FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00AW/LSC/2020/0194**
HMCTS Code (paper, video, audio)	**:**	**V :Video Remote**
Property	**:**	**22b, Kensington Court, London W8 5DP**
Applicant	**:**	**Mr. D. Peerless**
Representative	**:**	**Not represented**
Respondent	**:**	**Melhurst Investments Ltd.**
Representative	**:**	**Mr. S. Arnold of counsel instructed by Callaway & Co.**
Type of Applications	**:**	**For the determination of the reasonableness of and the liability to pay service charges and/or administration charges**
Tribunal Members	**:**	**Tribunal Judge Stuart Walker (Chairman)** **Mr. Mark Taylor MRICS**
Date and venue of Hearing	**:**	**15 February and 21 April 2021 – video hearings**
Date of Decision	**:**	**6 August 2021**

DECISION

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This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal's determination is set out below.

Decisions of the Tribunal

(1) The Tribunal determines that it would be both inappropriate and unfair to consider the Respondent's application contained in its submissions dated 7 May 2021 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the installation of a fire alarm and emergency lighting system in the 2010 service charge year.

(2) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2010 service charge year are as follows;

Gas	£1,242.54
Insurance	£ 526.35
Electricity	£ 141.49
Cleaning	£ 152.15
Entryphone	£ 44.13
Management Fees	£ 365.14
Fire Equipment	£ 250.00
Repairs and Maintenance	£ 433.99

(3) The Tribunal refuses the Respondent's application for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the painting of the front door in the 2011 service charge year.

(4) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2011 service charge year are as follows;

Gas	£ 715.95
Insurance	£ 561.51
Cleaning	£ 136.45
Entryphone	£ 90.94
Management Fees	£ 391.69
Repairs and Maintenance	£ 934.58

(5) The Tribunal allows the Respondent's application for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the contract for the supply of gas in the 2012 and 2013 service charge years.

(6) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2012 service charge year are as follows;

Gas	£1,366.30
Insurance	£ 589.11
Electricity	£ 81.31
Cleaning	£ 134.08
Entryphone	£ 47.78
Management Fees	£ 397.91
Repairs and Maintenance	£ 563.25

(7) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2013 service charge year are as follows;

Gas	£ 667.44
Insurance	£ 74.72
Electricity	£ 90.91
Cleaning	£ 137.75
Entryphone	£ 48.64
Management Fees	£ 397.91
Repairs and Maintenance	£ 1,049.86

(8) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2014 service charge year are as follows;

Gas	£ 463.90
Insurance	£ 557.96
Electricity	£ 59.03
Cleaning	£ 152.99
Entryphone	£ 49.36
Management Fees	£ 397.91
Repairs and Maintenance	£ 500.22

(9) The Tribunal refuses the Respondent's application for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the works done by Preservations in respect of penetrating damp in the basement of the building charged for in the 2015 service charge year.

(10) The Tribunal allows the Respondent's application for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the purchase and fitting of a new dilutant fan to the central heating system in the 2015 service charge year.

(11) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2015 service charge year are as follows;

Gas	£ 1,990.06
Insurance	£ 1,324.52

Electricity	£ 154.77
Cleaning	£ 133.01
Entryphone	£ 49.83
Management Fees	£ 397.91
Repairs and Maintenance	£ 1,688.26

(12) The Tribunal allows the Respondent's application for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in respect of the replacement of the water tank in the 2016 service charge year

(13) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2016 service charge year are as follows;

Gas	£ 1,423.50
Insurance	£ 307.69
Electricity	£ 127.49
Cleaning	£ 151.77
Entryphone	£ 50.75
Management Fees	£ 397.91
Repairs and Maintenance	£ 1,199.58
Water Tank Replacement	£ 2,535.21
Lift Renewal	£ 5,177.16

(14) The Tribunal determines that the sums payable by the Applicant by way of service charge in respect of the items set out below in the 2017 service charge year are as follows;

Gas	£ 559.80
Insurance	£ 279.84
Electricity	£ 46.12
Cleaning	£ 102.32
Entryphone	£ 21.45
Management Fees	£ 265.27
Repairs and Maintenance	£ 884.39
Lift Renewal	£ 4,050.45

(15) The application for an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge is refused as an order is not necessary. The Respondent concedes that the landlord's litigation costs are not recoverable as a service charge from the Applicant.

(16) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is refused as an order is not necessary. The Respondent concedes that the landlord's litigation costs are not recoverable as an administration fee.

(17) The applications by both the Applicant and the Respondent for costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 are refused.

Reasons

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by him in respect of each of the service charge years ending on 31 March from 2010 to 2017 inclusive.

2. The Applicant also seeks an order for the limitation of the landlord's ability to recover their costs as a service charge under section 20C of the 1985 Act ("section 20C") and an order to reduce or extinguish his liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("paragraph 5A").

3. The application was made on 6 July 2020. It identified disputed charges in respect of a number of different matters which are set out below and do not need to be itemised here.

4. Directions were issued on 11 September 2020 by Judge Hamilton-Farey (pages 84 to 90). They provided for a remote video hearing. This was not objected to by either party. They also required the parties to complete schedules identifying the issues between them and for the preparation of hearing bundles. The schedules were completed and appear at pages 100 to 115. The parties' statements of case, especially that of the Applicant, are lengthy and are to be found in a number of statements and responses at pages 116 to 220. The directions also provided for the preparation of a hearing bundle. Such a bundle was produced and comprised 1,875 pages. Page references throughout this decision are to the page numbers printed in red on this bundle unless otherwise stated.

The Hearing

5. The Applicant attended in person. The Respondent was represented by Mr. S. Arnold of counsel.

6. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The hearing was originally listed for 4 hours on 15 February 2021. However, due to the number and complexity of the matters in dispute the Tribunal was not able to conclude the hearing that day and it was reconvened on 21 April 2021. In the course of the first day's hearing the Tribunal found that the

agreed bundle did not clearly cross-reference the evidence provided to the items in dispute and also that there appeared to be a number of missing invoices. Therefore, at the conclusion of the first day of the hearing the Tribunal invited the parties, and especially the Respondent, to provide further and clearer evidence and submissions in relation to the charges in dispute. In due course the Tribunal received further submissions and evidence from both parties and these were considered during the second day of the hearing.

8. At the conclusion of the hearing on the second day the Tribunal invited submissions in respect of the applications under section 20C and paragraph 5A and any costs submissions. Issues arose as to whether or not the Respondent would be able to recover any administration fees or litigation costs as he no longer owned the leasehold interest. The Respondent asked the Tribunal to consider dealing with the applications by way of written submissions and the Tribunal agreed. The Respondent was directed to provide written submissions by 7 May 2021 with a reply from the Applicant to be served by 14 May 2021.

The Background

9. The property is a two-bedroom flat in a converted building containing a total of 8 flats spread over 6 floors, including a basement. Although no evidence of title was provided by either party there was no dispute that the freehold of the property is owned by the Respondent and that the relevant leasehold interest is held by the Applicant by virtue of a lease dated 6 October 2009 made between the Respondent and Alice Minoprio for a term of 189 years from 24 June 1981. This lease was entered into by way of a surrender of a lease entered into on 1 June 1983 by Kingsbridge Investments Ltd. and Mr. Alan Nigel Dalton for a term of 99 years from 24 June 1981 and incorporated the terms of the previous lease.

The Lease

10. The lease is at pages 1,662 to 1,709. Except in the few instances explained below, it was generally not contended by the Applicant that the terms of the lease did not allow for the recovery by the Respondent of service charges in respect of the matters in dispute. His case was that the sums sought were not reasonable and therefore not payable.

11. In summary, by clause 5.1 of the lease and clause 3 and paragraph 2 of the Fifth Schedule of the previous lease the Applicant covenanted to pay a maintenance charge in respect of the expenses incurred by the Respondent and authorised by the Eighth Schedule of the lease. These include the costs incurred by the Respondent in complying with the covenants in the Sixth Schedule of the lease. The items falling within the scope of the maintenance charge include the provision and maintenance of central heating and hot water, the provision and maintenance of a lift, and the usual provisions for general maintenance and cleaning, insurance and management. There was no dispute that the Applicant's share of the maintenance charge is 15.79%

MATTERS IN DISPUTE

12. In many cases the items in dispute in one service charge year were also disputed in subsequent years and the issues raised in respect of them were common throughout the whole of the period in dispute. In the case of other items, the dispute was confined to specific service charge years. In what follows the Tribunal has taken as its starting point the Scott Schedules produced by the parties and the detailed statement of case produced by the Applicant. It has considered each service charge year in turn. This means that for those disputes which span several years the bulk of the Tribunal's reasoning will be found in the first service charge year in which the issue arises.

13. Also, the Tribunal was provided with voluminous evidence in respect of the issues in dispute. This was all taken into account by the Tribunal when reaching its decision. In what follows it has sought to summarise that evidence and the submissions it received and heard into as concise a form as possible whilst still having regard to the need to provide a reasoned basis for its conclusions. Whilst references will be made to particular parts of the bundle it is simply not practicable to make specific reference to each and every item of evidence relevant to its considerations.

14. In no service charge year was there any challenge in respect of the accountancy charges made. There was also no challenge to the items for pest control in the 2010 service charge year, nor to the electricity cost in the 2011 service charge year. The Tribunal's decisions about the sums payable set out above do not take account of these undisputed matters.

SERVICE CHARGE YEAR 2010

1. Gas Consumption

15. Whilst on the face of it a dispute about the amount charged for the provision of gas may appear to be relatively straight forward, this was one of the more complex areas of dispute and it spanned the whole of the period in question.

16. The service charge accounts show that the sum charged for the provision of gas in 2010 was £9,257.85 (page 221), of which the Applicant's share was £1,461.81. There was no dispute that the amount of gas charged for had been used. The Applicant's case, put simply, was that the amount of gas consumed – and therefore the cost incurred – was excessive. This excess consumption arose because of the poor quality and incorrect calibration and/or fitting of the central heating system. The starting point of his argument was that an average 2 bedroom flat should require about 8,000kW/h of gas a year which, even at 2020 prices should cost about £295. The charge sought, by comparison, he argued, was excessive (see pages 160 to 161).

17. However, the Applicant's argument went well beyond a simple comparison between properties. His case was that the central heating system was faulty and, as a result, was consuming excessive quantities of gas. His evidence was that his flat would become overheated even in winter and even with the radiators turned off. Even after thermostatic radiator valves were fitted the

radiators were barely on at all yet it was still difficult to maintain a comfortable temperature (see page 175). He provided a letter dated 1 November 2012 addressed to the Respondent's managing agents referring to previous complaints of excessive heat with temperatures being recorded of 26 degrees in his main bedroom and 30 degrees in his lounge (page 179) and an e-mail to the contractors dealing with the heating system dated 24 October 2012 in which he explains that on the coldest days in winter his lounge would reach 28 or 30 degrees with the radiators on and 25 or 26 degrees with them off (page 183). Other examples of complaints of overheating include an e-mail of 18 November 2012 in which he complains of the flat being too hot even though it is November, the windows are open, and the radiators are off (page 208).

18. The Applicant's case was also that the external sensor used by the central heating system to improve control of the heat provided was not properly located. It was, he argued, placed in a sheltered south-facing wall rather than on an exposed north-facing wall. He relied on evidence from Schneider Electric to this effect (page 193). The real problem, as explained by the evidence from Schneider Electric, the manufacturer of the boiler controls, is that the siting of the sensor makes it more difficult to calibrate the system using stable values as explained at page 204;

> "*Just moving the sensor will not help any over heating issues, in fact, moving the outside sensor could escalate the problem, because you will be moving the sensor to a colder position, therefore the controller by design would be trying to achieve a higher flow temperature.*
> *"But with the sensor not being affected by the solar gain etc, the controller will be controlling to true fairly stable values, giving your engineer a chance of setting the controller up to provide constant flow of the flow temperature throughout the three heating seasons*"

19. The Respondent argued that there was no evidence from a mechanical or building engineer to confirm the problems alleged by the Applicant or to show that there was excessive gas consumption. They also argued that comparisons with other properties were not appropriate as much depends on the specific construction of individual buildings.

20. Mr. Arnold also reminded the Tribunal of the principle established in the case of Continental Property Ventures -v- White [2006] 1 EGLR 85 that, to the extent that a need for repair is caused by historic neglect, this is not relevant. Of course the case of Daejan Properties -v- Griffin [2014] UKUT 206 (LC) makes it clear that if the cost of repairs is made greater because of neglect then the situation is different.

21. The Tribunal did not find it helpful to consider comparisons with other properties, as no account can be taken of the specific construction of the property in question. It attached no weight to the Applicant's evidence in that regard. However, it accepted the Applicant's evidence that the heating system was not functioning properly and was causing his flat to overheat and that he struggled to keep the rooms below 26°C. It accepted the Applicant's evidence

that the walls of the flat, through which the central heating pipes travel, were often considerably hotter than his own radiators as evidenced by the photographs provided of heat sensor readings (see pages 1,091 to 1,120). It also accepted the evidence from Schneider Electric, which indicated that if the external sensor and CSC compensator control were set differently there may be less of a problem (page 202).

22. Overall, the Tribunal was satisfied that the overheating of the Appellant's flat is due to either incorrect calibration of the temperature controls on the system – in which case all the flats would be overeating – or a more fundamental design failure which caused his flat to overheat whilst the remaining flats remain comfortable. At the very best the system could be described as inefficient. It was satisfied that, whatever the cause, the end result was not satisfactory or reasonable. The Tribunal was satisfied that more gas was being consumed by the boiler in heating the property than was reasonable – thus resulting in overheating.

23. The Tribunal bore in mind that the boiler was responsible for providing not just heating but also hot water. Whilst there was some complaint about the temperature of the hot water (see page 206), the Tribunal was not satisfied that having hot water at 60˚C was itself unreasonable. In its professional view, in the course of a year allowing for seasonal variations, one would expect about 75% of the gas consumed to be in respect of heating and 25% in respect of hot water. In its view the use of efficient control systems would be likely to produce about 20% in savings overall, meaning a saving of about 15% of the total in respect of heating.

24. On this basis the Tribunal decided that the sum charged in respect of gas consumption was unreasonable and that a proper figure would be a reduction in the annual amount of 15%. The amount charged to the Applicant was £1,461.81. Reducing this by 15% produces a sum of £1,242.54. This is the sum which is reasonable and payable in respect of gas for this service charge year.

25. This was not an issue about repairs and the Tribunal doubted that arguments about historic neglect were relevant. The problem was with calibration and/or design. However, even if the overheating were caused by historic neglect it is clear that this has resulted in higher costs than would otherwise be the case and so a reduction is appropriate in any event.

2. Insurance

26. The cost charged to the service charge account in the 2010 service charge year for insurance was £3,333.42 (page 221) of which the Applicant's share was £526.35.

27. The charge for insurance comprised an invoice for £393.95 in respect of an engineering policy (page 298) and a half share of the total cost for insuring the buildings at 11 and 22, Kensington Court of £5,878.95 or £2,939.47 (page 300). The invoice shows that the insurance cover includes terrorism insurance.

28. The Applicant raised a number of issues in respect of the insurance costs. Firstly, he argued that terrorism cover should not be included as it is not within the scope of ordinary building insurance (page 164). The Tribunal rejected that argument. By paragraph 4 of the Sixth Schedule of the lease the landlord covenants to keep the property insured;

> "*against loss or damage by fire and such other of the usual comprehensive risks as the Lessor may in its discretion think fit to insure against*" (page 69)

In the Tribunal's judgment terrorism cover for a property in this location is well within the scope of the usual comprehensive risks against which it would be reasonable for a building owner to insure.

29. The Applicant also argued that the insurance provided had not been obtained at arm's length because one of the employees of Campden Hill Ltd. who arranged the insurance is married to an employee of the insurer the Clear Group. The Tribunal rejected this argument. It accepted the Respondent's evidence that the Clear Group are regulated by the Financial Services Authority and are a regulated broker. In addition, it noted that the insurers changed during the period in dispute. The Applicant accepted that there was no connection between the new insurers and the Respondent yet there was no significant change in the cost, suggesting that there was nothing inappropriate about the cost by reason of any connection between the parties.

