liable to pay the management charges of £125 (2013), £1,567.50 (2014), £2,928 (2015) and £2,925 (2016).

Charges for Water and Sewerage and Utilities

222. The facts are that the suppliers of water, sewerage and electricity provide one supply of their respective services to the building, and charge for one supply. The suppliers do not provide separate supplies to the dental practice and to the residential flats.

223. South East Water supply the water to the building on a meter and charge for what has been used. Mid Kent Water provide the sewerage, and its charge is calculated on 90 per cent of the water supplied.

224. Mr Anderson is responsible for the payment of water and sewerage services to the building. He has required Mrs Gold to pay a contribution of 18 per cent of the costs of those services which accorded with the terms of the lease.

225. The Tribunal understands the usage of electricity is measured by means of a check meter. The dental practice has paid the bills for the electricity and charge the tenant of flat 1 the cost based on the meter reading. It appeared that this arrangement was outside the terms of the lease.

226. Mrs Gold's contribution to the cost of the electricity supplies has not been a feature of this dispute except in 2017 when Mr Anderson decided to demand an estimated amount for the costs of the electricity. The Tribunal disallowed the estimate on the grounds that the cost of electricity supplies did not form part of the service charge in previous years, and that the existing arrangements with the dental practice and flat 1 would continue.

227. The Tribunal is concerned solely with the costs of the water and sewerage supplies. The Tribunal finds that Mr Anderson has incurred costs in relation to these supplies, and that those costs were reasonable. Further under the terms of the lease Mr Anderson was entitled to recover 18 per cent of those costs from Mrs Gold. In this regard the Tribunal adopted the figures given in Mr Anderson's spreadsheets and included them in the Tribunal's determinations for the service charges for each year in dispute.

228. The dispute in respect of water and sewerage supplies had three aspects. First, Mr Anderson contended that he was entitled to recover the actual costs of the amount of water and sewerage used by flat 1 which according to Mr Anderson would be significantly greater than the 18 per cent contribution. Mr Anderson said he contacted South East Water and Mid Kent Water and they estimated that for a two bedroom flat the costs would be around £200 for water and £225 for sewerage. Further Mr Anderson stated the recent bills for water and sewerage showed a 37 per cent reduction which he said was because flat 1 was unoccupied during the period of the charges. Mr Anderson concluded that Mrs Gold had not paid her fair share of the costs and that he now wished to recover 30 per cent of the water and sewerage costs from Mrs Gold backdated to 2010.

229. The Tribunal finds that the costs of the water and sewerage supplies are an outgoing of the building. Mr Anderson under paragraph 3 to The Fourth Schedule to the Lease is entitled to recover a contribution from Mrs Gold towards outgoings which is limited by the terms of the lease to 18 per cent of the costs of the outgoings. Mr Anderson has referred to no other legal document which entitled him to recover more than the 18 per cent contribution. The Tribunal, therefore, determines that Mrs Gold was liable to pay 18 per cent of the costs of the water and sewerage supplies.

230. Second, Mr Anderson argued that he was entitled to add a 15 per cent administration charge to the costs of each bill. Mr Anderson said that this additional cost was justified because of the time spent in correspondence and collecting the money, and the cost of postage. According to Mr Anderson, Mrs Gold's tenant always paid in arrears. The Tribunal determined under "management charges" that the requirements under the lease have not been met for the collection of such charges.

231. Third, Mr Anderson submits that the landlord was supplying the water and sewerage services as a neighbourly gesture from the main supplies to Stonerock House. Although the lease requires the landlord to allow the tenant free and uninterrupted right for passage of water, soil, electricity and gas to flat 1, Mr Anderson maintained that the freeholder was not responsible for providing the means of providing the supplies. Mr Anderson asserted that Mrs Gold could not use the sewerage and water supplies to Stonerock house but must install separate supplies of these services to flat 1.

232. On 23 April 2014 Mrs Gold's solicitors, Heringtons, wrote to Mr Anderson advising him that his threat to cut off the water and electricity in three months is a very serious matter. The solicitors required Mr Anderson to immediately and unconditionally withdraw his threat otherwise they would advise Mrs Gold to seek injunctive relief from the court prohibiting Mr Anderson from carrying out the threat. It would appear that Mr Anderson heeded the advice of Mrs Gold's solicitors.

233. This aspect of the dispute about whether the landlord is obliged under the lease to provide the means of supplying essential utilities to flat 1 is a matter for the court and not the Tribunal. The question for the Tribunal is whether Mr Anderson was entitled to recover from Mrs Gold a contribution towards the costs of the water and sewerage supplies. The Tribunal answers the question in the affirmative and the contribution is 18 per cent of the costs.

Other Charges

234. Mrs Gold challenged a small number of other costs, such as fencing, which are dealt with under the charges for individual years.