30. In his statement of case at page 164 the Applicant also argued that the insurance amounted to a qualifying long term agreement as defined in section 20ZA(2) of the Act and that there had not been any statutory consultation. The Tribunal rejected that argument. It is obvious that insurance is provided on an annual basis as annual policy statements are produced. The insurance itself never extends beyond one year. Whilst any agreement between the Respondent and their broker may be of longer duration, there was no evidence that the Respondent was making any charge in respect of any such agreement. Similarly the Tribunal rejected any criticism that there should have been a section 20 consultation when the insurers changed.

31. The Applicant also relied on an insurance quotation obtained on 13 November 2020 (pages 1,125 to 1,140). This resulted in a quote for buildings insurance of £3,945.27 plus £612.36, for terrorism cover making a total of £4,557.63. This is over £1,500, or 50% more than the sum charged in 2010. Even allowing for inflation over a 10 year period, if anything, the quotation relied on shows that the sum charged is comparable to what could have been obtained elsewhere. It certainly does not indicate that the sum charged was unreasonable.

32. With regard to the engineering policy, paragraph 10 of the Sixth Schedule expressly requires the Respondent to insure the lift against risks of breakdown and third party claims in respect of the lift and its equipment (page 71). Although the Applicant argued that there were times when the lift was not in operation and so this cover was unreasonable, that is not the case for this service charge year. In addition, it is clear from the documents provided at

pages 1,142 to 1,167 that the engineering policy also included cover in respect of the boiler.

33. The Tribunal therefore concluded that the charge of £526.35 for insurance in this service charge year was both reasonable and payable.

3. Electricity

34. The cost of electricity in this service charge year was £896.08 (page 221) of which the Applicant's share was £141.49. This charge is represented by invoices issued by EDF on 9 June 2009 for £159.12 (pages 242 to 248), 15 September 2009 for £160.94 (page 280) and 30 December 2009 for £576.02 (pages 284 to 289).

35. The Applicant's case is that the electricity bills are too high. He argues that the electricity supply is used mainly for lighting, which is emergency lighting and low energy corridor lights, the electrical aspects of the gas boilers including a large expulsion fan, and the lift – when functioning. He presents estimates of what he says should be the correct figures and uses a comparison with the electricity supply to his current flat (pages 157 to 159). He also argues that there should have been considerably less demand for electricity when the lift was not working.

36. The Applicant provided no evidence from an electrical engineer and there was no evidence that the electricity supply was being used to power anything which should not have been charged to him.

37. Analysis of the electricity bills throughout the whole of the period in question in this application shows several things. Firstly, charges are made in respect of 2 meters. One, which is numbered L86A 13474, shows very little consumption. At the second hearing the Respondent informed the Tribunal that this meter is the one which is associated with the lift. The highest amount charged for in any bill in respect of this meter was a mere 11 units in November 2011 (page 407). The other meter appears to have been changed in the period. It was initially numbered F83A 22852 (page 246) but from December 2009 onwards it is referred to as F85A 22152 (page 288). The consumption recorded on this meter is relatively consistent at something in the region of 500 to 750 units per quarter, though bills have not always been presented for some quarters and subsequent bills have been for longer periods (see for example page 491). The Respondent's evidence was that this meter was used for everything apart from the lift.

38. Although many bills have been issued in respect of estimated sums, the Tribunal was satisfied that it was not the case that excessive sums were being charged because the estimates were too high and never corrected. It is clear from the bills that the meters have been read either by the electricity company or the landlord during the period. See for instance the bills at pages 246, 358, 382, 425, 446, 611 and 740.

39. The only significant anomaly occurs in the bill dated 30 December 2009, which was passed on in the charge for 2010. This estimates consumption on the meter L86A 13474 at 3,205 units in a quarter (page 288). This was wildly inaccurate and resulted in a considerably larger bill for this quarter. However, the error was later recognised and corrected when the meter was read, as shown in the bill dated 30 November 2010 (page 358). Bills in the 2011 service charge year show credit amounts and the correction was clearly passed on by way of a smaller charge for the following service charge year. That being the case the Tribunal considered that no adjustment needed to be made in respect of the 2010 service charge year.

40. Overall, in the absence of sufficient evidence to show that charges were being made for electricity which had not in fact been used or that it was being used in ways which could not entitle the landlord to pass on the cost, the Tribunal concluded that the sum of £141.49 for electricity in this period was both reasonable and payable.

4. Cleaning

41. The charge made for cleaning and waste removal in 2010 was £1,050 (page 221) of which the Applicant's share was £164.53. Cleaning services were provided by Rochford Cleaning whose invoices are collated together at pages 35 to 45 of the Respondent's revised bundle. They are largely monthly invoices of £72 for cleaning the premises twice weekly, with some small additional charges for the supply of long life light bulbs. The total charged by Rochford in the period was £881. The remaining £169 was a charge made by Carlton Doyle Waste Management for the removal of bulk waste (page 269).

42. There was no challenge to the sum charged for waste removal. In his statement of case the Applicant said that the cleaners were supposed to clean the communal areas of the block twice a week but if they turned up at all the cleaning was rarely adequate. At one point during the period the residents implemented a cleaning record sheet (page 166). In his oral evidence the Applicant stated that the cleaners regularly did not attend at all or sometimes they attended but did not clean. He referred the Tribunal to documentary evidence and photographs at pages 1,180 to 1,223 showing complaints sent to the landlords about lack of cleaning, photographs of dirty carpeting and the cleaning schedules. Although there were no schedules or written complaints for the period after 2013, his evidence was that the problems persisted throughout the period.

43. Although the Applicant in his statement of case also argued that the provision of cleaning was a qualifying long-term agreement in respect of which there had been no consultation, and so the cost of cleaning should be capped at £100, he did not pursue this argument at the hearing.

44. The Respondent's case was that there was no long-term agreement and that the cleaning was in fact carried out. The photographs, argued Mr. Arnold, only showed snap-shots in time and so little weight should be attached to them.

45. The Tribunal accepted the Applicant's oral evidence that there were certainly occasions when cleaning did not take place. On the other hand, the schedules also showed that for the majority of the time cleaners were attending. It also bore in mind that the property comprises a total of 8 flats over 6 floors and that the requirement is to clean the common parts. The Tribunal considered the sum charged to be very much on the low side. Cleaners were to attend twice a week, which means 8 times a month, for which the charge was £72, which means that each visit only cost £9. The Tribunal concluded that one could not expect particularly thorough levels of cleaning at such a cost. Nevertheless, it accepted that at times there was no service at all and concluded that it was appropriate to deduct 10% from the cost of the cleaning alone. The total figure for cleaning alone was £864. The Tribunal therefore deducted £86.40 from the overall sum under this head, making a revised total of £963.60, of which the Applicant's share is £152.15.

5. Entryphone

46. The entryphone system is rented from Stanley Security Solutions. Although the service charge accounts at page 221 show that the cost charged to the service charge account in respect of this system in this service charge year was £279.45, the schedules of invoices at pages 223 and 821 only refer to a single invoice of £138.62 (page 251) for 6 months rental. However, there is also an invoice at page 283 for a further £140.83 for the remaining 6 months rental, making a total charge in the year of £279.45. It was clear to the Tribunal that this was the correct charge, despite what the Applicant has put in the schedule he compiled at pages 820 to 835 and despite what is in his Scott Schedule and statement of case. The Applicant's share of this sum is £44.13.

47. The Applicant's case was that the sum charged was unreasonable because it would be cheaper to obtain a new system rather than to continue to rent the existing one (page 163). He relied on prices of door entry system components (pages 1,121 to 1,124) which could be obtained, he argued, for about £300, and would cost little to install using existing wiring. His oral submissions were that the system was very old and not very good. It was hard to hear when people were speaking, though he accepted that it was a functioning door entry system.

48. The Applicant provided no evidence to suggest that the costs charged for hiring the entryphone system were unreasonable when compared with other providers of the same service.

49. The Respondent's case was that it was not unreasonable to continue to rent the entryphone system. There was no obligation on the landlord to buy rather than to rent. If the system were replaced it would require internal works to all of the 8 flats and this may include works of making good. The cost of the components alone was not a realistic indication of the actual cost of installation and there would also be an ongoing need for maintenance even if the system were purchased.

50. The Tribunal was satisfied that the cost of the entryphone was reasonable and payable by the Applicant. There is no obligation on the landlord to purchase equipment to enable it to perform its duties under the lease rather than obtaining such equipment under a hire contract, even if the result is that the hiring is a more expensive option. Provided that the hire costs themselves are reasonable – and there was no suggestion in this case that they were not – only in the most exceptional cases, of which this is not one, could it be said that choosing to hire rather than to buy is unreasonable.

51. It follows that the sum of £44.13 in respect of the entryphone for this service charge year is both reasonable and payable.

6. Management Fees

52. The management fees charged for the 2010 service charge year were £2,312.50 (page 221) of which the Applicant's share was £365.14. The Applicant's case was that the sum charged was too high for the level of service provided. In his statement of case he also argued that there was a qualifying long term agreement with the managing agents and that there had been no section 20 consultation or dispensation (page 167). He complained about only meeting the agent on site once in 7 years, and a slow and unresponsive service.

53. The Tribunal accepted the Respondent's evidence that the managing agents oversaw all contracts involving the property, dealt with utilities and plumbing and oversaw all necessary building works. They dealt with producing the year end accounts, producing service charge demands and collecting service charges. From the evidence before the Tribunal it was clear that the work included arranging for buildings insurance, insurance of the lift and the boiler system, and preparing for statutory consultations. The Tribunal also bore in mind that the managing agents dealt with correspondence from tenants, including the voluminous enquiries and demands made by the Applicant which took up a significant part of the bundle before it.

54. Whilst the Tribunal accepted that the service provided by the managing agents may not have been of the very highest standard, it also considered that a unit cost per flat of less than £300 was very much at the low end for a property of this type in Central London. In all the circumstances it was satisfied that the charge made was reasonable and therefore that the sum of £365.14 was payable by the Applicant.

7. Fire Equipment

55. In his Scott Schedule and statement of case (pages 100 and 131) the Applicant takes issue with a charge of £1,625.47 made to him in 2010 for the installation of a fire alarm and emergency lighting system which he stated cost a total of £10,294.32. The 2010 service charge accounts state that a total of £9,830.20 was charged in respect of the installation of fire alarm and emergency lighting systems (page 221). This was made up of two invoices from Assured Fire dated 6 November 2009 (a £1,000 deposit, at page 272, and a balance of £7,944.70 invoiced on 24 December 2019, at page 290) together with an invoice of £885.50 from John Mead Associates in respect of professional fees

for dealing with the specification, tendering and letting of the contract to instal fire alarms and emergency lighting and for managing the project on site (page 297). The difference between the two figures is explained by an invoice dated 29 January 2010 from Assured Fire of £464.12 for the bi-annual maintenance of the fire alarm system in the following year (page 293) which has been included in the accounts as a maintenance item.

56. For this financial year the Applicant's main argument was that there had been no section 20 consultation (page 131) and that he had not seen any quotes for the provision of the fire alarm system. He also argued that a fire alarm system would cost an average of £2,500 to install, with a commercial alarm system with 8 zones and 20 detectors costing only £4,000. He relied on evidence from an internet site Checkatrade giving indicative costs for installing fire alarm systems (pages 1,712 to 1,718)

57. The Respondent's case during the hearing was that the consultation requirements of section 20(1)(b) of the Act had been complied with and during the second hearing the Tribunal was provided with copies of letters sent to various tenants of the property in 2008 and a summary of tenders received by the agents.

58. However, as explained above, after the hearing was over the Tribunal gave directions for the making of submissions on administrative fees and costs. In the submissions served by the Respondent on 7 May 2021 at paras 3 to 5 the Respondent changed their position on the section 20 consultation in respect of the fire alarm works and conceded that the consultation requirements had not been met. They then invited the Tribunal to dispense with the requirements under the provisions of section 20ZA of the Act, arguing that the amounts expended were reasonably incurred and that the Respondent (by which must be meant the Applicant) had not evidenced any prejudice as a result of the failure to consult.

59. The Respondent made no application for dispensation prior to this or in the course of the two hearings. Their consistent argument was that the section 20 consultation had taken place and that the only reason that the Applicant had not seen the consultation documents and tenders was that the process had taken place before he had become the tenant. Indeed, in the interval between the hearings the Respondent provided to the Tribunal copies of letters sent to other tenants referring to a consultation exercise and also a summary of tenders received by John Mead Associates. The Applicant's case had been throughout that there had been no compliance. No attempt was made by Mr. Arnold on behalf of the Respondent even to address the issue in the alternative. No questions were put to the Applicant on the question of whether or not he had been prejudiced by a failure to consult and no argument was advanced that he had not been so prejudiced.

60. During the hearing the parties were invited to put forward the entirety of their case and it was clear that the Tribunal had concluded its consideration of the substantive issues in the case. By that time no dispensation application had

been made. The Tribunal expressly invited further submissions on only very limited matters. The Respondent's costs submissions accurately sets out those matters at paragraph 2. The Tribunal was not inviting the parties to supplement their substantive case.

61. In the view of the Tribunal this is not, as expressed in the Respondent's submissions, a "*point which requires clarification*" rather, it is an entirely new application which has never previously been canvassed before the Tribunal. As in all litigation there comes a time when the issues between the parties must be crystallised. That must be before the end of the substantive hearing unless the Tribunal expressly requests further submissions on specific issues only – as happened in this case – or unless some exceptional circumstances arise such that fairness requires certain issues to be re-opened or new issues to be addressed. The first instance does not arise as the Tribunal had made it clear what the scope of any future submissions was to be.

62. In the Tribunal's view the Respondent has also failed to establish any other basis for allowing this application to be made at this stage of the proceedings. To begin with, the Respondent's own submissions do not even address the question of whether or not it is appropriate for the Tribunal to consider their application at this stage of the proceedings. Further, and in any event, no explanation is given as to why the application was only made at this stage and why prior to this the Respondent was content to argue that there had been proper consultation, even after having had the opportunity to consider their position in the interval between the two hearings and even after having provided documentation in support of the argument they have now unceremoniously dropped.

63. In all the circumstances the Tribunal concluded that it would not be fair or appropriate to consider such an application at such a late stage of the proceedings and so refused to dispense with the statutory consultation requirements.

64. Having considered all the evidence before it, the Tribunal was not satisfied that the Respondent had shown that the requirements of section 20(1)(b) of the Act had been met and no dispensation had been granted so the Applicant's contribution to the cost of the installation of the fire alarm and emergency lighting system must be capped at £250.

65. Having considered the invoices set out above, it is clear that the actual cost of installation was that set out in the service charge accounts. The additional £464.12 relates to maintenance and so, in the view of the Tribunal, falls under the heading of repairs and maintenance, which is where it appears in the accounts.

66. The Applicant also argued that the cost of bi-annual maintenance was also too high and unreasonable. He relied on evidence from Safelincs that suggested that a fire alarm system could be serviced at a cost of £150 per 6-monthly visit (page 1,719). However, there was no indication that this covered anything

other than the fire alarms themselves and no indication that it also included servicing of the emergency lighting system. The Assured Fire invoice shows that the cost of the bi-annual maintenance of the fire alarm alone was only £230, with the maintenance of the lighting costing an additional £165. It was clear, therefore, to the Tribunal that the amount charged for the maintenance of the systems was reasonable and the cost is payable.

67. It follows that, by reference to the service charge accounts a total of £250 is payable in respect of the provision of fire safety equipment. The Applicant's share of the remaining invoice of £464.12 – ie £73.28 in respect of maintenance is reasonable and payable and so no deduction for the total sum sought in respect of repairs and maintenance is to be made.

8. Maintenance D.A. Thomas

68. Within the service charge accounts for 2010 there is a general item for repairs and maintenance with a total cost of £3,876.02 (page 221), the Applicant's share of this total would be £612.02. The schedule at page 223 shows that this comprises a number of different items. The Applicant's Scott Schedule shows that he takes issue with only some of these items. His case in relation to the first two items is set out at page 126. The first item in dispute is an invoice from D A Thomas dated 29 April 2009 for £775 (page 228) of which the Applicant's share is £122.37. His case is that this was work which was carried out to the interior of a flat in the building and not work to the common parts and so it falls outside the scope of the service charge provisions in the lease.

69. The Respondent explained that a water leak had caused damage to the interior of flat 22C. The Tribunal also noted that the invoice itself referred to works done "at the above address" which is given as 22C Kensington Court. It was clear that this was work to the interior of another demised premises, and so another unit as defined in the lease.

70. The Eighth Schedule of the lease deals with what may be charged to the maintenance fund. The items which may be charged for include the costs of the landlord performing their obligations under the covenants in Part I of the Sixth Schedule together with other items. As far as the Sixth Schedule is concerned, it requires maintenance of the structure of the property, the common parts, and all other parts of the property excluding the demised premises and other units. In the view of the Tribunal the work in question was not maintenance of the structure of the property, nor was it work to the common parts. The work was to another unit and so did not fall within the scope of the landlord's obligations. None of the other items set out in the Eighth Schedule would include these works as paragraph (3) only applies to works to the other parts of the property used in common by the lessee, which is clearly not the case here.

71. Taking the evidence as a whole it therefore concluded that the works charged for in this invoice were not works which, under the terms of the lease, could be included in the maintenance charge. The sum of £122.37 was, therefore, not payable and should be deducted from the total charge for maintenance.

9. Maintenance - Preservations

72. The second of the maintenance items challenged by the Applicant was an invoice for £690 from Preservations (page 279). The Applicant's share was £108.95. The invoice states that it was for work at 22H Kensington Court and was for opening up the wall joint, making necessary LAP repairs to the wall render coatings, cleaning down the wall and paintwork and re-decorating.

73. The Respondent's explanation was that damp had caused damage to the ceiling of flat 22H, which is in the basement, and to the hallway ceiling in the basement including a utility room and walkway area of the building. The area was, they said, interconnected with the common areas. There had been water penetration through the ceiling which had resulted in an insurance claim. The sum of £600 charged was merely the excess not covered by the insurance.

74. The Applicant argued that the utility room was only accessible via the basement flat and so it did not form part of the common areas and so the work was not within the scope of the maintenance charge.

75. The Tribunal rejected the Applicant's argument. Firstly, it was clear that some of the work involved opening the wall joint and making lap repairs – ie repairs to the junction between the wall and the external flat roof to ensure that it is watertight. In the Tribunal's view this was work to the structure of the building and so was within the scope of the landlord's obligations. In addition, although the walkway and utility room, which the Applicant accepted existed, may not be accessible to the other occupiers of the building, and so not within the common parts as defined in the lease, the landlord's repairing obligations also extend to any other part of the building which has not been demised (see paragraph 1(e) of the first part of the Sixth Schedule (page 68). It does not follow that just because there is a part of the building to which others do not have access and which can only be accessed through a part that has been demised, that that part itself has also been demised. No lease for the basement flat was produced. The Tribunal was not satisfied that the Applicant had shown that the works in question were not within the scope of the maintenance charge.

76. In view of the nature of the work set out in the invoice the Tribunal, in its professional view, was satisfied that the amount charged was reasonable. It therefore decided that the sum of £108.95 was both reasonable and payable by the Applicant.

10. Maintenance – Letheby Heating

77. The final matter included in the Applicant's Scott Schedule for this service charge year related to charges made by Shelbourne Letheby ("SL") the heating contractor. A great deal of the voluminous documentation in this case, and the argument presented to the Tribunal, concerned charges made by this contractor in relation to the repair, maintenance and operation of the heating and hot water system in the building throughout the period in question. There are numerous detailed complaints about the performance of this system which

do not need to be set out here. The overall conclusion which the Tribunal reached was that the heating and hot water system was old and inefficient and often failed. Over time a number of remedial measures were attempted, including the fitting of thermostatic radiator valves ("TRVs"), changing controllers, and frequent visits to bleed the system.

78. The Tribunal bore in mind the caselaw already referred to in respect of the approach to be taken towards historic neglect. It was satisfied that in some instances the poor condition of the system was such that repeated repairs or interventions were needed which would not have been had the system not been in such a poor condition and, therefore, that there was indeed additional cost because of neglect. However, in other cases it was not so satisfied.

79. In his statement of case the Applicant dealt systematically with the invoices from SL one by one – see pages 133 to 154. The Tribunal took a similar approach and its conclusions, as they relate to each service charge year, relate to the specific invoices which were challenged.

80. In this service charge year the total of the invoices submitted by SL was £1,025.25, of which the Applicant's share is £161.89. Taking the invoices in chronological order they are as follows;
    (a) A charge of £86.25 made on 30 April 2009 for turning the heating system off. The invoice does not appear to be included, though it is referred to in the schedule at page 820. The Applicant argues that it is unreasonable to make a charge for turning the system off as this could be automated. The Tribunal noted that the lease only requires the landlord to provide heating from October to May (paragraph 9 of the Sixth Schedule – page 70) and it was satisfied that it was reasonable to turn the system on and off accordingly. It did not accept the Applicant's argument that it was unreasonable not to automate this system as there is nothing in the lease which requires the landlord to provide such automation and nor was there any clear indication what such automation would cost. The Tribunal considered that the charge made for attending to turn off the system was a reasonable commercial charge and it was satisfied that the Applicant's share of this item was reasonable and payable
    (b) A charge of £327.75 for servicing the system invoiced on 9 September 2009 (page 268). In his own statement of case the Applicant conceded that this was arguably a reasonable charge (page 134). The Tribunal agreed. The scope of the works set out in the invoice and the charge made are, in its view, reasonable and the Tribunal decided that this charge was payable.
    (c) A charge of £86.25 for turning on the system invoiced on 15 October 2009. The arguments and the Tribunal's conclusions are as for item (a) above.
    (d) A charge of £172.50 made on 24 November 2009 (not included but referred to at page 820) and two charges of £176.25 each made on 25 January 2010 (page 292) and 10 February 2010 (page 294) for venting, backfilling and re-pressurising the system. At page 135 the Applicant

argued that these visits took place because the top floor flat was not heating properly. He particularly complained that repeated visits to perform the same task should not have been necessary. The Tribunal agreed with this argument. It considered the first venting reasonable – especially as the invoice relating to the switching on of the system that winter states that access could not be obtained to the top floor flat. However, it considered that the subsequent visits should not have been needed and it was likely that they were only required because of the poor state of the system. It therefore decided that the Applicant's £27.24 share of the first invoice was payable but not his share of the other two.

81. It follows that the Tribunal concluded that there should be reduction of £27.83 x 2 = £55.66 in the sums payable in respect of SL's invoices.

Maintenance Summary

82. Taking the sum sought for repairs and maintenance as a whole, as said above the total sum sought from the Applicant was his share of £3,876.02, namely £612.02. The Tribunal decided that from this should be deducted the £122.37 in respect of the works to Flat C and the £55.66 in respect of the SL invoices referred to above, making the total payable for maintenance in this year £433.99.

SERVICE CHARGE YEAR 2011

1. Gas Bill

83. The sum sought for gas in this service charge year was £5,334.34 (page 304) of which the Applicant's share was £842.29. The Tribunal took the same approach as in the previous year and concluded that a reduction of 15% was appropriate. It therefore decided that the reasonable sum which was payable under this head for this year was £715.95.

2. Insurance

84. The sum sought this year for insurance was £3,556.14 (page 304) of which the Applicant's share was £561.51. The charge comprised £421.19 in respect of the engineering policy and £3,134.95 buildings insurance (pages 364 and 367).

85. The arguments put forward by the Applicant were the same as in the previous service charge year and the Tribunal rejected them for the same reasons as for that year. It concluded that the sum of £561.51 demanded in this service charge year for insurance was both reasonable and payable.

3. Cleaning

86. The service charge accounts state that the charge made for cleaning and waste removal in 2011 was £951.17 (page 304), this is consistent with the schedule of invoices at page 307. However, the figure shown in the schedule produced by the Applicant at page 822 is £949.17 and he has used this as the basis for the figure in his Scott Schedule and statement of case (page 166). The difference is explained by a mis-transcription of the invoices by the Applicant into his schedule. In the schedule he has stated that there were 11 invoices at £72

whereas there were in fact 10 at £72 with one at £74. This is not the only error which the Tribunal identified when comparing the invoices provided with the schedule prepared by the Applicant. The Tribunal decided that the correct figure was £951.17.

87. As in the previous year the charges are made up mostly of monthly invoices of £72 from Rochford Cleaning. Their last invoice is dated 8 March 2011 and is for £84 (page 366) and shows that the monthly cleaning fee has increased to £78. This means that the total charged simply for cleaning in this year was £72 x 11 plus £78 = £870. For the same reasons as set out in the previous year the Tribunal concluded that it was appropriate to deduct 10% from the cost of the cleaning alone. There was no challenge to the other items charged for under this head. The Tribunal therefore deducted £87 from the overall sum making a revised total of £864.17, of which the Applicant's share is £136.45.

4. Entryphone

88. The sum sought in respect of the entryphone in this service charge year was £575.94 (page 304). This comprised rental invoices for £143.89 (page 317) and £150.05 (page 341) and a charge for a call out and labour on 6 December 2010 when a fault was found with the wiring to flat A, for which a charge of £282 was made (page 340). The Applicant's share was £90.94.

89. The only arguments put forward by the Applicant in his statement of case (page 163) were those already considered by the Tribunal in respect of the previous year. There was no separate challenge to the charge arising from the call out which, in any event, the Tribunal considered to be reasonable.

90. For the reasons given in respect of the previous service charge year the Tribunal concluded that the sum of £90.94 was reasonable and payable by the Applicant.

5. Management Fees

91. The management fees charged for the 2011 service charge year were £2,480.64 (page 304) of which the Applicant's share was £391.69 as accepted in his statement of case (page 167). The Applicant's case was the same as that put forward in the previous year and the Tribunal adopted the same approach. It was satisfied that the modest increase on the amount charged the previous year was reasonable. It therefore concluded that the sum of £391.69 in respect of management fees was both reasonable and payable.

6. Fire Protection

92. The service charge accounts for this service charge year do not include a specific item for fire protection. The disputed sums appear under the heading of repairs and maintenance. The Applicant takes issue with charges totalling £568, of which his share is £89.69, made by Force Fire (page 131). The invoices are at pages 320 (for £188) 333 (for £188) and 345 (for £192). The invoices clearly state that they are for weekly tests of the fire alarm system and monthly tests of the emergency lighting.

93. The Applicant's case was that weekly testing was not necessary and that there was, in any event, limited evidence of this happening (page 131), and that the cost was, in any event too high.

94. The Tribunal was satisfied that, bearing in mind the size and nature of the building, it was reasonable to conduct weekly tests of the fire alarm and monthly tests of the emergency lighting. There was insufficient evidence to show that these tests were not happening, and it concluded that on the balance of probabilities they were. It was also satisfied that the sum charged for the service provided was reasonable. The invoices were each for 3 month periods, meaning that they covered a total of 12 tests each, making the total charge per test of less than £20.

95. On this basis the Tribunal was satisfied that the sum of £89.69 sought for these services was reasonable and payable and that there should be no deduction from the overall sum sought in respect of repairs and maintenance in this respect.

7. Maintenance – Brian Duffin

96. The service charge accounts for 2011 show a total sum of £6,530.55 in respect of repairs and maintenance (page 304), of which the Applicant's share would be £1,031.17. As with the previous year, only some of the items under this head were disputed. Among the items included in the overall repair and maintenance charge was a charge of £2,000 made by Brian Duffin for work to the exterior of the entrance front door (page 310). The Applicant's share of this sum was £315.80.

97. In his statement of case at page 127 the Applicant argued that, given the amount charged, there should have been a section 20 notice and proper consultation, which had not happened and so the charge should, in any event, be capped at £250. He argued that the sum charged was excessive for what amounted to the simple painting of a front door. He relied on a quotation of £320 to carry out the same job (page 1,710).

98. The Respondent was unable to provide any evidence of a section 20 notice and invited the Tribunal to consider a dispensation under section 20ZA of the Act. This was refused by the Tribunal. The Tribunal had regard to the decision of the Supreme Court in Daejan Investments Ltd -v- Benson [2013] UKSC 14. This decision makes it clear that the purpose of the consultation requirements is to protect tenants from paying for inappropriate works and from paying more than would be appropriate for such works. It follows that the issue when considering dispensation is the extent to which the tenants are prejudiced as regards these two protections. It is the question of prejudice, rather than urgency, which is at the heart of the Tribunal's approach.

99. The Tribunal accepted the Respondent's argument that it is appropriate for the landlord to maintain the front door and also that it is appropriate to maintain it to a standard which is in keeping with the nature and vicinity of the premises. Nevertheless, it also considered the need for the Applicant to be

protected from having to pay too much for the works involved. The Tribunal considered that, even allowing for a desire to re-decorate the front door to a very high professional standard, the sum charged was very much on the high side and considered that it was likely, had the Applicant been able to comment in advance of the works, he would have been able to identify an alternative contractor of a similar quality at a lower price. It decided that in the circumstances a dispensation was not appropriate and so the sum recovered should be capped at £250.

100. The Tribunal then considered whether there was any basis for reducing the amount recoverable below £250 as the Applicant argued that the job could have been done for as little as £320 in total. However, there was no indication of the likely quality of the work that may be done by the contractor he had identified in his quotation nor any indication of their qualifications or skill. Although the Applicant described the door as just an ordinary black door, the Tribunal considered that it was reasonable, given the nature and location of the property, for it to be decorated to a high standard. Capping the charge at £250 for the Applicant would, in effect, reduce the amount payable by about 20%. A 20% reduction on the total sum charged would result in a bill of £1,600. Although still very much on the high side, the Tribunal considered that this was just within the range of what was reasonable and so decided not to reduce the chargeable amount further.

101. The Tribunal therefore decided that the amount payable for this work was £250, a reduction from the overall repair and maintenance charge of £65.80.

8. Maintenance D.A. Thomas

102. In his Scott Schedule and statement of case the Applicant took issue with a charge made by D.A. Thomas on 15 July 2010 for £245 in respect of repairs to a faulty stopcock in Flat D (page 319) of which his share was £38.69. His case was that this was work to the interior of another demised premises and so was not recoverable under the terms of the lease.

103. The Tribunal rejected this argument. The recital on the invoice shows that there was a report of there being no water to the top flats, this was shown to be because the water tanks were empty due to an overflow running continuously from flat D. The relevant stopcocks were freed, water to flat D was shut down and the water then restored.

104. In paragraph viii of the First Schedule of the lease the term "conduits" is defined so as to include;

> "*cisterns tanks radiators water .... supply pipes ... and all valves traps and switches appertaining thereto*" (page 47)

From this it is clear that the works involved works to conduits as defined in the lease.

105. By paragraph 1(b) of the first part of the Sixth Schedule of the lease the landlord covenants to keep and maintain in good repair the conduits in under and upon the property "*not exclusively serving the demised premises or other*

units". The Tribunal interpreted this to mean that conduits which exclusively serve the demised property or exclusively serve another unit are excluded but that conduits which serve more than one unit are included. It follows that as the pipes in question were having an effect on the water supply system as a whole they were not exclusively serving any particular demised premises. It follows, therefore, that the work fell within the scope of the landlord's obligations and may properly be charged for in the maintenance charge. The Tribunal considered that the charge made was reasonable.

106. The Tribunal therefore concluded that the sum of £38.69 was both reasonable and payable for this item.

9. Maintenance Transform

107. Included in the charges for repair and maintenance in this service charge year was a charge of £195 made by Transform (page 331). The Applicant's share is £30.79. The Applicant's case is that this sum is not recoverable as it is in respect of decorating work undertaken to the interior of Flat A.