235. Although the Tribunal has no jurisdiction to determine the amount of interest, it follows from the Tribunal's decision on the validity of the demands that no interest is payable under the terms of the lease.

Charges for Individual Years

2010 [B2]

236. The service charge for 2010 was £2,817.98 comprising £2,558.72 major repair and maintenance works, £81.75 repair conservatory, £301.50 insurance and £177.52 water and sewerage charges.

237. The Tribunal finds the insurance of £301.50, water and sewerage charges of £177.31 and the repair charge of £81.75 were reasonably incurred.

238. The Tribunal limited Mrs Gold's contribution to the costs of the major works to £250.

239. **The Tribunal determines that Mrs Gold is liable to pay £810 in respect of the service charge for 2010.**

2011 [B4]

240. The service charge for 2011 was £822.94 comprising £252 major repair and maintenance works, £21.60 rod and clear drains, £316.25 insurance and £233.09 water and sewerage charges.

241. The Tribunal finds that the above charges have been reasonably incurred except that contribution to the major works is limited to £250.

242. **The Tribunal determines that Mrs Gold is liable to pay £820.94 in respect of the service charge for 2011.**

2012 [B8]

243. The service charge for 2012 was £961.78 comprising £414 major repair and maintenance works, £337.68 insurance and £210.10 water and sewerage charges.

244. The Tribunal finds that the costs for insurance and water and sewerage were reasonably incurred.

245. The Tribunal limited Mrs Gold's contribution for the major repair and maintenance works to £250.

246. **The Tribunal determines that Mrs Gold is liable to pay £797.78 in respect of the service charge for 2012.**

2013 [B10]

247. The service charge for 2013 was £596.77 comprising £359.43 insurance, £206.22 water and sewerage charges and £31.12 management fee for the water charges.

248. Mr Anderson also claimed an administration charge of £125 in connection with the parking dispute.

249. The Tribunal finds that the costs for insurance and water and sewerage were reasonably incurred.

250. The Tribunal decided that the management charges of £31.12 and the administration charge of £125 were not payable under the lease.

251. **The Tribunal determines that Mrs Gold is liable to pay £565.65 in respect of the service charge for 2013.**

2014 [276]

252. There appears to be four versions of the spreadsheet for 2014, one in Mr Anderson's bundle [R:E2] and three in Mrs Gold's file [A: 274-276]. The Tribunal refers to the third version in Mrs Gold's bundle marked "New "[A:276].

253. The service charge for 2014 was £1,325.65 comprising £386.74 insurance, £191.74 water and sewerage charges, £28.76 management fee for the water charges, £38.45 purchase and fixing of parking signs and £679.96 car park repairs.

254. Mr Anderson also claimed administration charges of £1,567.50 in connection with the parking dispute.

255. Mr Anderson was unable to provide the invoices for the car park signage. Mrs Gold did not dispute the fact that Mr Anderson had incurred the costs but questioned the necessity for the signs. Mrs

Gold believed they were enhancements largely benefitted the dental practice. Mr Anderson said the signage was required because of the problems created by Mrs. Gold's tenant. The Tribunal agrees with Mr Anderson that the signage was necessary. Mrs Gold adduced no evidence to suggest that the charges were excessive.

256. The Tribunal finds that the costs for insurance, water and sewerage and the purchase and fixing of signs were reasonably incurred.

257. The Tribunal limited Mrs Gold's contribution for the repairs to the car park to £250.

258. The Tribunal decided that the management charges of £28.76 and the administration charges of £1,567.50 were not payable under the lease.

259. **The Tribunal determines that Mrs Gold is liable to pay £866.93 in respect of the service charge for 2014.**

2015 [278]

260. The Tribunal applied the figures in the new version of 2015 spreadsheet [278] which were amended following consideration of Mr Anderson's observations in [C].

261. The service charge for 2015 was £2,300.56 comprising £445.10 insurance, £44.51 management charge for the insurance, £45 insurance excess on claim, £217.39 water and sewerage charges, £38.36 management fee in connection with the water charges, £50.73 test water, £1,218.20 decorations, £107.64 fencing repairs (including a management fee of £11.70), £34.38 sundry repairs (including a management fee of £4.48) and £99.25 renew gutter and roof repair (including a management fee of £12.95)[11].

262. Mr Anderson also claimed legal expenses of £2,928.20 as an administration charge.

263. Mrs Gold questioned whether the repairs to the fence had been completed to a satisfactory standard. Mrs Gold also pointed out that the fence was newly installed in 2008. Mr Anderson stated that Mrs Gold's tenant had reported that the fence was flapping in the wind. Mr Anderson found on investigation that a reinforced concrete post at the end of car park space 1 was broken just above ground level. Mr Anderson suspected that Mrs Gold's tenant had been responsible for the damage to the post because she parked her car in the space. Mrs Gold disagreed, arguing one of the clients of the dental practice was the more likely culprit. The Tribunal considers the identity of the culprit irrelevant to its decision on whether the charges have been reasonably incurred. The Tribunal finds that the repairs were necessary and that

[11] The figure given in the spreadsheet for this work was £111.52. Mr Anderson did not understand how the mistake was made.