108. It is clear from the invoice itself that the work in question was for making good the picture rail and painting the walls in Flat A. The Respondent put forward no cogent argument why this work, which was clearly interior work to another demised premises, fell within the scope of the management charge. The Tribunal was satisfied that this was work which could not be charged for in the service charge and so the sum is not payable, resulting in a reduction to the overall maintenance charge of £30.79.

10. Maintenance – Letheby Heating

109. As with the previous service charge year, the final item of dispute relates to the invoices submitted by SL, which are considered in turn below. The Applicant's arguments in respect of the SL invoices for this service charge year are at pages 136 and 137 and do not need to be set out in full below.
   (a) A charge of £86.25 made on 13 April 2010 30 April 2009 for turning the heating system off (page 308). The arguments are the same as for the same item in the previous year and for the same reasons the Tribunal considered this charge to be reasonable and payable.
   (b) A charge of £334.88 made on 1 September 2010 for servicing the system (page 323). The Applicant accepted that this was reasonable and payable.
   (c) A charge of £528.75 made on 8 September 2010 for removing, flushing and replacing the radiator in the top flat (page 322). The Tribunal considered that occasional flushing of radiators is reasonable and did not accept the Applicant's contention that all that was needed was to vent the radiator – he had insufficient evidence to show that that was all that was needed. It considered the time spent was reasonable given the need to drain down the system. This was not an example of unreasonable work or of work only made necessary by neglect and the Tribunal considered the sums charged to be a reasonable commercial rate. It concluded that this charge was reasonable and payable.

(d) A charge of £88.13 made on 15 October 2010 for switching the system on (page 329). For the reasons already given this was reasonable and the charge is payable.

(e) A charge of £252.63 made on 29 October 2010 for replacing a cracked combustion chamber and insulation panels (page 334). This was accepted as reasonable by the Applicant.

(f) A charge of £270 made on 18 February 2011 (page 347). What this shows is that the contractor attended in order to find out why there was no heating or hot water, they discovered there was no power and left, they then returned and reset the boilers when the power returned. Although the Applicant objects to the amount of the charge it is clear that two attendances were required, effectively a double call out charge, and the Tribunal considered this to be reasonable. This charge is payable.

(g) A charge of £1,089.60 made on 18 February 2011 (page 362). The narrative on this invoice shows that the work involved was the installation of a new safety valve on the boiler and that the work involved draining and refilling the whole building and venting all the flats. The Tribunal considered it reasonable for the safety valve to be replaced and, despite the Applicant's arguments to the contrary – which were not supported by any technical or expert evidence as to the time it would take to carry out such a task on this system - accepted that the amount of time charged for was reasonable. It concluded that this charge was reasonable and payable.

(h) A charge of £90 made on 28 February 2011 for reducing the maximum flow temperature (page 365). The Tribunal considered that this was likely to be work which was carried out following complaints by the Applicant about the flow temperature being too high. Although the Applicant argues that if the controls were properly set then adjustments would not be necessary, the Tribunal accepted that some adjustments from time to time – especially if in response to observations/complaints from tenants – are reasonable. It concluded that this charge was reasonable and payable.

110. It follows that the Tribunal considered that no reduction was appropriate in respect of the SL invoices in this service charge year and that the whole of the £432.98 sought from him in respect of them was recoverable.

11. Maintenance Summary

111. Considering the repairs and maintenance aspect of the service charge as whole it follows from what is set out above that the Tribunal concluded that the amount payable by the Applicant in respect of repairs and maintenance which would otherwise have been £1,031.17 should be reduced by a total of £96.59, making the total sum payable £934.58.

SERVICE CHARGE YEAR 2012

1. Gas Bill

112. The sum sought for gas in this service charge year was £10,176.94 (page 369) of which the Applicant's share was £1,607.41.

113. In addition to the arguments raised in the previous service charge years, the Applicant also argued that the gas in this year was supplied under a qualifying long term agreement over which there had been no consultation and, therefore, that the amount charged should be capped (page 161). He relied on the contract at page 1,038 which showed that the Respondent had agreed with British Gas on 21 May 2011 for the supply of gas at a fixed price for a minimum period of 2 years.

114. The Tribunal was satisfied that this amounted to a qualifying long term agreement and that the obligation to consult under section 20 of the Act arose.

115. In the course of the hearing the Respondent accepted that there had been no consultation in respect of this contract. Mr. Arnold applied to the Tribunal for dispensation from the consultation requirements. He argued that the Applicant had not shown any prejudice arising from the lack of consultation. He argued that it was not unreasonable for the Respondent to obtain gas at a fixed cost from British Gas. He further argued that it did not necessarily follow that simply because it may have been possible to find gas at a cheaper cost from another supplier it was necessarily unreasonable not to use that supplier. He also argued that, whilst the Applicant had provided evidence about current utility prices, he had provided nothing to show what the price of gas was at the time in question.

116. The Tribunal decided to exercise its power under section 20ZA of the Act to grant the application for a dispensation from the consultation requirements in respect of the gas supply contract unconditionally. It considered the question of prejudice as explained above. It considered that there was clearly no prejudice in respect of the first of the two protections explained in the Daejan case as there was an obvious need for a gas supply. It concluded that the Applicant had provided insufficient evidence to show that there was prejudice under the second limb. He had provided insufficient evidence to show that gas could have been obtained at a significantly cheaper price elsewhere at the time, and, more importantly, whether any such lower price could have been fixed for the period of the contract in question.

117. With regard to the question of the amount of gas consumed the Tribunal took the same approach as in the previous year and concluded that a reduction of 15% was appropriate. It therefore decided that the reasonable sum which was payable under this head for this year was £1,366.30.

2. Insurance

118. The sum sought this year for insurance was £3,730.91 (page 369) of which the Applicant's share was £589.11. The charge comprised £442.26 in respect of the engineering policy and £3,288.65 buildings insurance (pages 426 and 429).

119. The arguments put forward by the Applicant were the same as in the previous service charge year and the Tribunal rejected them for the same reasons. It

concluded that the sum of £589.11 demanded in this service charge year for insurance was both reasonable and payable.

3. Electricity

120. The cost of electricity in this service charge year was stated in the service charge accounts to be £514.92 (page 369). This is consistent with the invoices at pages 379, 393, 405 and 423. The schedule of invoices at pages 824 to 825 prepared by the Applicant and relied on in his statement of case (page 157) shows a total of £514.84. The difference was again due to mis-transcription by the Applicant – the invoice at page 379 has been stated to be for £140.00 whereas it was for £140.08. The Applicant's share of the sum sought is £81.31.

121. The arguments presented by the Applicant for this year were the same as with regard to the 2010 service charge year. The Tribunal took the same approach as in that year and concluded that the sum of £81.31 sought in respect of electricity was both reasonable and payable.

4. Cleaning

122. Although the service charge accounts state that the charge made for cleaning and waste removal in 2012 was £936 (page 304), this is not consistent with the schedule of invoices prepared by the Respondent at page 372 which gives a total of £942.75, nor with the schedule of invoices at pages 824 to 825 prepared by the Applicant which shows a total of £1,020.75. The figure in the Respondent's schedule is consistent with the invoices. This is also another example of an error by the Applicant who has included an invoice of £78 from Stanley Security – the providers of the entryphone – under the heading of cleaning (see page 824) No such invoice exists.

123. The Tribunal decided that the sum in question in this case was £942.75. As in the previous year the charges are made up mostly of monthly invoices from Rochford Cleaning at £78 per month, with small charges totalling £6.75 in respect of light bulbs.

124. For the same reasons as set out for the 2010 service charge year the Tribunal concluded that it was appropriate to deduct 10% from the cost of the cleaning alone. The Tribunal therefore deducted £93.60 from the overall sum making a revised total of £849.15, of which the Applicant's share is £134.08. This is the sum payable by the Applicant.

5. Entryphone

125. The sum set out in the service charge accounts in respect of the entryphone in this service charge year was £302.62 (page 369). This sum is consistent with the schedule prepared by the Respondent at page 372. Although only one invoice appears in the papers at page 384 it is clear that this is for only six month's rental. Although the second invoice was not provided it is clear that the entryphone rental continued into the following financial year and the Tribunal accepted that the total sum in respect of which the claim for payment was made had been paid by the Respondent in this service charge year. Although the Applicant has based the figure in his Scott Schedule and

statement of case (page 163) on just the one invoice, the Tribunal decided that the figure in issue was £302.62 of which the Applicant's share is £47.78.

126. The only arguments put forward by the Applicant in his statement of case (page 163) were those already considered by the Tribunal in respect of the previous year.

127. For the reasons given in respect of the 2010 service charge year the Tribunal concluded that the sum of £47.78 was reasonable and payable by the Applicant.

6. Management Fees

128. The management fees charged for the 2012 service charge year were £2,520 (page 369) of which the Applicant's share was £397.91 as accepted in his statement of case (page 167). The Applicant's case was the same as that put forward in the 2010 service charge year and the Tribunal adopted the same approach. It was satisfied that the modest increase on the amount charged for the previous year was reasonable. It therefore concluded that the sum of £397.91 in respect of management fees was both reasonable and payable.

7. Fire Protection

129. As with the previous service charge year the disputed sums under this head appear under the heading of repairs and maintenance in the service charge accounts. The Applicant takes issue with charges totalling £791, of which his share is £124.90, made by Force Fire (page 131). The invoices are at pages 376, 388, 403 and 418.

130. The arguments put forward by the Applicant were the same as in the previous service charge year. The increase from the previous year is largely explained by the fact that only three quarters of the first annual charge fell within the previous year whereas the charge this year was for a full year.

131. For the same reasons as given in respect of the 2011 service charge year the Tribunal concluded that the sum of £124.90 sought for these services was reasonable and payable and that there should be no deduction from the overall sum sought in respect of repairs and maintenance in this respect.

8. Maintenance – Letheby Heating

132. The service charge accounts for 2012 show a total sum of £5,029.35 in respect of repairs and maintenance (page 369), of which the Applicant's share would be £794.13. In this year the only disputed items other than the fire protection costs were the SL invoices. The Applicant's arguments in respect of these are at pages 138 to 140 and do not need to be set out in full below.

133. In his own statement of case the Applicant accepted that the charges made in respect of the invoices at pages 392 and 410 were reasonable. He objected to the invoice at page 377 which related to turning the system off. For the reasons given in relation to similar invoices in previous years the Tribunal

concluded that this was a reasonable charge. The remaining invoices challenged were as follows;

(a) A charge of £180 made on 23 November 2011 (page 409) for repressurising the system and venting the radiators on the top floor. This was followed by charges of £193.20 made on 3 February 2012 (page 420) for similar work and a further charge of £180 on 7 February 2012 (page 422) again for similar work. As in 2010 the Applicant argued that these visits took place because the top floor flat was not heating properly. He particularly complained that repeated visits to perform the same task should not have been necessary. The Tribunal agreed with this argument. It considered the first venting reasonable – especially as this was at the beginning of the winter season after the heating had not been in use for a period. However, it considered that the subsequent visits should not have been needed and it was likely that they were only required because of the poor state of the system. It therefore decided that the Applicant's share of the first invoice was payable but not his share of the other two, which amounted to a total reduction from the overall maintenance charge of £58.93.

(b) A charge of £571.20 made on 13 December 2011 for investigating a report of no heating, diagnosing a fault on a circuit board, supplying and fitting a new board and by-passing the compensator (page 417). In his statement of case the Applicant made no comment on this item and in the absence of such a comment the Tribunal considered the charge to be reasonable.

(c) A charge of £1,089 made on 20 January 2012 for replacing the compensator (page 417). The Applicant's case in respect of this was that the contractors fitted a legacy compensator rather than an updated version which would have dealt more effectively with the ongoing problems with the heating system and which would also have removed the need to attend regularly to turn the system on and off. The Tribunal accepted this argument, considering it unreasonable effectively to patch up the system when it would have been more reasonable to seek to resolve the ongoing problems more effectively. It therefore considered that this charge was unreasonable and the Applicant's share (£171.95) should be deducted from the overall amount in respect of maintenance.

(d) A charge of £660 made on 1 February 2012 for investigating a report of no hot water, diagnosing a failed circulation pump, installing a new one and refilling and testing the system (page 419). The Applicant argued that this sum was unreasonable as the whole system should have been replaced. The Tribunal rejected his arguments. This was a straightforward case of replacing a failed part. There was no suggestion that the cost of doing this was increased by ongoing neglect and it was not the case, unlike that of the compensator, that the provision of a different pump would have improved the system. The Tribunal decided that the Applicant's share of this sum was reasonable and payable.

Maintenance Summary

134. Considering the repairs and maintenance aspect of the service charge as whole it follows from what is set out above that the Tribunal concluded that the amount payable by the Applicant in respect of repairs and maintenance which would otherwise have been £794.13 should be reduced by a total of £230.88, making the total sum payable £563.25.

SERVICE CHARGE YEAR 2013

1. Gas Bill

135. The sum sought for gas in this service charge year was £4,972.91 (page 432) of which the Applicant's share was £785.22.

136. The arguments raised in this year were the same as in the previous year, including the arguments about consultation as well as reasonableness.

137. The Tribunal took the same approach as in that year for the same reasons. This included applying a reduction of 15% to the overall charge. It therefore decided that the reasonable sum which was payable under this head for this year was £667.44.

2. Insurance

138. The sum sought this year for insurance was only £473.21 (page 432) of which the Applicant's share was £74.72. The charge related solely to the engineering policy (page 497). There was no charge in relation to the buildings insurance.

139. The arguments put forward by the Applicant were the same as in the previous service charge year and the Tribunal rejected them for the same reasons. It was satisfied that it was reasonable to have in place an engineering insurance policy which, as previously explained, covered both the lift and the central heating boiler. The Tribunal concluded that the sum of £74.72 demanded in this service charge year for insurance was both reasonable and payable.

3. Electricity

140. The cost of electricity in this service charge year was stated in the service charge accounts to be £575.73 (page 432) of which the Applicant's share is £90.91.

141. The arguments presented by the Applicant for this year were the same as with regard to the 2010 service charge year. The Tribunal took the same approach as in that year and concluded that the sum of £90.91 sought in respect of electricity was both reasonable and payable.

4. Cleaning

142. The cost of cleaning in this service charge year was £966 (page 432). As in the previous year the charges are made up mostly of monthly invoices from Rochford Cleaning at £78 per month, with small unchallenged charges for lightbulbs and waste collection.

143. For the same reasons as set out for the 2010 service charge year the Tribunal concluded that it was appropriate to deduct 10% from the cost of the cleaning alone. The Tribunal therefore deducted £93.60 from the overall sum making a revised total of £872.40, of which the Applicant's share is £137.75.

5. Entryphone

144. The sum set out in the service charge accounts in respect of the entryphone in this service charge year was £308.02 (page 432). The invoices are at pages 454 and 482. As in previous years the charge is solely for rental. The applicant's share is £48.64.

145. The only arguments put forward by the Applicant in his statement of case (page 163) were those already considered by the Tribunal in respect of the previous years.

146. For the reasons given in respect of the 2010 service charge year the Tribunal concluded that the sum of £48.64 was reasonable and payable by the Applicant.

6. Management Fees

147. The management fees charged for the 2013 service charge year were £2,520 (page 432). This was the same as the year before. The Applicant's share was £397.91 as accepted in his statement of case (page 167). The Applicant's case was the same as that put forward in the 2010 service charge year and the Tribunal adopted the same approach. It therefore concluded that the sum of £397.91 in respect of management fees was both reasonable and payable.

7. Fire Protection

148. As with the previous service charge year the disputed sums under this head appear under the heading of repairs and maintenance in the service charge accounts. The Applicant takes issue with charges totalling £799.20, of which his share is £126.19, made by Force Fire (page 131). The invoices are at pages 438, 457, 472 and 488.

149. The arguments put forward by the Applicant were the same as in the previous service charge years. For the same reasons as given in respect of the 2011 service charge year the Tribunal concluded that the sum of £126.19 sought for these services was reasonable and payable and that there should be no deduction from the overall sum sought in respect of repairs and maintenance in this respect.

8. Maintenance – Letheby Heating

150. The service charge accounts for 2013 show a total sum of £7,428.88 in respect of repairs and maintenance (page 432), of which the Applicant's share would be £1,173.02. As with the previous year the only disputed items other than the fire protection costs were the SL invoices. The Applicant's arguments in respect of these are at pages 141 to 144 and do not need to be set out in full below.

151. In his own statement of case the Applicant accepted that the charge made in respect of the invoice at page 459 was reasonable. He objected to the invoice at page 448 which related to turning the system off. For the reasons given in relation to similar invoices in previous years the Tribunal concluded that this was a reasonable charge. The remaining invoices challenged were as follows;

(a) A charge of £330 made on 12 April 2012 (page 435) for repositioning the outside detector. The Tribunal accepted the arguments, put forward by the Applicant and discussed above, that the detector was put in the wrong place. It was satisfied that this work was unreasonable and that the Applicant's share (£52.11) should be deducted from the overall maintenance charge.

(b) A charge of £90 made on the same day for re-progamming the compensator (page 436). The Tribunal was satisfied that this was not reasonable. As previously explained the Tribunal considered that fitting a legacy compensator was not reasonable and that continuing adjustment of this part of the system was not justified. It concluded that the Applicant's share of this charge (£14.21) should be deducted from the maintenance charge.

(c) A charge of £540 made on 5 October 2012 (page 468) for backfilling the radiators, venting the top floor and draining down the system to detect a leak. As with the previous year the Tribunal considered that it was reasonable to attend to vent and backfill the radiators at the beginning of a heating season. It was also satisfied that it was reasonable to attend to investigate and deal with a leak. It concluded that this charge was reasonable and the Applicant's share was payable so no deduction was warranted.

(d) A charge of £1,181.83 made on 7 November 2012 (page 474) which included fitting TRVs in the Applicant's flat together with dealing with venting radiators and a reported water leak. The Tribunal considered that it was obviously reasonable to deal with a leak and that all the other items were also reasonable works to be done. The TRVs were being fitted at the Applicant's suggestion. The Applicant also argued that TRVs could be fitted at a cost of £50, though there was nothing in the bundle to show this and, in any event, there was also nothing which addressed the likely time needed to undertake such work in this particular location. In the professional view of the Tribunal the charge made for the works set out was a reasonable commercial charge. It follows that it was satisfied that the charge was reasonable and that no deduction should be made.

(e) A charge of £900 made on 14 November 2012 (page 473) for flushing the pipework and the radiator in the back bedroom in flat A and adjusting pump noise. The Tribunal was satisfied that it was reasonable to undertake this work. Heating systems do need flushing at times and there was insufficient evidence that a higher cost was being caused by a failure to do this earlier. The Applicant also argued that the cost was excessive and he relied on an internet advertisement offering power flushes from £180. The Tribunal was not satisfied that this was a realistic comparison as it gave absolutely no details of the service offered and took no account of the fact that the billed work

included flushing pipework as well as radiators and nor did it take any account of the particular circumstances at the property. In the professional view of the Tribunal the charge made for the works set out was a reasonable commercial charge. It follows that it was satisfied that the charge was reasonable and that no deduction should be made. The Applicant also argued in relation to the three invoices above that the total sum payable by him in respect of the invoices above exceeded £250 and so required consultation. The Tribunal rejected that argument. It was clear that each charge was made for separate and discrete items of work which had no connection to each other apart from their being work in respect of repairs and/or maintenance of the heating system.

(g) A charge of £337 made on 26 November 2012 (page 475) in respect of investigating a failure in the heating system which was caused by the time clock being jammed, sourcing and fitting a replacement and setting it. The Tribunal considered that it was reasonable for the Respondent to replace the failed part and, on this occasion, did not accept that it was not appropriate to instal a legacy item as there was nothing in the evidence to show that ongoing problems with the heating supply were caused by problems with the timer. It considered the Applicant's share of this charge to be reasonable and payable.

(h) A charge of £90 made on 5 December 2012 (page 478) for re-setting the time clock. The Tribunal considered that this was not reasonable as the clock had only been set a few days before and it should have been set correctly then. It considered that the Applicant's share of this charge (£14.21) should be deducted from the overall maintenance charge.

(i) Charges made on 29 January 2013 of £90 and (page 485) and on 19 February 2013 of £180 (page 495) in respect of re-pressurising and venting the system. As explained previously the Tribunal considered that repeated attendances to carry out largely the same task were an indication of problems caused by the poor condition of the system and resulted in additional costs which were not reasonable. The Tribunal concluded that the Applicant's share of these two charges (a total of £42.63) was not reasonable and should be deducted from the overall maintenance charge.

Maintenance Summary

152. Considering the repairs and maintenance aspect of the service charge as whole it follows from what is set out above that the Tribunal concluded that the amount payable by the Applicant in respect of repairs and maintenance which would otherwise have been £1,173.02 should be reduced by a total of £123.16 making the total sum payable £1,049.86.

<u>SERVICE CHARGE YEAR 2014</u>

1. Gas Bill

153. The sum sought for gas in this service charge year was £3,456.35 (page 501) of which the Applicant's share was £545.76.

154. The arguments raised in this year were the same as in the previous year, including the arguments about consultation as well as reasonableness.

155. The Tribunal took the same approach as in that year for the same reasons. This included applying a reduction of 15% to the overall charge. It therefore decided that the reasonable sum which was payable under this head for this year was £463.90.

2. Insurance

156. The sum sought this year for insurance was £3,533.62 (page 501) of which the Applicant's share was £557.96. This year the only charge was for buildings insurance. There was no charge in respect of an engineering insurance policy.

157. The arguments put forward by the Applicant were the same as in the previous service charge year and the Tribunal rejected them for the same reasons. In addition, there was in fact no charge in respect of any insurance policy for the lift in this year. The Tribunal concluded that the sum of £557.96 demanded in this service charge year for insurance was both reasonable and payable.

3. Electricity

158. The cost of electricity in this service charge year was stated in the service charge accounts to be £373.87 (page 501) of which the Applicant's share is £59.03.

159. The arguments presented by the Applicant for this year were the same as with regard to the 2010 service charge year. The Tribunal took the same approach as in that year and concluded that the sum of £59.03 sought in respect of electricity was both reasonable and payable.

4. Cleaning

160. The cost of cleaning in this service charge year was £1,062.50 (page 501). This is another instance of errors in the Applicant's schedule (page 828). He has recorded all the Rochford Cleaning invoices as being £78 whereas those at pages 520 and 550 are more than this. He has also not included two invoices for waste removal (pages 503 and 552) though he does not dispute those charges. Therefore, whilst the sum in issue is stated in the Scott Schedule (page 108) and the Applicant's statement of case (page 166) to be £147.49, the actual share of the cleaning charge as set out in the service charge accounts is £167.77.

161. As in the previous year the charges are made up mostly of monthly invoices from Rochford Cleaning at £78 per month, with small unchallenged charges for lightbulbs and waste collection.

162. For the same reasons as set out for the 2010 service charge year the Tribunal concluded that it was appropriate to deduct 10% from the cost of the cleaning alone. The Tribunal therefore deducted £93.60 from the overall sum making a revised total of £968.90, of which the Applicant's share is £152.99.

5. Entryphone

163. The sum set out in the service charge accounts in respect of the entryphone in this service charge year was £312.63 (page 501). The invoices are at pages 521 and 554. As in previous years the charge is solely for rental. The applicant's share is £49.36.

164. The only arguments put forward by the Applicant in his statement of case (page 163) were those already considered by the Tribunal in respect of the previous years.

165. For the reasons given in respect of the 2010 service charge year the Tribunal concluded that the sum of £49.36 was reasonable and payable by the Applicant.

6. Management Fees

166. The management fees charged for the 2014 service charge year were £2,520 (page 432). This was the same as the two previous years. The Applicant's share was £397.91 as accepted in his statement of case (page 167). The Applicant's case was the same as that put forward in the 2010 service charge year and the Tribunal adopted the same approach. It therefore concluded that the sum of £397.91 in respect of management fees was both reasonable and payable.

7. Fire Protection

167. As with the previous service charge year the disputed sums under this head appear under the heading of repairs and maintenance in the service charge accounts. As in previous years the Applicant takes issue with charges made by Force Fire (page 131). Their invoices are at pages 505, 525, 538, and 558 and total £817.20. With regard to these invoices the arguments put forward by the Applicant were the same as in the previous service charge years. For the same reasons as given in respect of the 2011 service charge year the Tribunal concluded that the Applicant's share of the charge for these services was reasonable and payable and that there should be no deduction from the overall sum sought in respect of repairs and maintenance in this respect.

168. However, in this year the Applicant also challenged some other fire related items falling within the scope of the maintenance and repair charge, though his statement of case does not set out the nature of his challenge. The sums in question are £467.35 charged by HSA Fire Protection and £577.20 charged by Assured (page 131).

169. With regard to the former, the Applicant's schedule refers to two invoices of £261.55 and £205.80 respectively. The first of these is at page 533 and relates to the servicing of fire extinguishers, there is no trace of the latter. However, as the total in his schedule for repairs and maintenance is higher than that appearing in the Respondent's service charge accounts it may well be that this is simply another error. In any event, the Tribunal considered it reasonable to make a charge for the servicing of the fire extinguishers as set out in the invoice at page 533 and that the amount of the charge was also reasonable. It

was not satisfied that any charge was in fact being made in respect of the invoice which it could not locate. There was, therefore, no basis for any reduction in this regard.

170. The Assured invoices are at pages 553 and 559. They relate to the preventative maintenance of the fire alarm and emergency lighting system and a replacement battery. This is distinct from the charges made by Force Fire for testing of the systems. Although, as explained previously, the Applicant argued that the cost of this work was too high, the Tribunal was not satisfied that he had provided a genuine comparison as the example he provided made no reference to emergency lighting and the charge made in respect of the fire alarms themselves was in fact lower than in his own example. The Tribunal considered it reasonable to undertake preventative maintenance of the fire alarm and emergency lighting systems and that the cost charged was reasonable. There was no basis for any reduction to the maintenance charge in this regard.

8. Maintenance – Letheby Heating

171. The service charge accounts for 2014 show a total sum of £3,953.95 in respect of repairs and maintenance (page 501), of which the Applicant's share would be £624.33. As with the previous year the only disputed items other than the fire protection costs were the SL invoices. The Applicant's arguments in respect of these are at pages 145 to 146 and do not need to be set out in full below.

172. In his own statement of case the Applicant accepted that the charge made in respect of the invoice at page 526 was reasonable. He objected to the invoice at page 507 which related to turning the system off. For the reasons given in relation to similar invoices in previous years the Tribunal concluded that this was a reasonable charge. The remaining invoices challenged were as follows;

(a) Three charges made on 17 October 2013, 24 October 2013 and 7 November 2013 of £180, £180 and £270 respectively (pages 535, 536 and 540). The first invoice was for repressurising the system and venting the radiator in the top flat, as was the second. The third was for investigating problems with the radiator in the bedroom in the top floor flat not getting warm, which was dealt with by putting the pump on the maximum setting. As in previous years, the Tribunal considered that a single charge for repressurising and venting the system at the beginning of the heating period after several months of inactivity was reasonable, but repeated visits were not. It also concluded in its professional opinion that the third charge was another instance of additional – and very similar - work being required because of the ongoing poor state of the system. It therefore concluded that whilst the Applicant's share of the first of these invoices was reasonable and payable, his share of the other two, a total of £71.06, should be deducted from the overall sum for maintenance and repairs.

(b) A charge of £450 made on 26 September 2013 (page 531). This charge was for investigating a problem with the hot water supply. The fault was found to lie with the ball valve in the water tank which was cleaned

and left in working order. Although the Applicant argued that this was a charge which only arose because of ongoing neglect, the Tribunal was not satisfied of that. Faults in ball valves are not uncommon and do not necessarily arise solely from neglect. It considered that the Applicant's share of this charge was reasonable and payable and that no deduction was justified.

(c) A charge of £336 made on 12 November 2013 (page 539). This was a charge for investigating a report of no heating and hot water which was found to be due to the failure of the boiler clock. A new one was supplied and fitted. The Tribunal noted that on 26 November 2012 a new clock had been fitted to the boiler (page 475). There was no evidence that the Respondent or their contractors had taken any steps to seek a replacement of the faulty clock from the manufacturer, it having been fitted less than a year earlier. The Tribunal considered it unreasonable for the Applicant, effectively, to be charged twice for the same work and so it decided that the Applicant's share of this charge (£53.05) should be deducted from the overall maintenance charge.

Maintenance Summary

173. Considering the repairs and maintenance aspect of the service charge as whole it follows from what is set out above that the Tribunal concluded that the amount payable by the Applicant in respect of repairs and maintenance which would otherwise have been £624.33 should be reduced by a total of £124.11 making the total sum payable £500.22.

SERVICE CHARGE YEAR 2015

1. Gas Bill

174. The sum sought for gas in this service charge year was £14,827.40 (page 568) of which the Applicant's share was £2,341.25.

175. The arguments raised in this year were the same as in the previous years, though it was not argued in this year that there had been any failure to consult appropriately.

176. The Tribunal took the same approach as previously. This included applying a reduction of 15% to the overall charge. It therefore decided that the reasonable sum which was payable under this head for this year was £1,990.06.

2. Insurance

177. The sum sought this year for insurance was £8,388.36 (page 568) of which the Applicant's share was £1,324.52. The charge is significantly higher than in previous years, but this is explained because the charge covers two years. The relevant invoices are as follows. A charge of £506.35 for the renewal of the engineering policy in February 2014 (page 571), a half share (£3,655.15) of the renewal of the buildings insurance for 11 and 22 Kensington Court on 3 March 2014 (page 572), and a half share (£4,226.86) of the renewal of the block policy on 2 March 2015 (page 655).

178. The arguments put forward by the Applicant in respect of the buildings insurance were the same as in the previous service charge years and the Tribunal rejected them for the same reasons.

179. The Applicant's evidence before the Tribunal, which it accepted, was that from 2009 onwards the use of the lift had been curtailed and there was a sign on it saying that it could only be used as a goods lift. Then on 5 August 2014 the lift was turned off altogether (see page 950) and for a total of 14 months the lift was not functioning at all.

180. As already explained above, it is clear that the engineering insurance policy covered both the lift and the boiler at the premises. The Tribunal also concluded that even if the lift were only being used as a goods lift, it was still reasonable to maintain the same insurance. Although it accepted that there was a time when the lift was not operative it considered it was still reasonable to keep the insurance cover in place as there may well still have been ongoing risks in relation to the lift, and, in any event, it would not have been immediately apparent how long necessary works to bring the lift back into service would be likely to last.

181. Overall, the Tribunal considered that the whole of the sum sought in respect of insurance was both reasonable and payable.

3. Electricity

182. The cost of electricity in this service charge year was stated in the service charge accounts to be £980.17 (page 568) of which the Applicant's share is £154.77.

183. The arguments presented by the Applicant for this year were the same as with regard to the 2010 service charge year. The Tribunal took the same approach as in that year and concluded that the sum of £154.77 sought in respect of electricity was both reasonable and payable. The Applicant argued that the lift was out of action for a significant part of the year and that this should have resulted in a reduction of the amount of electricity used. However, the evidence was that the meter which monitored supply to the lift showed only very low levels of consumption in any event – presumably because there was very little use of the lift at any time because of its only being available for goods.

4. Cleaning

184. According to the service charge accounts the cost of cleaning in this service charge year was £936 (page 568). This represents 12 monthly invoices from Rochford Cleaning of £78 each, though small sundry items for bulbs (eg the charge at page 652) appear not to have been included under the head of cleaning in this year.

185. For the same reasons as set out for the 2010 service charge year the Tribunal concluded that it was appropriate to deduct 10% from the cost of the cleaning

alone. The Tribunal therefore deducted £93.60 from the overall sum making a revised total of £842.40, of which the Applicant's share is £133.01.

5. Entryphone

186. The sum set out in the service charge accounts in respect of the entryphone in this service charge year was £315.58 (page 568). This is made up of the two rental invoices at pages 592 and 635. A small charge for a new push button of £6.94 (page 574) has not been included under this head. The applicant's share is £49.83.