Mrs Gold adduced no convincing evidence of excessive costs or a poor standard of works. The Tribunal is satisfied that the costs of £520 (£93.60) had been reasonably incurred.

264. Mrs Gold made the same challenge to the repairs to roof. Mr Anderson explained this was a repair to the gutter over the conservatory roof. According to Mr Anderson, the gutter was tipping all the water onto the corner of the conservatory causing an ingress of water. Mr Anderson said the repair curtailed the leak. The Tribunal is satisfied that the repair to the gutter was necessary and Mrs Gold adduced no convincing evidence of excessive costs or a poor standard of works. The Tribunal is satisfied that the costs of £479.44 (£86.30) had been reasonably incurred.

265. Mrs Gold did not consider that she was liable to contribute £45 for the excess on an insurance claim and £50.73 in respect of the water test. Mr Anderson said that Mrs Gold was responsible under the lease to contribute to the excess in respect of a claim against buildings insurance. Mr Anderson acknowledged that the initial problem with the water supply may have been caused by faulty dental equipment but he was obliged to investigate because of air locks in the water supply. The Tribunal is satisfied that Mr Anderson was entitled to recover the costs for the excess on the insurance and for investigating the fault in the water supply. The Tribunal considers the pipe carrying the water supply fell within the definition of the building and was caught by the landlord's repairing covenant except for pipes solely serving flat 1.

266. The Tribunal finds that the costs for insurance and water and sewerage were reasonably incurred.

267. The Tribunal limited Mrs Gold's contribution for the external decorations to £250.

268. The Tribunal decided that the management charges of £44.51 for insurance, £38.36 for water, £11.70 for fencing, £4.48 for sundry repairs, £12.95 for roof repairs, and the legal expenses of £2,928.20 were not payable under the lease.

269. **The Tribunal determines that Mrs Gold is liable to pay £1,175.36 in respect of the service charge for 2015.**

2016 [279]

270. The Tribunal applied the figures in the new version of 2016 spreadsheet [279].

271. The service charge for 2016 was £2,297.72 comprising £135.54 insurance, £20.31 management charge for the insurance, £45 insurance excess on claim, £126.79 water and sewerage charges, £22.21

management fee in connection with the water charges[12], and £1,947.87 repairs to the roof.

272. Mr Anderson also claimed administration charges of £2,925 in connection with his time spent on correspondence with Mrs Gold and her solicitors.

273. The Tribunal finds that the costs for insurance (including the excess) and water and sewerage were reasonably incurred.

274. The Tribunal limited Mrs Gold's contribution for the roof repairs to £250.

275. The Tribunal decided that the management charges of £20.31 for insurance, and £22.21 for water, and the administration charges of £2,925 were not payable under the lease.

276. **The Tribunal determines that Mrs Gold is liable to pay £557.33 in respect of the service charge for 2016.**

2017 [281]

277. The spreadsheet at [281] gave a figure of £4,932.70 for anticipated expenditure for 2017, which comprised £1,780.20 for decorations to the weatherboard and roof repairs, £180 contingency, £575 for water charges (including a management fee of £75), £1,380 for electricity (including a management fee of £180) and £207 for insurance.

278. Mr Anderson also included a sum of £500 for installing a water meter and stop cock which was to be paid in full by Mrs Gold.

279. The Tribunal is concerned with the estimated service charge budget for the year ended 31 December 2017, not with the actual service charge for that period. When examining a budget the Tribunal has regard to section 19(2) of the 1985 act which provides that

> "Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charge or otherwise".

280. The Tribunal considers the correct approach for determining the budget for the year ended 31 December 2017 is to assess the reasonableness of the costs at the time the budget should be demanded (1 January 2017) having regard to expenditure in previous years. Applying these criteria, the Tribunal is satisfied that the estimated charges are excessive and include a charge for electricity which has not been previously levied. The Tribunal decides that a reasonable amount

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[12] The Tribunal assumes that Mr Anderson has levied a 15per cent management charge which was included in the £148.08

for 2017 is £500 comprising £150 insurance, £100 water and sewerage charges and £250 for repairs and maintenance.

281. The Tribunal, therefore, determines that Mrs Gold is liable to pay £500 for the estimated service charge for 2017.

Application under S20C

282. In the application form Mrs Gold applied for an order under Section 20C of the 1985 Act. There is no power to make a section 20C order because the lease does not allow Mr Anderson to recover the costs incurred in Tribunal proceedings through the service charge. The Tribunal, therefore makes no order under section 20C.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

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

(e) the manner in which it is payable.

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

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

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).