187. The only arguments put forward by the Applicant in his statement of case (page 163) were those already considered by the Tribunal in respect of the previous years.

188. For the reasons given in respect of the 2010 service charge year the Tribunal concluded that the sum of £49.83 was reasonable and payable by the Applicant.

6. Management Fees

189. The management fees charged for the 2015 service charge year were £2,520 (page 432). This was the same as the three previous years. The Applicant's share was £397.91 as accepted in his statement of case (page 167). The Applicant's case was the same as that put forward in the 2010 service charge year and the Tribunal adopted the same approach. It therefore concluded that the sum of £397.91 in respect of management fees was both reasonable and payable.

7. Fire Protection

190. As with the previous service charge year the disputed sums under this head appear under the heading of repairs and maintenance in the service charge accounts. Also as in previous years the Applicant takes issue with charges made by Force Fire (page 131). Their invoices are at pages 577, 598, 621, and 639 and total £838.50. With regards to these invoices the arguments put forward by the Applicant were the same as in the previous service charge years. For the same reasons as given in respect of the 2011 service charge year the Tribunal concluded that the Applicant's share of the charge for these services was reasonable and payable and that there should be no deduction from the overall sum sought in respect of repairs and maintenance in this respect.

191. Again in this year the Applicant also challenged some other fire related items falling within the scope of the maintenance and repair charge, though his statement of case does not set out the nature of his challenge. The sums in question are £207.60 charged by HSA Fire Protection, £2,187 charged by Assured, and £200 charged by Accensus (page 131).

192. With regard to the HSA charge, the invoice is at page 616 and it shows that the charge was for the service of fire extinguishers and the provision of 1 new extinguisher. The Tribunal considered this work to be reasonable and the cost

was also reasonable. There was, therefore, no basis for any reduction in the amount charged to the Applicant in this regard.

193. The Assured invoices are at pages 578, 594, 636, 637 and 640. The invoice at page 636 relates to the preventative maintenance of the fire alarm and emergency lighting system. For the reasons previously given, the Tribunal considered this to be a reasonable charge.

194. The remaining invoices relate to call out charges and corrective work to the fire alarm system. The Tribunal considered that it was reasonable for the Respondent to call out contractors to deal with reported faults with the fire alarm system and it was satisfied that the work done and the charges made were both reasonable.

195. The charge by Accensus was for carrying out fire risk assessments. These were done at both 11 and 22 Kensington Court and the total charge of £400 was divided between them (page 633). The Tribunal considered that it was reasonable for the landlord to undertake a fire risk assessment and that the charge made for this was reasonable.

196. It follows that the Tribunal was satisfied that there was no basis for reducing the Applicant's share of the overall charge for maintenance in respect of any item which he has categorised under his heading of fire protection works.

8. Maintenance

197. The service charge accounts for 2015 show a total sum of £13,586.64 in respect of repairs and maintenance (page 568), of which the Applicant's share would be £2,145.33. In this service charge year challenges were brought by the Applicant in respect of a number of items as follows.

9. Maintenance - Duffin

198. There is a charge of £940 made on 18 May 2014 which is stated to be in connection with external decorations (page 579). The Applicant's share of this charge is £148.43. This charge is included in his Scott Schedule (page 111) but no specific reference is made to it in his statement of case dealing with maintenance items for 2015 (page 129). The Tribunal was not satisfied that the Applicant had provided sufficient evidence to show that the works set out in the invoice were not chargeable and not reasonable. It concluded that no deduction should be made in respect of this invoice.

10. Maintenance – Leak Detection

199. Three charges were made on 2 September, 17 October and 24 October 2014 of £360, £567 and £360 respectively in respect of leak detection in the ceiling of flat B (pages 606, 618 and 619). The Applicant's share of these sums was £203.22. The Applicant's case was that the resulting repairs were carried out and their cost was covered under the insurance policy. He argued that the insurance policy under which the repairs were paid for also covered the costs of leak detection and so the costs incurred in doing this should not have been charged to the tenants. He relied on an e-mail from the insurance brokers

which stated that the insurance policy covered the reasonable costs incurred in tracing and accessing leaks (page 1,440).

200. The Respondent drew attention to the fact that the policy would, in any event, contain an excess charge which would need to be passed on, and also that the policy did not include duplicated charges.

201. Given the correspondence relied on by the Applicant the Tribunal was satisfied that charges for leak detection should have been included within the scope of the insurance claim and should not have been passed onto the tenants. It considered that the Respondent had provided insufficient evidence to show that some of the costs would not have been covered by virtue of an excess on the policy and, nor, indeed, had they identified what any such excess would have been. The Tribunal also considered it likely, in the absence of evidence to the contrary, that any excess would have been exhausted by the actual repair works carried out in any event. The Respondent had failed to provide sufficient evidence to show any other reason why these costs should not have been included within the insurance claim. To the extent that any such costs were not covered because they were duplicated charges, the Tribunal considered that it was not reasonable to incur duplicate charges in any event. It therefore concluded that the sum of £203.22 should be deducted from the sum payable by the Applicant in respect of maintenance charges.

11. Maintenance - Preservations

202. The Applicant also took issue with invoices dated 6 and 8 August 2014 raised by Preservations for a total of £2,831 (pages 600 and 601). His share of these was £447.17. The Tribunal noted that these had again been inaccurately transcribed into the Applicant's schedule, resulting in a slightly lower figure appearing in his Scott Schedule and statement of case (page 830).

203. The Applicant's case was that this was work which was not properly chargeable to him as it fell outside the scope of the maintenance charge in the lease and also that, in any event, the cost to him exceeded £250 and there had been no section 20 consultation (page 129).

204. The invoices themselves give no indication as to the works involved, merely referring to a quotation, which was not provided to the Tribunal.

205. The Respondent's case was that these invoices were in respect of work to deal with penetrating damp in the ceiling vault above the walking area in the basement of the property. Two sections of the vault were in poor condition and needed renewal and repairs were needed to the cavity drain membrane and the damp proof course. This was the same area – previously described as the utility room – which was the subject of an invoice from the same contractor in the 2010 service charge year and discussed above.

206. For the same reasons as given above, the Tribunal rejected the Applicant's argument that the works were not properly chargeable under the terms of the

lease. Whilst the area in question may not form part of the common parts, the Tribunal was not satisfied that the Applicant had shown that the works in question were not within the scope of the maintenance charge as he had not shown that they were not works to part of the building which had not been demised to anybody else.

207. However, the Respondent had not provided any evidence of any section 20 consultation and the Tribunal was satisfied that none had taken place. It then considered their application for dispensation. In doing so it considered the question of prejudice. It bore in mind that work had been undertaken to the same area only a few years previously and also that the Respondent had not in fact produced the quotation which they had obtained for the work. That being the case the Tribunal considered that, had the Applicant been given proper notice of the intention to carry out works, he may well have been in a position to raise arguments as to the nature of the works which were required to be undertaken and, therefore, it was satisfied that he was prejudiced in the sense that his ability to challenge unnecessary work had been removed. In all the circumstances, therefore, the Tribunal decided not to grant the Respondent a dispensation from the consultation requirements and that consequently the Applicant's contribution to this item should be capped at £250 as required by the Act.

208. It follows that the Applicant's contribution to the overall maintenance charge should be reduced by £197.01.

12. Maintenance – Lethaby Heating

209. As with the previous service charge years, the final disputed items relate to the maintenance of the heating system and concern the SL invoices. The Applicant's arguments in respect of these are at pages 147 and 148 and do not need to be set out in full below.

210. In his own statement of case the Applicant accepted that that part of the charge set out in the invoice at page 604 in respect of the annual service was reasonable. This part of the invoice amounts to £342. He objected to the invoice at page 576 which related to turning the system off. For the reasons given in relation to similar invoices in previous years the Tribunal concluded that this was a reasonable charge. The remaining invoices challenged were as follows;

    (a) Three charges made on 28 October 2014, 19 November 2014 and 19 February 2015 of £180 each (pages 620, 631 and 651). The first invoice was for switching the system on and venting radiators. The two others were for venting and repressurising the system in respect of the top floor flat. As in previous years, the Tribunal considered that a single charge for repressurising and venting the system at the beginning of the heating period after several months of inactivity was reasonable, but repeated visits were not. It therefore concluded that whilst the Applicant's share of the first of these invoices was reasonable and payable, his share of the other two, a total of £56.84, should be deducted from the overall sum for maintenance and repairs.

(b) A charge of £366 made on 26 August 2014 and forming the remainder of the invoice at page 604. The charge is for visits to deal with a lack of hot water and for dealing with the problem by manually starting the dilutant fan on two successive days. On the second a new fan was ordered. The Tribunal considered that the visits were reasonable in order to deal with an obviously failing part. It was not satisfied that there was sufficient evidence to show that the dilutant fan's failure was due to neglect and, in any event, parts will eventually fail. It was reasonable to attempt a manual restart on the first visit and reasonable after the second visit to order a new part. The Tribunal therefore concluded that the balance of the charge on this invoice was reasonable and payable.

(c) A charge of £1,616.40 made on 2 September 2014 for replacing the defective dilutant fan (page 605). The invoice shows that the fan itself cost £897 which the Tribunal considered a reasonable sum, with the balance of the charge being for installation and testing. The Applicant's share of this charge was £255.22 and he argued that the sum should be capped because there had been no statutory consultation. The Respondent accepted that there had been no consultation and again sought a dispensation. On this occasion the Tribunal was not satisfied that the Applicant had shown that he had been prejudiced in any way by a failure to consult. It was obvious that the fan needed replacing, as otherwise there would be no hot water, and although the Applicant suggested that cheaper dilutant fans could be obtained, insufficient evidence of any clear direct comparison was not provided. The Tribunal concluded that a dispensation should be granted unconditionally and also that the Applicant's share of this invoice was reasonable and payable.

(d) A charge of £478 made on 15 September 2014 (page 608) for inspecting a leaking radiator valve, turning off the system, draining it, fitting a replacement valve, refilling the system and venting the radiators. Although the Applicant argued that the total cost of the work was unreasonable, the Tribunal disagreed. It was reasonable to deal with a leaking valve and it accepted that in view of the size of the system it would take considerable time to drain down and refill it. It concluded that no deduction was warranted in respect of this invoice.

Maintenance Summary

211. Considering the repairs and maintenance aspect of the service charge as whole it follows from what is set out above that the Tribunal concluded that the amount payable by the Applicant in respect of repairs and maintenance which would otherwise have been £2,145.33 should be reduced by a total of £457.07 making the total sum payable £1,688.26.

<u>SERVICE CHARGE YEAR 2016</u>

1. Gas Bill

212. The sum sought for gas in this service charge year was £10,606.15 (page 658) of which the Applicant's share was £1,674.71.

213. The arguments raised in this year were the same as in the previous year.

214. The Tribunal took the same approach as in that year for the same reasons. This included applying a reduction of 15% to the overall charge. It therefore decided that the reasonable sum which was payable under this head for this year was £1,423.50.

2. Insurance

215. The sum sought this year for insurance was £1,948.61 (page 658) of which the Applicant's share was £307.69. The invoices are £521.53 for the engineering policy (page 668) and a half share (£1,427.08) of the invoice at page 710 for the buildings insurance.

216. The arguments put forward by the Applicant were the same as in the previous service charge year and the Tribunal rejected them for the same reasons. In addition, the buildings insurance was now being obtained elsewhere and so there was no longer any force at all in the argument that this had not been obtained at arms length. The Tribunal concluded that the sum of £307.69 demanded in this service charge year for insurance was both reasonable and payable.

3. Electricity

217. The cost of electricity in this service charge year was stated in the service charge accounts to be £807.39 (page 658) of which the Applicant's share is £127.49.

218. The arguments presented by the Applicant for this year were the same as with regard to the 2010 service charge year. The Tribunal took the same approach as in that year and concluded for the same reasons as before that the sum of £127.49, was reasonable and payable.

4. Cleaning

219. The cost of cleaning in this service charge year was £1,068 (page 658). This represents 11 monthly invoices from Rochford Cleaning at an increased rate of £90 and one at the previous rate of £78. Again, small sundry items included in the invoices appear not to have been included within the cleaning charge. The Tribunal considered that the increase was reasonable as there had been no change in the monthly charge since the 2011 service charge year.

220. For the same reasons as set out for the 2010 service charge year the Tribunal concluded that it was appropriate to deduct 10% from the cost of the cleaning alone. The Tribunal therefore deducted £106.80 from the overall sum making a revised total of £961.20 of which the Applicant's share is £151.77.

5. Entryphone

221. The sum set out in the service charge accounts in respect of the entryphone in this service charge year was £321.41 (page 658). The invoices are at pages 673 and 703. The charge is solely for rental. The applicant's share is £50.75.

222. The only arguments put forward by the Applicant in his statement of case (page 163) were those already considered by the Tribunal in respect of the previous years.

223. For the reasons given in respect of the 2010 service charge year the Tribunal concluded that the sum of £50.75 was reasonable and payable by the Applicant.

6. Management Fees

224. The Applicant's Scott Schedule (page 112) and his statement of case (page 167) state that the total sum in issue in this year was £1,890. However, the service charge accounts for the 2016 service charge year show a sum of £2,520 (page 658). This was the same as the four previous years. The difference is explained by the absence of one of the quarterly invoices for £630. However, in his statement of case the Applicant has also included an additional £630 in the figures for the 2017 service charge year. Taking the evidence as a whole the Tribunal was satisfied on the balance of probabilities that the total charge of £2,520 was made by the managing agents for their services in this service charge year. As in previous years the Applicant's share is £397.91.

225. The Applicant's case was the same as that put forward in the 2010 service charge year and the Tribunal adopted the same approach. It therefore concluded that the sum of £397.91 in respect of management fees was both reasonable and payable.

7. Fire Protection

226. As with the previous service charge year the disputed sums under this head appear under the heading of repairs and maintenance in the service charge accounts. Also as in previous years the Applicant takes issue with charges made by Force Fire (page 131). Their invoices are at pages 665, 676, 691 and 704 and total £858.90. This is different from the figure in the Applicant's statement of case, where he appears to have moved one of the invoices into the following service charge year. With regards to these invoices the arguments put forward by the Applicant were the same as in the previous service charge years. For the same reasons as given in respect of the 2011 service charge year the Tribunal concluded that the Applicant's share of the charge for these services was reasonable and payable and that there should be no deduction from the overall sum sought in respect of repairs and maintenance in this respect.

227. Again in this year the Applicant also challenged some other fire related items falling within the scope of the maintenance and repair charge, though his statement of case does not set out the nature of his challenge. The sums in question are £475 charged by HSA Fire Protection, and £2,125 charged by Assured (page 131).

228. With regard to the HSA charge, the invoice is at page 681 and it shows that the charge was for the servicing of fire extinguishers together with the supply of 3 new extinguishers, which explains why the cost was higher than in the

previous year as 2 additional extinguishers at a cost of over £100 each were provided when compared with the previous year. The Tribunal considered this work to be reasonable and the cost was also reasonable. There was, therefore, no basis for any reduction in the amount charged to the Applicant in this regard.

229. The Assured invoices are at pages 663, 674, and 699 and 700. The invoice at page 700 relates to the preventative maintenance of the fire alarm and emergency lighting system. For the reasons previously given, the Tribunal considered this to be a reasonable charge.

230. The remaining invoices relate to call out charges and corrective work to the fire alarm system. The Tribunal considered that it was reasonable for the Respondent to call out contractors to deal with reported faults with the fire alarm system and it was satisfied that the work done and the charges made were both reasonable.

231. It follows that the Tribunal was satisfied that there was no basis for reducing the Applicant's share of the overall charge for maintenance in respect of any item which he has categorised under his heading of fire protection works.

8. Maintenance – Letheby Heating

232. The service charge accounts for 2016 show a total sum of £9,843.45 in respect of repairs and maintenance (page 658), of which the Applicant's share would be £1,554.28. The main dispute under this head was again in respect of the SL invoices. The Applicant's arguments in respect of these are at pages 149 to 151 and do not need to be set out in full below.

233. In his own statement of case the Applicant accepted that the invoice at page 683 in respect of the annual service was reasonable and payable. The remaining invoices challenged were as follows;

(a) In this year the system was turned on in October 2015 (see page 689). Unlike in previous years it appears that it was not necessary to carry out venting and re-pressurising at this stage. However, there are charges of £180 each made on 14 January and 22 January 2016 for venting and pressurising the radiators in the top floor flat (pages 701 and 702). In the view of the Tribunal this was another example of the ongoing need to continually vent and pressure the system because of its poor functioning. It considered that these two charges were unreasonable and that the Applicant's share (£56.84) should be deducted from the overall maintenance charge.

(b) A charge of £180 on 4 March 2016 (page 711) for dealing with an airlock in the cold water system. In the Tribunal's view this was a reasonable charge. The works are unrelated to the central heating system and there was insufficient evidence to suggest that they were not reasonably required bearing in mind that there were other works going on in respect of the water supply which the Applicant acknowledges in his statement of case and which may well give rise to an airlock.

(c) A further charge of £90 on 4 March 2016 for venting radiators (page 712). As already explained, the Tribunal considered that repeated charges for venting the system were not reasonable and so it concluded that the Applicant's share of this charge (£14.21) should be deducted from the overall maintenance charge.

(d) A charge of £90 made on 23 March 2015 for dealing with a leaking radiator valve in flat E (page 659). The Tribunal considered that it was reasonable to deal with a report of a leak and that this charge was reasonable and payable.

(e) A charge of £360 made on 22 April 2015 for a number of items including clearing a blocked drain, accessing the tank room and cleaning the ball valve (page 664). The Tribunal concluded that these were reasonable items of work at a reasonable cost and that no deduction was warranted.

(f) A charge of £688.80 made on 18 May 2015 for replacing the radiator valve in flat E (page 669). The Applicant's arguments were similar to those advanced in respect of the charge made on 15 September 2014 and considered above. Although he argued that all the valves should have been replaced at the same time this would have been likely to present significant logistical problems with obtaining access and may well have resulted in considerable delay. Indeed, the invoice itself states that access to all the flats could not be obtained. The Tribunal concluded that no discount was warranted for this.

(g) A charge of £1,796.40 made on 16 October 2015 (page 689) for diagnosing a faulty dilutant fan and replacing it. This was, in effect, the same work that was charged for in replacing the dilutant fan in the previous year (page 604). There was no evidence that the Respondent or their contractors had taken any steps to seek a replacement of the faulty fan from the manufacturer, it having been fitted little more than a year earlier. The Tribunal considered it unreasonable for the Applicant, effectively, to be charged twice for the same work and so it decided that the Applicant's share of this charge (£283.65) should be deducted from the overall maintenance charge.

(h) A charge of £1,302 made on 4 February 2016 in respect of the replacement of radiator valves in flat F (page 706). Although the Applicant argues that this is a high charge for simply replacing 2 valves it is clear from the invoice that the work involved not only replacing the two valves (whereas the work was initially intended to be to replace just one) but also remaking the pipework under the floor, which would involve raising and re-fitting the floor as well as doing the necessary works to the pipes, together with draining the system. The Tribunal in its professional view considered the sum charged a reasonable commercial rate and so no reduction was justified.

9. Maintenance – KC Drains

234. At the end of his Scott Schedule for this service charge year the Applicant also challenged a charge made on 15 September 2015 by KC Drains for £117.60 (page 684). The invoice states that they attended the site in order to deal with a blocked waste pipe. The Applicant's case in respect of this was that the

charge was unreasonable because the contractors were unable to gain access, by which he appears to mean access to the building (page 130). However, it is clear from the invoice that the problem the contractor had was that they could not access the blocked pipe as the carpet and floor boards needed to be raised to cut access into the waste pipe. It is clear to the Tribunal that this invoice represents a reasonable call out to a contractor to diagnose a fault with a blocked drain and no reduction is appropriate.

Maintenance Summary

235. Considering the repairs and maintenance aspect of the service charge as whole it follows from what is set out above that the Tribunal concluded that the amount payable by the Applicant in respect of repairs and maintenance which would otherwise have been £1,554.28 should be reduced by a total of £354.70 making the total sum payable £1,199.58.

10. Water Tank Replacement

236. Included in the service charge accounts for 2016 is a charge of £16,055.80 in respect of the costs of replacing the water tank in the building, of which the Applicant's share is £2,535.21 (page 658).

237. The Applicant's case in respect of this charge is set out at page 155. In essence it is that the costs of this work should be capped at £250 because there was no proper consultation under section 20 of the Act.

238. It was accepted by the Respondent that there had not been a fully compliant consultation and an application was made to the Tribunal for a dispensation from the consultation requirements.

239. The Tribunal was satisfied that there was a need to replace the water tank. The photographs at pages 945 and 946 show that it is old and in poor condition. In a letter from the managing agents to all the tenants at page 928 dated 19 May 2015 it states that SL had been asked to inspect the cold water storage tank (page 928). They recommended that the tank should be replaced immediately. A summary of its condition is set out at page 941;

> "*The tank is old galvanized, with corrosion on sides and base, it does not have a proper lid, overflow filter or breather, the connection pipes do not have isolation valves, the tank is not insulated, I think is a health risk.*"

The Applicant did not dispute that the works were needed, indeed his case was that they should have been done earlier. The Tribunal concluded that the works were necessary and that it was reasonable to undertake them.

240. Although the letter at page 928 states that the urgency of the matter entitled the Respondent to by-pass the section 20 consultation requirements, no application was made to the Tribunal at that time for a dispensation. However, the letter and its enclosures also show that MSE Building Services Consultants ("MSE") were instructed to obtain tenders for the renewal of the water tank, and that two of the three contractors approached submitted tenders (page 929).

241. The Tribunal was satisfied that the tenants were notified on 19 May 2015 of the proposed works and that at that time they were also provided with the tender report. The Tribunal also noted that, whilst the letter at page 928 failed to comply with the consultation requirements, it expressly invited a response from the tenants, stating that it was hoped that they would agree that the works should be commenced as soon as possible and seeking confirmation that they may proceed.

242. It is clear that the Applicant then entered into correspondence with both the managing agents and MSE about these works, asking a number of detailed questions about the scope of the works and the obtaining of the tenders (pages 933 to 944) during the course of which he was also provided with specifications for the work to be undertaken (page 941).

243. The Tribunal considered the question of prejudice. It concluded that there was no prejudice to the Applicant in deciding to undertake the works without consultation as it was clear that the works needed doing. The Applicant has provided insufficient evidence to show that the scope of the works was in any way unreasonable.

244. When asked by the Tribunal how he had been prejudiced by a failure to consult the Applicant stated that if there had been a proper consultation he could have proposed an alternative contractor. However, despite having been provided with the specification being used by the landlord, the fact that he was invited by the letter of 19 May 2015 to express his views, and despite a long history of making suggestions to the Respondent about what works to do and how, he has provided no evidence to show that he took any steps at the time to obtain any alternative quotations. Although he complained in his oral evidence of having had no opportunity to ask questions about the work it is clear from the correspondence already referred to that he asked many questions of the managing agent and MSE about the scope of the work. To date he has not provided sufficient evidence to show that the cost charged for the works was unreasonable. The Tribunal was not satisfied that the Applicant had been prejudiced in either of the two ways contemplated in the case of Daejan.

245. Taking the evidence as a whole the Tribunal decided that it was appropriate to grant a dispensation under section 20ZA of the Act unconditionally. Further, the Tribunal was satisfied that the works done were reasonable and that the costs incurred were also reasonable. It follows that it was satisfied that the Applicant's share of £2,535.21 for this work was both reasonable and payable.

11. Lift

246. A further new charge in the 2016 service charge accounts was a sum of £32,787.60 for the modernisation of the lift (page 658) of which the Applicant's share was £5,177.16. The invoices are at pages 688, 690 and 707 and are all charges made by Patron Lifts.

247. The Applicant's case in relation to this charge is at page 156. He accepts that what appears to be a section 20 consultation was carried out. The Tribunal agreed. The Applicant did not argue that a notice of intent and a notice of estimates were not sent. The Tribunal was satisfied that a notice of intent was sent to the tenants on 13 February 2015 and that a notice of estimates was sent to them on 21 May 2015 (pages 1,752 and 1,753) and the Applicant did not argue to the contrary.

248. Three quotations were obtained, of which the cheapest was that from Patron Lifts (page 1,754). In fact, the total sum paid to Patron Lifts for the work (part of which was charged for in the following service charge year) was higher than the original tender. The increase is explained by the fact that once work started it became clear that a beam at the top of the building was heavily corroded and could no longer support the lift mechanism. The tenants were notified of two options, the cheaper of which was to leave the beam in place and to instal an hydraulic lift (pages 1,756 and 1,757), which is the option which was adopted.

249. In his statement of case the Applicant states that as the lowest of the three quotes the Patron tender can be classified as reasonable. He has submitted no evidence to show that the works which were undertaken were not reasonable nor that the costs of those works were not reasonable. Indeed, apart from his complaint that the lift should have been maintained in the past, it was difficult to ascertain the substance of the Applicant's case in respect of the cost of the lift replacement.

250. In the absence of evidence to the contrary, The Tribunal was satisfied that a proper consultation exercise was conducted, that the work undertaken was reasonable and that the costs of that work were reasonable.

251. Although the Respondent also argued that the Applicant had in fact agreed the costs of the lift in a letter dated 14 December 2000 and so was prohibited from challenging the charge in any event by virtue of section 27A(4)(a) of the Act, the Tribunal did not consider it necessary to consider that argument as it was, in any event, for the reasons given above, satisfied that the costs were both reasonable and payable.

SERVICE CHARGE YEAR 2017

252. The position as regards the service charge for this service charge year is complicated by the fact that the Applicant ceased to be a tenant of the property on 29 November 2016. Therefore, the period in respect of which the Applicant was liable for the cost of services is 1 April 2016 to 29 November 2016, a total of 242 days. Whilst in many cases the apportionment of charges for this year can be done simply by considering the date of the invoice, in others the charge will need to be calculated on a pro-rata basis. The Tribunal's task was not simplified by the lack of an actual demand notice for this year. The approach which appears to have been taken by the Respondent was simply to apply a pro-rata calculation in respect of all costs incurred in the service charge year

(page 118). However, at the hearing the parties agreed that the better approach was to consider the charges individually and determine whether they were incurred during or related to the period that the Applicant was the tenant. The Tribunal confined itself to considering the disputed charges raised in the Applicant's Scott Schedule and took the approach that other charges made in this service charge year, as in all previous years, were agreed. At pages 834 and 835 the Applicant has scheduled the invoices in respect of this service charge year in chronological order. The invoices themselves are at pages 716 to 810.

1. Gas Bill

253. The gas bills for the period in question are at pages 729 to 732, pages 747 to 750 and 774 to 777. The bill period for the last of these ended on 22 November 2016 which the Tribunal considered was close enough to the actual end point of the tenancy so as not to require any further pro-rate calculations. The total of these invoices is £4,170.95 of which the Applicant's share is £658.59. This is the sum in the Applicant's Scott Schedule (page 114).

254. The arguments raised in this year were the same as in the previous year.

255. The Tribunal took the same approach as in that year for the same reasons. This included applying a reduction of 15% to the overall charge. It therefore decided that the reasonable sum which was payable under this head for this year was £559.80.

2. Insurance

256. The sum in the service charge accounts for this year for insurance was £5,481.95 (page 715). This related solely to the building insurance and was a half share of the bill at page 756. From this it is clear that the period of cover began on 3 August 2016. The period until the end of the Applicant's tenancy is, therefore, 118 days. Performing a pro-rata calculation produces a figure for insurance cover for this period of £5,481.95 x 118/365 which amounts to £1,772.25 of which the Applicant's share is £279.84.

257. The arguments put forward by the Applicant were the same as in the previous service charge year and the Tribunal rejected them for the same reasons. The Tribunal concluded that the entirety of the Applicant's share of the insurance cost for the remaining period of his tenancy was both reasonable and payable, and that this sum was £279.84

3. Electricity

258. At the beginning of the service charge year the electricity account was in credit (page 738), with a sum being due for the period ending 16 August 2016 of £132.31. A further charge of £159.78 was made for the period until 14 November 2016 (page 766). As this bill and the one which followed were based on estimates only, the Tribunal did not consider it necessary to calculate a precise pro-rata amount for the remaining 15 days of the period and that using these two invoices alone gave a reasonable indication of the total electricity usage in the relevant period. It follows that the total charge was

£292.09, of which the Applicant's share was £46.12 – again this was the figure in the Applicant's Scott Schedule.

259. The arguments presented by the Applicant for this year were no different from previous years and so the Tribunal concluded for the same reasons as before that the sum of £46.12 was both reasonable and payable.

4. Cleaning

260. During the period in question (8 months) the cleaning contractor Rochford continued to charge a monthly fee of £90 for cleaning, totalling £720. None of the invoices for these 8 months included any additional amounts. Adopting the same approach as in previous years the Tribunal concluded that a 10% deduction was appropriate, meaning that the total of £720 should be reduced to £648, of which the Applicant's share is £102.32 which the Tribunal decided was reasonable and payable.

5. Entryphone

261. The sum set out in the service charge accounts in respect of the entryphone in this service charge year was £329.62 (page 715). As in previous years this was solely for rental. The invoices are at pages 735 and 786. The first of these shows that the rental period is from 1 July 2016 to 31 December 2016 so roughly one month of this period is outside the relevant period and clearly the second invoice is not relevant at all. The Tribunal calculated the monthly rental rate for the first 6 month period as £27.17. Deducting one month's rental produced a figure of £163.01 - £27.17 = £135.84. The Applicant's share of this amount is £21.45. In all other respects the arguments were the same as in previous years and the Tribunal concluded that the sum of £21.45 was reasonable and payable.

6. Management Fees

262. Once again there was no change in the management fees, which are charged at a standard quarterly rate. The total for the year was £2,520 (page 715), making the monthly rate £210. The period in question was 8 months, making a total amount for that period of £1,680. Of this the Applicant's share is £265.27. In all other respects the arguments were the same as in previous years and the Tribunal concluded that the sum of £265.27 was reasonable and payable in respect of management fees.

7. Fire Protection

263. As with the previous service charge year the disputed sums under this head appear under the heading of repairs and maintenance in the service charge accounts. Also, as in previous years, the Applicant takes issue with charges made by Force Fire (page 131). As previously explained these charges were for testing of the fire alarm and emergency lighting systems. The invoices are for contract fees agreed for annual periods beginning on 1 August. The invoice at page 718 is for the final quarter of the previous contract and that at page 737 is for the first quarter of the period from 1 August 2016. It follows that these both fall within the period in question and should be taken into account – the total for these two periods is £437.40. A further month of the period falls

within the following quarter. The quarterly charge is £221.40, therefore the monthly charge is £73.80. Adding this to the previous figure gives a total of £511.20, of which the Applicant's share is £80.72. The Tribunal was satisfied that this was a reasonable charge and was payable by the Applicant. The balance of the sums paid to this contractor were not, though, payable as they were in respect of services provided outside the period of the tenancy.

264. Again in this year the Applicant also challenged some other fire related items falling within the scope of the maintenance and repair charge, though his statement of case does not set out the nature of his challenge. The sums in question are £486.50 charged by HSA Fire Protection, and £1,155.60 charged by Assured (page 131).

265. With regard to the HSA charge, the invoice is at pages 745 and 746. The amount is, in fact, £486.57. The invoice shows that it was dated 24 August 2016 for works carried out during the period in question, together with the provision of 3 more new extinguishers. It is clear, therefore, that the whole of this charge falls within the relevant period. The Applicant's share is £76.83 and, for the same reasons as given in the previous service charge year, the Tribunal was satisfied that this sum was reasonable and payable.

266. The Assured invoices are at pages 733, 784 and 789. It is clear that only the first of these, which refers to a call out in June 2016, is in respect of services provided during the period in question. The others are not. The first invoice is for £340.80, of which the Applicant's share is £53.81. For the reasons previously given in respect of similar charges, the Tribunal considered this to be a reasonable and payable charge.

8. Maintenance – Letheby Heating

267. Once again, the Applicant raised challenges to a number of SL invoices (pages 152 to 154) which the Tribunal considered as follows.

268. In his own statement of case the Applicant accepted that the invoice at page 744, of which his share is £55.89, was reasonable. He objected to the invoices at pages 720 and 759 which were for switching the system off and on again, which, for the same reasons as given previously, the Tribunal considered reasonable. His share of these amounts to £29.37 and this sum is payable by him. The remaining invoices challenged were as follows;

(a) In this year the system was turned on in October 2016 (see page 759). Unlike in previous years it appears that it was not necessary to carry out venting and re-pressurising at this stage. However, there are charges of £180 each made on 5 April, and 25 April 2016 for backfilling, venting and pressurising the radiators in the top floor flat (pages 716, and 717). In the view of the Tribunal this was another example of the ongoing need to continually vent and pressure the system because of its poor functioning. It considered that these two charges were unreasonable and that the Applicant's share (£56.84) was not payable.

(b) A charge of £192 on 3 November 2016 (page 765) for investigating reports of a leak in the top floor flat. The Tribunal considered this to be reasonable and the Applicant's share (£30.32) payable.

(c) A charge of £1,152 made on 4 November 2016 for replacing the defective radiator valves in flat A (page 764). The Tribunal considered the arguments raised here were the same as in respect of the replacement of valves in other flats and concluded that the work and the sums charged were both reasonable. The Applicant's share of £181.90 is reasonable and payable.

(d) A charge of £90 made on 8 November 2016 for venting the radiators in flat A (page 772). The Tribunal considered that this was an unreasonable charge as the radiators had been attended to only a few days before and was another example of repeated work being required because of the poor state of the system. The Applicant's share of £14.21 is not payable.

(e) A charge of £189.60 made on 8 November 2016 for replacing a defective insulation panel in the combustion chamber (page 773). Although the Applicant appears to argue that this should not have been necessary because similar work was charged for in a previous period, that was in the 2010 service charge year and related to the whole of the combustion chamber. The Tribunal considered that now 6 years later it was reasonable for an insulating panel to need replacement. It concluded that the Applicant's share of £29.94 was both reasonable and payable.

(f) The remaining SL invoices at pages 779, 797, 798, 799, and 806 are all in respect of works undertaken after the Applicant ceased to be a tenant and no charges are payable in respect of them.

Maintenance Summary

269. In this service charge year it is not possible simply to identify the total charged for repairs and maintenance and deduct any sums not payable from the Applicant's share, because of the fact that only part of the year is covered. The invoices relied on by the Respondent are found between pages 716 and 810. Bearing in mind the Tribunal's conclusions set out above it decided that the Applicant's share of the following invoices relating to repairs and maintenance (other than those relating to the lift renewal dealt with separately) was reasonable and payable as follows;

Page	Invoice Sum	Applicant's share
716	£180	nil (see above)
717	£180	nil (see above)
718	£216	£34.11 (see under fire protection)
720	£90	£14.21 (SL invoice)
728	£60	£9.47 – no issue raised
733	£340.80	£53.81 (see under fire protection)
735	£163.01	£21.45 (see under entryphone)
737	£221.40	£34.96 (see under fire protection)
744	£354	£55.89 (SL accepted by Applicant)
745-6	£486.57	£76.83 (see under fire protection)
759	£96	£15.16 (SL invoice)

760	£210	£33.16 no issue raised
761	£190	£30 no issue raised
762	£221.40	£11.65 (one month - under fire protection)
764	£1,152	£181.90 (SL invoice)
765	£192	£30.32 (SL invoice)
772	£90	nil (see above)
773	£189.60	£29.94 (SL invoice)
TOTAL		£632.86

270. This is the total sum which is reasonable and payable in respect of repairs and maintenance for this service charge year. The remaining invoices relating to repair and maintenance which are not considered elsewhere are in respect of services provided outside the period in question and so no charge is payable in respect of them.

9. Lift

271. In this service charge year a further sum of £25,714 was charged in respect of the lift modernisation. The Patron Lifts invoices are at pages 721 and 751, both are for work done before the Applicant left the property, and they total £21,786. It is not clear how the balance of £3,928 is made up, though the explanation would seem to be that MSE's fees of £3,866 for managing the lift project have been included, making a total of £25,652. The remaining £62 appears to derive from an arithmetical error in MSE's second application for funds (page 754) where the balance owing should have been stated as £2,001 and not £2,063 – a difference of £62.

272. In view of the conclusions set out in respect of the previous service charge year, the Tribunal was satisfied that the Applicant's share of the £21,786 paid to Patron Lifts in this service charge year – which amounts to £3,440.01 – the sum also referred to by the Applicant in his Scott Schedule (page 114) is reasonable and payable.

10. MSE Fees

273. In his Scott Schedule the Applicant takes issue with fees charged by MSE of which he states his share amounts to £871.77 (page 115). There are invoices presented by MSE at pages 727 and 754 in respect of management fees in respect of the lift project totalling £3,866. They have been calculated as 8.5% of the charge of £45,478 made by Patron Lifts, though the sum paid to Patron Lifts appears to exceed that amount. The Applicant's share of this amount is £610.44. The Applicant's case was that it was not appropriate for MSE's fees to be calculated in the way they were (page 156).

274. The Tribunal was satisfied that it is normal practice for building consultants such as MSE to charge their fee on a percentage basis and that the sum charged was reasonable. It also noted that their projected fees were included in the information provided to tenants during the consultation process (pages 1,752 to 1,755), where the sum is roughly 8.5% of the contract sum excluding VAT.

275. Taking the evidence as a whole the Tribunal was satisfied that the sum of £610.44 in relation to MSE's fees in relation to the lift project were reasonable and payable and should be included under the heading of lift renewal, making the total sum payable by him under that head £4,050.45.

276. Also in the invoices provided by the Respondent are charges made by MSE of £656 (page 725) and £437 (page 726) in respect of the project dealing with the replacement of the water tank. The total sum for this was £1,093 and this was again calculated on the basis of a percentage of the contract cost. For the same reasons as applied in relation to their costs in respect of the lift project, the Tribunal concluded that the Applicant's share of these fees (£172.58) was both reasonable and payable.

277. There is a final invoice from MSE at page 810 for £500 in respect of the preparation of a survey and report in respect of the electricity supply. This is referred to in a further section 20 notice of intent dated 16 March 2016 in respect of proposed works to the main electrical intake and rising mains at the premises (page 1,758). From this it is clear that the inspection and report were prepared by the time this letter was sent and so was within the period during which the Applicant was a tenant. The Tribunal was satisfied that it was reasonable to commission this report as the letter refers to problems with a power outage in flat A. It was also satisfied that the sum charged was reasonable in the light of the fact that the letter indicates that the likely proposed works will cost in the region of £35,000 to £40,000. It therefore concluded that the Applicant's share (£78.95) was both reasonable and payable.

278. There was no separate heading in the service charge accounts for the MSE fees relating to the water tank and the electricity survey so the Tribunal concluded that these should be included under the heading of repairs and maintenance, making the total sum payable under that heading for this year £884.39.

Applications under s.20C of the 1985 Act and Para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, Fees and Costs

279. In his application the Applicant applied for an order under section 20C of the 1985 Act ("section 20C") and for an order under para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("para 5A").

280. As explained above, at the end of the hearing into the substantive aspects of the Applicant's case the Tribunal turned to consider these applications. The Tribunal raised with Mr. Arnold the question of whether or not the Respondent's costs could be recovered either as a service charge or an administration fee given the fact that he was no longer a tenant.

281. Mr. Arnold on behalf of the Respondent accepted that there was now no possibility of the Respondent's costs being recovered in a service charge that would be payable by the Applicant as he was no longer a tenant. There was no application from any other tenant and the Tribunal concluded that it was

therefore unnecessary to make any order under section 20C and so decided not to make such an order. However, Mr. Arnold asked for permission to make written submissions on the question of whether or not an order should be made under para 5A and also indicated that he may make an application for costs under the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules").

282. The Tribunal granted permission for the Respondent to make written submissions on those matters and granted the Applicant permission to respond. The Tribunal made it clear that the purpose of those submissions was limited to the questions of costs and fees only and that these submissions were not to be used to adduce further evidence and/or argument about the substantive issues in dispute.

283. The Tribunal received submissions from the Respondent on 5 May 2021. These conceded that the lease did not entitle the Respondent to recover administration charges from the Applicant (para 6). The Tribunal therefore concluded that as an order under para 5A was not necessary none should be made.

284. In their submissions the Respondent also invited the Tribunal to make an order for costs under rule 13(1)(b) of the Rules on the basis of unreasonable conduct by the Applicant. It was argued that the Applicant's unreasonable conduct consisted of the following;
(a) not making a contemporaneous challenge to the service charges;
(b) challenging almost every constituent element of the service charge;
(c) not focussing on particular issues;
(d) failing to state, as directed, how much he was prepared to pay for each item in dispute, thereby depriving the Respondent of the opportunity of considering settlement options;
(e) maintaining his challenge throughout the hearing, though his evidence evolved during the course of it;
(f) failing to provide independent support for his case;
(g) pursuing hopeless arguments in respect of section 20 consultations in relation to insurance;
(h) pursuing arguments in relation to conflicts of interest in relation to insurance;
(i) pursuing weak arguments in relation to terrorism cover;
(j) asking to see copies of inspection reports;
(k) producing an unwieldy bundle which was not user friendly;
(l) challenging the costs of the lift renewal when he had previously agreed these

These together, it is argued, amount to conduct which no reasonable person would have demonstrated and so was unreasonable conduct.

285. The Respondent's submissions reminded the Tribunal of the leading case of Willow Court Management Co (1985) Ltd v Alexander [2016] UKUT 0290 (LC). In that case the Upper Tribunal quoted with approval the

following definition from Ridehalgh v Horsefield [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G;

> "*Unreasonable" ... means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable*"

286. The Upper Tribunal in Willow Court went on to say:

> "*An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in Ridehalgh at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?*
>
> *We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense*"

287. In his submissions on behalf of the Respondent Mr. Arnold accepted that the first task of the Tribunal is to determine whether or not there has been unreasonable conduct. He also accepted that a lack of legal representation is also relevant to the question of whether or not conduct is unreasonable.

288. Whilst the Tribunal considered that had the case put forward by the Applicant been presented by a represented party it may have reached a different conclusion, it was not satisfied that the Respondent had crossed the very high bar of establishing that the Applicant was unreasonable in the sense of

displaying conduct which was designed to harass, rather than being merely over-enthusiastic or inefficient.

289. In reaching this conclusion it found that many of the arguments presented by the Respondent in this respect carried little weight. In relation to the points set out above the Tribunal concluded as follows;

(a) there is no obligation to make a contemporaneous challenge to a service charge and a failure to do so hardly amounts to unreasonable conduct. If the contrary were true then the Tribunal would be detecting unreasonable conduct in a large number of its cases;

(b) it is true that the Applicant challenged most items of the service charge. That again does not of itself amount to unreasonable behaviour. The decision set out above shows that in many instances he had a valid argument to put forward – as evidenced by the number of ad hoc applications the Respondent was forced to make for dispensations from consultation requirements – and in some he was successful, at least in part;

(c) in many cases the Applicant was putting forward a general argument – for instance in relation to the maintenance of the heating system, the gas bill, the electricity bill etc. As the decision above makes clear, although there was a challenge to each of 8 years' charges, the general argument was largely the same in each case. Whilst lengthy, the Applicant's statement of case did identify the issues in question;

(d) whilst the Applicant did not provide the figures he said should be payable, this is a requirement which is often honoured in the breach especially by unrepresented parties. In any event the Tribunal does not accept that this failure prevented the Respondent from seeking to settle the proceedings. There was nothing preventing them from making an offer and seeing what the Applicant's response was, but there is nothing to suggest that this happened;

(e) often the evidence of parties changes during the course of a hearing. Whilst the Applicant maintained some arguments which were on the face of it weak, the Tribunal did not consider this to be unreasonable;

(f) failing to provide independent evidence is hardly a basis for a finding of unreasonableness, otherwise such findings would be numerous;

(g) in the Tribunal's experience it is occasionally argued by litigants in person that insurance which is maintained with the same provider over many years is a qualifying long term agreement. Whilst the Tribunal would not expect a represented party to make such an argument without more, this is because one expects such a party to know the law well. Such an argument from a litigant in person takes very little time to deal with and the making of it is not of itself unreasonable and, as in this case, can be dealt with quickly by a simple explanation of the law;

(h) this argument was indeed pursued and was perhaps the Applicant's worst point. However, it again took little time to deal with and the Tribunal is not satisfied that by raising it the Applicant was acting in a way which was designed to harass;

(i) the argument in relation to terrorism cover was a proper argument to pursue and the Tribunal is aware that some Tribunals may take a different approach to that taken in this case;

(j) it is not unreasonable to ask to see copies of inspection reports when it becomes clear that these have been prepared. Indeed, if anything the Tribunal considered that the Respondent had not helped the Tribunal in its understanding of the case by not including such things as the survey report into the water tank in the bundle;

(k) the Tribunal agrees that the bundle was unwieldy and was not user friendly and acknowledges that the directions required the bundle to be prepared by the Applicant. However, that does not absolve the Respondent, who had the benefit of being represented, from any responsibility in relation to the presentation of the documents in this case. There is a duty on all parties under rule 3(4)(a) of the Rules to help the Tribunal further the overriding objective. The Respondent failed to provide a clear statement of case which actually addressed the issues raised by the Applicant in his detailed statement of case at pages 126 to 168. At the end of the first day of the hearing the Tribunal asked the Respondent to prepare a schedule which clearly identified by page number the various invoices relied on by them in respect of each of the items charged for. This was simply not done but, rather, the invoices were simply grouped together by subject matter and re-presented. In addition, some invoices were simply not provided.

(l) this point is dependent on the argument presented by the Respondent in relation to section 27A(4)(a) referred to above. That argument was in no sense overwhelming and depended on the Tribunal adopting a particular construction of the letter relied on.

290. The Tribunal is satisfied that the matters raised are not sufficient to lead to the conclusion that the Applicant acted unreasonably in bringing and pursuing this case within the meaning of rule 13. It is not possible to go so far as to describe his behaviour as vexatious or designed to harass the Respondent rather than advance the resolution of the case. The Applicant is guilty of over-enthusiasm rather than malice. In reaching this conclusion the Tribunal also bore in mind that the Applicant had been successful in respect of a number of his challenges and, in other instances, had only failed when the Respondent was forced to make an impromptu application for a dispensation from the consultation requirements.

291. In reaching the decision above it was not necessary to consider the Applicant's detailed arguments in reply, which were received on 14 May 2021. This reply also includes the Applicant's own rule 13 costs application, together with arguments and supporting documentation in relation to the substantive issues. The Tribunal took no account of the latter as they were outside the scope of the directed submissions.

292. The Applicant's rule 13 application highlights a number of matters which the Applicant argues amount to unreasonable conduct by the Respondent and/or their managing agents in their dealings with the Applicant over time and

before the proceedings were commenced. Rule 13, however, is concerned with the conduct of proceedings, not with conduct generally. The Tribunal is satisfied that there is nothing raised in this application which amounts to unreasonable conduct in choosing to defend the application – they were largely successful in doing so – or in the manner of doing so.

293. For the reasons given above the Tribunal decided not to make any order in favour of either party under rule 13(1)(b) of the Rules.

294. There was no application by the Applicant for the re-imbursement of his fee under rule 13(2) and in its discretion, having regard to the relative success achieved by the parties, it decided not to make such an order of its own motion.

Name:	Tribunal Judge S.J. Walker	**Date:**	6 August 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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

- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), 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.

<u>Section 20</u>

(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.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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).

Schedule 11, paragraph 5A

5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceedings.