



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case References** : **BIR/00FN/LIS/2018/0055  
BIR/00FN/LLD/2019/0001  
BIR/00FN/ /LLC/2019/0001**

**Court Reference** : **E49YJ188 (Staines County Court)**

**Subject Property** : **Apartment 101  
St Georges Mill  
11 Humberstone Road  
Leicester LE5 3GW**

**Applicant/Claimant** : **Blue Property Investment UK Limited**

**Representative** : **Blue Property Management UK Limited**

**Respondent/  
Defendant** : **Catrina Teresa Clulow**

**Type of Application** : **(1) Liability to pay service charges  
(2) Liability to pay administration charges  
(3) Liability to pay interest  
(4) Liability to pay costs  
(All on transfer from the County Court)**

**Date of Hearing** : **9 and 10 January 2019**

**Tribunal Members** : **Deputy Regional Judge Nigel Gravells  
Graham Freckelton FRICS**

**Date of Decision** : **31 January 2019**

---

**DECISION**

---

## **Introduction**

- 1 This case concerns a service charge dispute in respect of the property at Apartment 101, St Georges Mill, Humberstone Road, Leicester LE5 3GW. The freehold interest in the property is owned by the Applicant, Blue Property Investment UK Limited; the leasehold interest in the property is owned by the Respondent, Catrina Teresa Clulow.
- 2 The Applicant alleges that service charges in respect of the property going back to 2012 have been demanded but remain unpaid. The dispute also includes claims for administration charges, interest on unpaid ground rent and costs.
- 3 The case commenced in the County Court in March 2018 and the Respondent disputed all claims and made a counterclaim. The case was subsequently transferred to the First-tier Tribunal for determination by a First-tier Tribunal Judge sitting as a Judge of the County Court exercising the jurisdiction of a District Judge (under section 5(2)(t) and (u) of the County Court Act 1984, as amended by Schedule 9 to the Crime and Courts Act 2013) and, where appropriate, a Valuer Member of the Tribunal, in accordance with the Civil Justice Council flexible deployment pilot scheme.
- 4 The procedure adopted follows the guidance of the Upper Tribunal (Lands Chamber) set out in *Avon Ground Rents Limited v Child* [2018] UKUT 0204 (LC).
- 5 Issues relating to service charges and administration charges were determined by the First-tier Tribunal (Deputy Regional Judge Nigel Gravells and Graham Freckelton FRICS ('the Tribunal')). Issues relating to contractual costs and interest were determined by Judge Gravells, sitting as a Judge of the County Court ('the Court').
- 6 Since the case is now before the First-tier Tribunal, for the purposes of this Decision the Claimant in the County Court action is referred to as 'the Applicant' and the Defendant is referred to as 'the Respondent'.

## **Background**

- 7 The subject property is an apartment on the first floor of a converted mill building (St Georges Mill) in the centre of Leicester. The building is divided vertically into three 'phases' or sections, each with its own ground floor entrance; and only on the fourth floor is there internal access across all three phases of the building. The building comprises 96 apartments. The leases of some of the apartments (but not that of the subject property) include a parking space in the car park. There are also two commercial units on the ground floor of the building.
- 8 The Applicant is the freeholder of the building. Its title is registered at the Land Registry under title number LT314519.
- 9 The Respondent is the leaseholder of the subject property, holding under a lease dated 9 January 2006 for a 125-year term from 1 January 2005. Her title is registered at the Land Registry under title number LT388804.
- 10 By clause 6 of, and the Fifth and Sixth Schedules to, the lease, the Applicant covenants to insure the subject property and to carry out repairs and maintenance and to provide associated services: see paragraph 29 below. By clause 4 of, and paragraphs 28 and 29 of the Fourth Schedule to, the lease,

the Respondent covenants to pay the tenant's proportion of the costs incurred by the Applicant in providing those services (specified in clause 6 of the Particulars of the lease as 0.73 per cent of the 'development service costs'). Payment is made, first, by an interim payment in advance and, second, by a balancing payment (or credit) following the preparation of the accounts for the relevant service charge year.

- 11 By clause 4 of, and paragraph 1 of the Fourth Schedule to, the lease, the Respondent covenants to pay the annual (ground) rent (specified in clause 8 of the Particulars of the lease as £150.00).
- 12 The Respondent became registered proprietor of the lease of the subject property on 23 January 2012. As part of the acquisition transaction she paid the interim service charge demand of £952.18 for the service charge year 2012. However, since then she has made no further interim or balancing service charge payments.
- 13 From the time of acquisition there was a great deal of correspondence between the parties in which the Respondent sought clarification from the Applicant of a wide range of service charge issues and made complaints about the provision of services at St Georges Mill; but she remained unsatisfied with the (lack of) responses.
- 14 Both parties instructed solicitors but there was no resolution of their ongoing dispute.
- 15 In June 2017 the Respondent offer to pay a sum in full and final settlement of all claims between the parties. (The letter was headed 'without prejudice save as to costs' but it was included in the hearing bundles submitted by both parties. Nonetheless, the Tribunal has ignored that letter in its determination of the claim for service charges and administration charges.) The Applicant did not respond to the Respondent's offer.
- 16 In November 2017 the Applicant instructed Leasehold Debt Recovery to pursue the alleged arrears. Leasehold Debt Recovery wrote to the Respondent on seven occasions during the period November 2017 to February 2018; but the Respondent made no further payments.
- 17 On 21 March 2018 the Applicant commenced a County Court action against the Respondent to recover alleged unpaid service charges (including insurance) of £8571.35, administration charges of £982.00 and interest of £892.93. The Applicant also claimed court fees of £522.31 and contractual costs.
- 18 On 20 April 2018 the Respondent indicated that she intended to defend all parts of the claim. She also indicated that she wished to make a counterclaim.
- 19 By Order dated 3 September 2018, pursuant to section 176A of, and paragraph 3 of Schedule 12 to, the 2002 Act, District Judge McColloch transferred the County Court claim to the First-tier Tribunal (Property Chamber) for determination.
- 20 Subject to paragraph 5 above, the Tribunal proceeded to deal with all the issues in dispute between the parties.

- 21 With a view to clarifying the matters in dispute the Tribunal issued detailed Directions on 10 September 2018. The deadlines for the submission of documentation were extended by revised Directions issued on 15 November 2018.
- 22 On 14 December 2018 the Applicant's claim for contractual costs was quantified at £10,738.64.
- 23 On 4 January 2019 the Respondent made applications under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

### **Inspection and hearing**

- 24 The Tribunal inspected the St Georges Mill development on 9 January 2019. Present at the inspection were (i) Mr M Olley, Ms I Lazinskaite, Mr M Phillips and Mr S Marlow, all of Blue Property Management UK Limited, and Mr A Beaumont, of Counsel, representing the Applicant, and (ii) Ms Clulow.
- 25 A two-day hearing was held at Leicester Employment Tribunal on 9 and 10 January 2019. The same persons were present at the hearing.

### **Service charges**

#### Statutory framework

- 26 Section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'), so far as material, provides –
  - (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.
- 27 Sections 18 and 19 of the 1985 Act provide –
  - 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.

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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(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.

### Service charge demands

28 The unpaid service charge demands for the relevant years are as follows –

	Total service charge costs	Respondent's interim payment (0.7330%*)	Respondent's balancing charge (0.7330%*)	Respondent's total payment (0.7330%*)
2012	194,928		436.64	436.64
2013	198,910	1128.00	299.31	1427.31
2014	179,720	1001.00	226.15	1227.15
2015	195,201	1364.00	00.00	1364.00
2016	180,667	1249.00	17.26	1266.26
2017	217,916	1313.00	145.99	1458.99
2018		1391.00		1391.00
				<b>8571.35</b>

\* To reflect contributions made in respect of the commercial units on the ground floor of St Georges Mill, the Respondent was charged 0.6648 per cent of the buildings insurance premium (from 2014), insurance excess (from 2017), window cleaning costs (from 2015) and roof repair costs (2017)

### Heads of expenditure and challenges

29 The heads of expenditure challenged by the Respondent (other than in respect of her percentage contribution: see paragraphs 35-43 below) are indicated (x) in the table below –

Head of expenditure	2012	2013	2014	2015	2016	2017
Buildings insurance			x	x	x	
Accountancy fees	x	x	x	x	x	x
Cleaning/caretaking	x	-	-	-	-	-
Management charges	x	x	x	x	x	x

Repairs and maintenance	X	X	X	X	X	X
Electricity	X	X	X	X	X	X
Window cleaning	X	X	X	X	X	X
Sundries	X	X				
Fire risk assessment	X	X	X	X		
Health and safety risk assessment	X	X	X	X		X
Bank charges and interest	X	X	X			
Lift telephone	X	X	X	X		
Lift maintenance		X				
Caretaker office rent		X				
Insurance excess	X	X	X	X	X	X
CCTV/Telephone/Broadband		X	X	X	X	X
Cleaning	-	X	X	X	X	X
Concierge/reception service	-	X	X	X	X	X
Grounds maintenance	-			-	-	-
Lift insurance	-					
Alarms and emergency lighting	-					
Car park maintenance	-	X	X	X	X	X
Car park electricity	-	X	X	X	X	X
Legal/professional fees	-	X	X			X
Carpet replacement	-	-	-		-	-
Land Registry fees	-	-	-	X	X	X
Fire alarm maintenance	-	-	-	-		
Painting reserve	-	-	-	-	-	

30 The dispute in relation to the 2018 service charge year is considered separately: see paragraphs 238-240 below.

Reasonableness and payability of service charges: preliminary observations

31 In making its determinations the Tribunal took into account, so far as relevant, all written representations of the parties, together with the oral evidence and arguments advanced at the hearing.

32 It is appropriate to note at the outset that the Tribunal was faced with significant difficulties in determining many of the matters in dispute. On the one hand, some of the Respondent’s challenges were unparticularized and/or unsupported by hard evidence. On the other hand, it was apparent that the Respondent had analysed very closely the service charge accounts and supporting invoices and she raised a significant number of pertinent questions. Many of the invoices included in the Applicant’s bundle were unclear – particularly but not exclusively those from Blue Property Maintenance UK Limited relating to repairs and maintenance; and it is hard to believe that they would not have been queried if the services had been provided by an unconnected contractor rather than by a closely-related company in the Blue Property organisation. The Blue Property personnel who attended the hearing were unable to answer many of the questions from the Respondent and the Tribunal. As Mr Beaumont submitted, that inability to answer questions does not by itself mean that the costs in question were not incurred or that the Applicant is not entitled to recover those costs. However, it is a factor to be weighed in assessing the balance of probabilities.

- 33 More generally, it is difficult to avoid the conclusion that the Applicant seems to take every opportunity to add costs to the service charge; and the internal structure of the Blue Property organisation means that there is little incentive to minimise those costs.
- 34 In order to address the large number of challenges, it is convenient to deal with a number of preliminary issues before dealing with the specific heads of expenditure.

Preliminary issue (1): the Respondent's proportion of the service charge

- 35 As noted above, the lease requires the Respondent to pay 0.73 per cent of the costs incurred by the Applicant in providing the 'development services'.
- 36 Leaving aside the meaning of 'development services' (a question discussed below: see paragraphs 44-57), the Respondent objected to the application of a proportion of 0.733 per cent to calculate her contribution.
- 37 The Applicant explained that the percentages applied to the apartments reflected the respective floor areas of the apartments, that the figure included in clause 6 of the Particulars of the lease was rounded to two decimal places and that those rounded percentages for all the apartments in the building totalled 100.08 per cent. The Applicant had therefore decided to recalculate the percentages to four decimal places so that the percentages totalled exactly 100 per cent. The result was that while the percentages for some apartments were decreased, the percentages for other apartments (including the subject property) were increased.
- 38 The Applicant relied upon paragraph 7 of the Sixth Schedule to the lease, which states –
- If it should at any time become necessary or equitable to do so the Lessor may recalculate on an equitable and reasonable basis the Service Charge percentages appropriate to all Flats ... and will notify the lessees accordingly and in such case as from the date specified in the notice the new proportions notified to the Lessee in respect of the Property shall be substituted for those set out in clause [6] of the Particulars and the new percentages notified to the other lessees shall be substituted for those set out in the Particulars of their leases.
- 39 The Tribunal raised two potential problems with the Applicant's reliance on that paragraph. First, the pre-condition for recalculation ('if it should at any time become necessary or equitable') would seem to presuppose a post-lease development that results in previously 'equitable and reasonable' percentages becoming inequitable and unreasonable. This might occur where, for example, the building is reconfigured so as to increase or decrease the number or size of apartments. There has been no such post-lease development in the present case.
- 40 Secondly, paragraph 7 requires the lessor to notify the lessees. In the view of the Tribunal, the issuing of service charge demands that simply indicate the recalculated percentage without any indication that there has been a recalculation or any explanation of that recalculation does not satisfy the notification requirement. In apparent anticipation of the latter problem, at the hearing the Applicant produced copies of a notice of variation backdated to 1 January 2012 (shortly before the Respondent acquired the lease of the subject property).

- 41 However, in the view of the Tribunal, while the literal wording of paragraph 7 would seem to permit the specification of any date as the start date for the application of the recalculated percentage, a recalculation backdated for seven years would be wholly inequitable and unreasonable.
- 42 The Tribunal therefore determines that the applicable percentage to be applied to calculate the Respondent's service charge liability throughout the period covered by the present application is 0.73.
- 43 If the Applicant is concerned to regulate the percentages, it could apply for a variation of the leases. Alternatively, as a practical solution to address the potential overpayment by the leaseholders collectively, the Applicant could credit the service charge account to the extent of the overpayment.

Preliminary issue (2): the meaning of 'development service charge'

- 44 The Respondent argued that she was not required make any contribution to costs incurred in providing services in respect of the car park. Not surprisingly, she based that argument on the fact that the lease of the subject property does not include a car parking space. However, that is not conclusive; and the determination of the issue depends upon the interpretation of the lease.
- 45 As noted, the lease requires the Respondent to pay 0.73 per cent of the 'development service costs'.
- 46 Clause 1.21 of the lease defines 'development service costs' as –  
The proportion of the Service Costs assessed in accordance with the Sixth Schedule which relate to the Development and being in respect of the Services referred to in paragraphs 1 and 2 of the Sixth Schedule [and associated accounting costs].
- 47 Clause 1.8 of the lease defines 'the Development' as –  
The Lessor's estate known as St Georges Mill on which the Building is constructed  
....
- 48 Paragraph 1 of the Sixth Schedule details services provided in relation to (a) the exterior and structure of the building, (b) the internal common parts and (c) such of the service media as may be enjoyed or used by the building. Paragraph 2 of the Sixth Schedule details services provided in relation to (a) the accessway, (b) the external common parts and (c) the landscaped court (if any).
- 49 Clause 1.5 of the lease defines 'the Internal Common Parts' as –  
The main entrances passages landings lobby areas staircases (external and internal) corridors lifts (if any) entry phone system communal television aerial cable television and such other areas and facilities which may from time to time be provided for the common use and enjoyment of the occupiers of the Building and their visitors and not forming part of the Flats.
- 50 Clause 1.6 of the lease defines 'the External Common Parts' as –  
The walkways footpaths landscaped areas entrance gates boundary walls and fences of the Development the Bin Stores the Cycle Store the Service Media (but excluding any within and exclusively serving any Flat) communal television aerial cable television and such other areas and facilities which may from time to time be provided for the common use and enjoyment of the occupiers of the Building and their visitors but excluding (for the avoidance of doubt) the Accessway and the Parking Bays (if any).



- 51 Clause 1.1 defines ‘the Accessway’ as –  
The vehicular accessways within and serving the Development.
- 52 Clause 1.16 defines ‘the Parking Bay’ as –  
The parking space shown edged blue on Plan 2 (if any).
- 53 Clause 1.17 defines ‘the Parking Bay Service Costs’ as –  
The proportion of the Service Costs assessed in accordance with the Sixth Schedule which relate to the Parking Bays (if any) and being in respect of the Services referred to in paragraph 3 of the Sixth Schedule [and associated accounting costs].
- 54 Paragraph 3 of the Sixth Schedule provides –
- 3.1 Keeping the Parking Bays (if any) generally in good repair and condition and maintaining and insuring the Parking Bays (if any) and any electronic entry or monitoring systems and such other equipment relating to the Parking Bays (if any) ....
- 3.2 Paying all rates taxes charges assessments and outgoings whatsoever ... assessed charged imposed upon or payable in respect if the Parking Bays (if any)
- 3.3 Paying the costs charges and expenses of abating a nuisance at or in respect of the Parking Bays (if any) and of executing all such works as may be necessary for complying with any notice served by a local authority or other competent body in connection with the Parking Bays (if any) or any part thereof ....
- 3.4 Providing any other service relating to the Parking Bays (if any) which the Lessor (in its sole discretion) thinks necessary.
- 55 In the view of the Tribunal the clear intention of these provisions is that the development service costs are those costs incurred in providing services to the internal and external common parts of the development excluding the costs incurred in respect of the car parking area.
- 56 However, on behalf of the Applicant, Mr Beaumont sought to argue that the term ‘parking bay’ meant only the actual delineated area in the car park for each car; that the ‘parking bay costs’ referred to in paragraph 3 of the Sixth Schedule are confined to those costs incurred in providing services to the parking bays so defined; and that all other costs incurred in respect of the car parking area are costs relating to the external common parts and so recoverable from all leaseholders (including the Respondent) in accordance with paragraph 2 of the Sixth Schedule. The Tribunal is not persuaded by that interpretation. It would require the Applicant to apportion costs for such matters as insurance, cleaning, lighting and repairs and maintenance between the individual parking bays and the remainder of the car parking area. In the view of the Tribunal, that would simply be unworkable.
- 57 The Tribunal therefore determines that the ‘parking bay costs’ extend to all costs incurred in respect of the car parking area; and that the Applicant cannot include any of those costs in the Respondent’s service charge.

#### Preliminary issue (3): old invoices

- 58 The Respondent questioned the inclusion in the service charge accounts for a particular year of invoices received in previous years. This issue was particularly significant in relation to 2012 since 2011 invoices related to services provided before the Respondent acquired the lease of the subject property. However, the issue was not confined to the 2012 service charge accounts.

59 It might be argued that the lease provides an answer to that challenge. Paragraph 4 of the Sixth Schedule to the lease provides –

... [A]ny omission by the Lessor its managing agent or accountants to include in the Service Costs and/or Service Charge in any Financial Year a sum expended or a liability incurred in that Financial Year pursuant to the provisions of this Schedule shall not preclude the Lessor from including such sum or the amount of such liability in the Service Costs and/or Service Charge in any subsequent Financial Year.

60 Consequent upon that provision it could be argued that a person acquiring a lease should obtain an undertaking from the previous leaseholder to reimburse the successor in respect of such historic costs. (Such a solution was not available in the present case as the Respondent acquired the lease from a mortgagee which had repossessed the subject property.)

61 However, the lease is not wholly determinative of the issue. Paragraph 7.10 of the RICS Service Charge Residential Management Code (3rd edition) provides –

An annual statement should be issued to leaseholders following the end of each service charge period, giving a summary of the costs and expenditure incurred and a statement of any balance due to either party to the lease. It is also recommended that explanatory notes are included. *The accounts should be transparent and reflect all of expenditure in respect of the account period.* (Emphasis added)

62 And section 87(7) of the Leasehold Reform, Housing and Urban Development Act 1993 provides –

A failure on the part of any person to comply with any provision of a code of practice for the time being approved under this section shall not of itself render him liable to any proceedings; but in any proceedings before a court or tribunal—

(a) any code of practice approved under this section shall be admissible in evidence; and

(b) any provision of any such code which appears to the court or tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

63 In the view of the Tribunal, the overall effect of these provisions is that, while some flexibility is appropriate and the Applicant should be permitted to include in the service charge accounts for a particular year invoices inadvertently omitted from the accounts for a previous year, it would not be reasonable to permit the Applicant to include large numbers of historic invoices omitted through a lack of rigour in its accounting procedures.

64 The application of the Tribunal's view is discussed under the relevant heads of expenditure.

#### Preliminary issue (4): Allocation of costs between individual leaseholders and the service charge

65 The Respondent challenged the inclusion in the service charge accounts of a significant number of invoices for work carried out to individual apartments in the St Georges Mill building.

66 In the view of the Tribunal, in some cases it was appropriate for the Applicant to respond to calls from individual leaseholders because the reported issues posed a potential risk of damage beyond the individual apartments. However, it appears that the Applicant rarely (if ever) invoiced

the individual leaseholders for the relevant work but simply included the costs in the service charge. It is difficult to avoid the conclusion that the Applicant took the view that that was the simplest means of recovering the costs of the work. In the view of the Tribunal that approach is incompatible with the lease, which clearly differentiates between repair and maintenance of the apartments, which is the responsibility of individual leaseholders, and repair and maintenance of the common parts, which is the responsibility of the leaseholders collectively through the service charge.

- 67 The application of the Tribunal's view is discussed under the relevant heads of expenditure.

#### Head of expenditure (1): Building insurance

- 68 The premiums for buildings insurance included in the service charge accounts for the relevant service charge years were as follows –

2012: £44,664  
2013: £52,670  
2014: £60,760  
2015: £64,040  
2016: £74,401  
2017: £86,346

- 69 In 2012 and 2013 the Applicant included 0.7330 per cent of the premiums in the Respondent's service charge; from 2014 onwards the percentage was reduced to 0.6648 (to reflect the fact that the leaseholders of the commercial units in the building contributed to the insurance costs). Applying those percentages, the costs included in the Respondent's service charge were as follows –

2012: £327.39  
2013: £386.07  
2014: £403.93  
2015: £490.28  
2016: £494.62  
2017: £574.03

- 70 The Respondent's proportion for 2015 seems to be incorrect. £64,040 x 0.6648 per cent = £425.74.

- 71 Although the Respondent did not directly challenge the insurance premiums, she did comment that the premiums had increased significantly over the period from 2012 to 2017, which she attributed to a failure on the part of the Applicant properly to maintain the building. However, she had obtained no quotations for comparable insurance of St Georges Mill.

- 72 The Applicant gave evidence that the premiums for the relevant years were competitively obtained following an independent review of market rates.

- 73 The issue of insurance premiums has been considered by the Upper Tribunal on a number of occasions. In *Forcelux Limited v Sweetman* [2001] 2 EGLR 173, a decision of the then Lands Tribunal, the Tribunal stated –

[39] I consider, first, [the] submissions as to the interpretation of section 19(2A) of the 1985 Act, and specifically [the] argument that the section is not concerned with whether costs are 'reasonable', but whether they are 'reasonably incurred'. In my

judgment, [that] interpretation is correct, and is supported by the authorities .... The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

[40] But to answer that question, there are, in my judgment, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.

- 74 That decision has recently been elaborated upon in *Cos Services Ltd v Nicholson and Willans* [2017] UKUT 382 (LC). In that case, HHJ Stuart Bridge, having referred to the case of *Waler v Houslow LBC* [2017] EWCA Civ 45, in which the Court of Appeal analysed the concept of 'reasonably incurred' in section 19(1) of the 1985 Act, stated –

[47] This is in my judgment a crucial point. If, in determining whether a cost has been 'reasonably incurred', a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in *Waler*. I agree with the Court of Appeal that this cannot have been the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in *Forcelux*, necessarily a two-stage test.

[48] Context is, as always, everything, and every decision will be based upon its own facts. It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they 'compare like with like'), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease.

- 75 Applying those principles, it has already been noted that the Respondent adduced no evidence of any comparable insurance quotation. On the other hand, although the premiums look high, the Tribunal accepted that the Applicant had followed an appropriate procedure to secure competitive premiums; and that, especially in the light of the claims history, those premiums could not be regarded as unreasonable.
- 76 Even if failings in the maintenance of the building had led to an increase in the premiums (which was not established), that would not mean that the premiums were unreasonable. Such failings (if established) would be reflected in an appropriate reduction in the management fee.

- 77 The Tribunal therefore determines that the costs of the insurance premiums for each of the service charge years were reasonably incurred. The Applicant is entitled to include 0.73 per cent of the costs in the Respondent's service charge but from 2014 has reduced that proportion to 0.6648 per cent.
- 78 The consequences of those determinations are set out below –

	Insurance costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	327.39	325.90	1.49
2013	386.07	384.49	1.58
2014	403.93	403.93	0.00
2015	490.28	425.74	64.54
2016	494.62	494.62	0.00
2017	574.03	574.03	0.00

#### Head of expenditure (2): Accountancy fees

- 79 Responsibility for the service charge accounts appears to be split into three stages. Paragraph 27 of Blue Property Management UK Limited's 'Management Duties' document states –
- To maintain adequate bookkeeping procedures, prepare documentation and instruct the production of Service Charge accounts. The production of the Service Charge accounts will incur an additional accountancy fee.
- 80 The fee charged by Blue Property Management UK Limited for the duties specified in the first sentence of paragraph 27 is part of the management fee included in the service charge accounts and is considered separately.
- 81 In accordance with the second sentence of paragraph 27, in each service charge year covered by the present application, additional fees were charged by Blue Accounting UK Limited for producing the service charge accounts (£795.00) and by David Harrison (2012-2014) and Beaumont Chapman (2015-2017) for the accreditation/certification of the accounts (£150 rising to 176.40). However, in 2012-2014 the service charge accounts included additional invoices from David Harrison for 'work in connection with the preparation of the accounts' or 'accountancy work'. The Tribunal disallows those additional fees since the preparation and production of the accounts is clearly the responsibility of Blue Property Management UK Limited and/or Blue Accounting UK Limited.
- 82 Moreover, the Tribunal determines that Blue Accounting UK Limited must bear some responsibility for failings such as double billing and the 'old invoice' problem. To reflect that responsibility, the Tribunal determines that a reasonable fee for the services provided by Blue Accounting UK Limited would be £700 in each year.

83 The consequences of those determinations are set out below -

	Total accountancy fees included in service charge	Accountancy fees included in Respondent's service charge	Reduced accountancy fees to be included in service charge	Reduced accountancy fees to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	1620.00	11.87	1000.00	7.30	4.57
2013	1299.00	9.52	850.00	6.21	3.31
2014	1155.00	8.47	850.00	6.21	2.26
2015	946.00	6.93	851.20	6.21	0.72
2016	971.00	7.12	876.40	6.40	0.72
2017	997.00	7.31	876.40	6.40	0.91

Head of expenditure (3): Cleaning/caretaking/concierge

84 The presentation of the costs for cleaning the common parts of the building included in the service charge accounts is less than clear – not least because in the earlier years the costs for cleaning, caretaking and the concierge service were presented as a single figure.

*Cleaning*

85 At the hearing the Applicant provided a breakdown of the costs. The costs for cleaning only included in the service charge accounts were as follows –

2012: £6,120.00  
 2013: £6,120.00  
 2014: £6,120.00  
 2015: £5,898.00  
 2016: £3,456.00  
 2017: £4,056.00

86 The Applicant claimed that in fact the costs of cleaning had been significantly understated in the service charge accounts but they do not seek to recover the shortfall.

87 The Respondent was critical of the standard of cleaning but she provided no compelling evidence that it was of an unsatisfactory standard. Indeed, at the time of the Tribunal's inspection it was noted that the standard of cleaning appeared to be of a satisfactory standard.

88 In the circumstances, the total costs included in the service charge cannot be regarded as unreasonable. However, the proportion charged to the Respondent is limited to 0.73 per cent.

89 The consequences of those determinations are set out below –

	Cleaning costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	44.86	44.67	0.19
2013	44.86	44.67	0.19
2014	44.86	44.67	0.19
2015	43.23	43.06	0.17
2016	25.33	25.23	0.10
2017	29.73	29.61	0.12

*Caretaking/concierge*

90 The costs included in the service charge accounts for caretaking/concierge services were as follows –

2012: £18,623.00

2013: £17,753.00

2014: £8,174.00

2015: £6,240.00

2016: £7,873.00

2017: £7,392.00

91 The reduction in costs from 2014 onwards reflects the reduced hours worked by the caretaker/concierge.

92 The Respondent challenged the inclusion of the full costs of the caretaking/concierge service in the service charges for apartments in phase 1 of the building (which includes the subject property) on the ground that the service was not available to the leaseholders of those apartments. However, the Tribunal determines that that argument is misconceived. Although the concierge desk is physically located in the foyer of phase 2 of the building, the concierge services are available to the leaseholders of apartments in all phases of the building.

93 In the circumstances, the total costs included in the service charge cannot be regarded as unreasonable. However, the proportion charged to the Respondent is limited to 0.73 per cent.

94 The consequences of those determinations are set out below –

	Caretaking/concierge costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	136.51	135.95	0.56
2013	130.13	129.60	0.53
2014	59.92	59.67	0.25
2015	45.74	45.55	0.19
2016	57.70	57.47	0.23
2017	54.18	53.96	0.22

#### Head of expenditure (4): Management fees

- 95 The management fee included in the service charge accounts for each of the relevant service charge years remained the same at £28,200. That equates to an average management fee of £293.75 per unit. However, since the management fee is apportioned among the units in accordance with the percentages stated in the leases, the management fee included in the service charge for the subject property was £206.71 (applying a 0.733 percentage figure).
- 96 The Respondent made a series of criticisms of the standard of management provided by Blue Property Management Limited ('Blue Property'). In particular, the Respondent submitted that Blue Property –
- (a) used connected companies for the provision of almost all services;
  - (b) failed to maintain the building properly and effectively;
  - (c) failed to follow rigorous, transparent and reliable accounting procedures;
  - (d) failed to seek reimbursement of costs incurred from individual leaseholders as appropriate;
  - (e) failed to respond to issues raised by leaseholders.
- 97 Surprisingly, since it appears that the Respondent owns other leasehold properties, she provided no alternative quotations for the management of St Georges Mill.
- 98 On behalf of the Applicant it was argued that the management fee was commensurate with the work involved and was reasonable given the nature of the development and the services undertaken.
- 99 In response to questions from the Tribunal, the Applicant failed to offer any clear basis for the level of the management fee. No evidence was provided in relation to comparable management fees in the area.
- 100 In determining a reasonable management fee the Tribunal notes the clear preference of the RICS for 'per unit' fees.
- 101 Using its general knowledge and experience, the Tribunal determines that (averaged over the period covered by the present application) a reasonable annual management fee (inclusive of VAT) for each apartment in St Georges Mill would be £200.00.
- 102 However, the Tribunal is of the view that the management provided by Blue Property has not always been of an appropriate standard. It accepts that there is evidence of the failings identified by the Respondent set out in paragraph 96 above. It also accepts the claim by the Respondent that a representative of Blue Property had admitted to failings in the maintenance of the building. However, in determining the appropriate reduction to reflect the shortcomings in the management, the Tribunal finds (what the Respondent appeared not to acknowledge) that Blue Property has carried out most of its management functions. In the circumstances the Tribunal determines that an appropriate reduction would be 25 per cent.
- 103 The Tribunal therefore determines that a reasonable management fee would be £150.00 per apartment. However, since the management fee is apportioned among the apartments in accordance with the percentages



stated in the leases, a reasonable management fee for the subject property in each of the relevant service charge years would be £150.00 x 96 x 0.73 per cent, that is £105.12.

104 The consequences of those determinations are set out below:

	Management fee included in Respondent's service charge	Reduced cost to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	206.71	105.12	101.59
2013	206.71	105.12	101.59
2014	206.71	105.12	101.59
2015	206.71	105.12	101.59
2016	206.71	105.12	101.59
2017	206.71	105.12	101.59

Head of expenditure (5): Repairs and maintenance

105 The total costs for repairs and maintenance included in the service charge accounts were as follows –

2012: £60,558.00  
 2013: £42,370.00  
 2014: £33,034.00  
 2015: £44,026.00  
 2016: £20,462.00  
 2017: £45,959.00

106 The Respondent had analysed the documentation relating to repairs and maintenance in minute detail. She disputed her liability to contribute to many of the costs on a number of grounds –

- (i) that some costs related to the car parking area in respect of which the Respondent has no liability under the lease;
- (ii) that some payments related to historic claims (for example many of the invoices included in the 2012 service charge accounts are dated 2011);
- (iii) that costs incurred in carrying out works to individual apartments should have been charged back to the relevant leaseholder;
- (iv) that the labour charges for some invoices was excessive and unreasonable;
- (v) that some costs appeared to be the subject of double billing (including the costs of remedying unsatisfactory work);
- (vi) that there were numerous unexplained claims for key-cutting.

107 The Tribunal has explained the exclusion of costs relating to the car parking area: see paragraphs 44-57 above. In the context of repairs and maintenance the Tribunal has disallowed all such costs.

108 The Tribunal has explained its general approach to old invoices: see paragraphs 58-64 above. In the context of repairs and maintenance the Tribunal has disallowed costs where the invoice has been paid in the previous service charge year (or earlier).

- 109 The Tribunal has already explained its approach to costs incurred in carrying out works to individual apartments: see paragraphs 65-67 above. In the context of repairs and maintenance the Tribunal has disallowed all costs incurred for work where the matter originated within an apartment.
- 110 In the context of the repairs and maintenance head of expenditure there is a related issue. There are a significant number of invoices from Blue Property Maintenance UK Limited for dealing with 'out of hours' telephone calls. Many of these impose high charges for simply taking the calls as well as 'out of hours' labour rates for carrying out the work. In the view of the Tribunal, this practice results in excessive and unreasonable costs. Where the actual work is the subject of a separate invoice, whether properly charged to an individual leaseholder or to the service charge account, the Tribunal has disallowed the charge for taking the telephone call.
- 111 The Tribunal agrees that there are some invoices that, in the experience of the Tribunal, include excessive and unreasonable labour charges. The Tribunal has disallowed those charges to the extent that the Tribunal determines that they are unreasonable.
- 112 The Tribunal finds that the number of claims for key cutting requires explanation and, in the absence of any such explanation from the Applicant, determines that the fairest approach is to disallow 50 per cent of the amount of each invoice.
- 113 The Tribunal determines that some miscellaneous costs were not properly included in the service charge account.
- 114 The costs disallowed in each service charge year are set out in paragraphs 116-161 below.
- 115 The costs disallowed reflect the determination of the Tribunal *on the challenges made by the Respondent*. With the exception of a small number of invoices which were not challenged by the Respondent but which raised identical issues to invoices that were challenged, the Tribunal has treated unchallenged costs as agreed by the Respondent.

#### *Costs disallowed in 2012*

- 116 Car parking costs: £6,370.38 (Invoices in Folder B: 344, 351 (part), 358, 364, 371 (part), 375 (part), 381, 408 (part), 411, 422 (part), 427, 435, 447, 455 (part), 464, 465, 466, 470, 479, 486 (part), 493, 497).
- 117 Old invoices: £6,230.10 (Invoices in Folder B: 336, 337, 338, 339).
- 118 Work to individual apartments: £432.00 (Invoice in Folder B: 359).
- 119 Out of hours calls: £1,608.00 (Invoices in Folder B: 342 (part), 352, 356, 367, 383 (part), 398, 402, 417, 428, 446, 449, 459, 477).
- 120 Excessive charges: £2,380.50 (Invoices in Folder B: 349 (part), 353, 410 (part), 451 (part), 492 (part), 503 (part)).
- 121 Double billing: £605.10 (Invoices in Folder B: 356 (part), 361),
- 122 Keys: £21.00 (Invoice in Folder B: 443 (part)).
- 123 Concierge clothing: £162.49 (Invoice in Folder B: 504).

- 124 In relation to the Respondent, the Tribunal disallowed service charges for 2010 and 2011 in respect of the concierge office: £3,498.39 (Invoice in Folder B: 507).
- 125 The total costs disallowed in 2012 is £21,307.96, of which the Respondent's proportion (0.733 per cent) was £156.19.

*Costs disallowed in 2013*

- 126 Car parking costs: £4,153.78 (Invoices in Folder C: 793 (part), 798, 799, 807, 830, 841, 843, 909, 911, 921, 930, 932, 956).
- 127 Work to individual apartments: £1,185.89 (Invoices in Folder C: 802, 824, 837, 840, 861, 862, 883, 893, 894, 915, 925).
- 128 Out of hours calls: £576.00 (Invoices in Folder C: 774, 783, 813, 816, 927 (part)).
- 129 Excessive charges: £2,463.54 (Invoices in Folder C: 775 (part), 777 (part), 795 (part), 804 (part), 817 (part), 835 (part), 852 (part), 855 (part), 857, 923 (part)).
- 130 Double billing: £1,107.79 (Invoices in Folder C: 785, 786, 789, 815, 836, 844, 876).
- 131 Keys: £112.05 (Invoices in Folder C: 779 (part), 794 (part), 933 (part)).
- 132 The total costs disallowed in 2013 is £9,599.05, of which the Respondent's proportion (0.733 per cent) was £70.36.

*Costs disallowed in 2014*

- 133 Car parking costs: £4,583.24 (Invoices in Folder D: 1179, 1184, 1185 (part), 1192, 1217 (part), 1219, 1221, 1232, 1242 (part), 1245, 1246, 1247, 1261, 1280, 1284, 1285, 1286).
- 134 Work to individual apartments: £1,913.36 (Invoices in Folder D: 1191, 1210, 1212, 1213, 1254, 1273).
- 135 Out of hours calls: £192.00 (Invoices in Folder D: 1209, 1277).
- 136 Excessive charges: £2,394.00 (Invoices in Folder D: 1147 (part), 1155 (part), 1162 (part), 1173 (part), 1198 (part)).
- 137 Double billing: £318.00 (Invoices in Folder D: 1144, 1150, 1151).
- 138 Keys: £141.83 (Invoices in Folder D: 1158 (part), 1169 (part), 1176 (part), 1262 (part), 1272 (part)).
- 139 Vacuum cleaner: £120.00 (Invoice in Folder D: 1170).
- 140 CCTV downloads: £105.24 (Invoice in Folder D: 1180).
- 141 Unexplained work: £132.72 (Invoice in Folder D: 1199).
- 142 The total costs disallowed in 2014 is £9,900.39, of which the Respondent's proportion (0.733 per cent) was £72.57.

*Costs disallowed in 2015*

- 143 Car parking costs: £4,094.21 (Invoices in Folder E: 1584, 1621, 1629, 1642-4 (part), 1684, 1708, 1720, 1732, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1787).

- 144 Old invoices: £144.00 (Invoices in Folder E: 1663, 1768).
- 145 Work to individual apartments: £3,040.84 (Invoices in Folder E: 1602, 1603, 1618, 1638, 1639, 1662, 1673, 1691, 1705, 1714, 1715, 1716, 1717, 1718, 1729, 1752, 1753, 1786).
- 146 Excessive charges: £710.00 (Invoices in Folder E: 1627 (part), 1710 (part)).
- 147 Double billing: £1,058.03 (Invoices in Folder E: 1593, 1641, 1665).
- 148 Keys: £84.00 (Invoices in Folder E: 1587, 1659, 1679).
- 149 The total costs disallowed in 2015 is £9,131.08, of which the Respondent's proportion (0.733 per cent) was £66.93.

*Costs disallowed in 2016*

- 150 Car parking costs: £2,679.23 (Invoices in Folder F: 2101, 2104, 2119, 2120, 2125, 2141, 2142, 2149, 2170, 2187, 2191, 2207 (part), 2218, 2233, 2238).
- 151 Old invoices: £84.00 (Invoice in Folder F: 2266).
- 152 Work to individual apartments: £4,726.88 (Invoices in Folder F: 2102, 2116, 2123, 2126, 2147, 2151, 2156, 2157, 2159, 2160, 2163, 2165, 2184, 2191, 2203, 2210, 2216, 2217, 2221, 2231, 2235, 2241, 2244, 2246, 2247, 2257, 2264, 2276, 2277).
- 153 Excessive charges: £90.00 (Invoice in Folder F: 2181 (part)).
- 154 Double billing: £372.00 (Invoices in Folder F: 2115, 2158).
- 155 The total costs disallowed in 2016 is £7952.11, of which the Respondent's proportion (0.733 per cent) was £58.29.

*Costs disallowed in 2017*

- 156 Car parking costs: £2,976.63 (Invoices in Folder G: 2560, 2562 (part), 2564, 2585, 2588, 2592, 2596, 2598, 2601, 2620, 2642, 2664, 2671, 2716, 2719 (part), 2720, 2723, 2730).
- 157 Work to individual apartments: £1,633.99 (Invoices in Folder G: 2569, 2570, 2573, 2582, 2583, 2590, 2611, 2616, 2669, 2675, 2681, 2684, 2693, 2715, 2717).
- 158 Out of hours calls: £288.00 (Invoices in Folder G: 2568, 2680, 2694).
- 159 Excessive charges: £72.00 (Invoice in Folder G: 2680 (part)).
- 160 Unexplained work: £25.00 (Invoice in Folder G: 2676).
- 161 The total costs disallowed in 2017 is £4995.62, of which the Respondent's proportion (0.733 per cent) was £36.62.

*Repairs and maintenance: summary*

162 The total reasonable costs for repairs and maintenance as determined by the Tribunal are as follows –

	Total repairs and maintenance costs included in service charge	Deductions determined by the Tribunal	Reasonable total costs to be included in service charge
2012	60,558.00	21,307.96	39,250.04
2013	42,370.00	9,599.05	32,770.95
2014	33,034.00	9,900.39	23,133.66
2015	44,026.00	9,131.08	34,894.92
2016	20,462.00	7,952.11	12,509.89
2017	45,959.00	4,995.62	40,963.38

163 The consequences for the Respondent are as follows -

	Repair and maintenance costs included in Respondent's service charge (0733%)	Reduced costs to be included in Respondent's service charge (0.73%)	Sum to be deducted from Respondent's service charge
2012	443.89	286.53	157.36
2013	310.57	239.23	71.34
2014	242.14	168.88	73.26
2015	322.71	254.73	67.98
2016	149.99	91.32	58.67
2017	336.88	299.03	37.85

Head of expenditure (6): Electricity

164 The presentation of the costs for electricity in respect of the common parts of the building included in the service charge accounts is less than clear.

165 At the hearing the Applicant provided a breakdown of the costs, which showed a lack of correlation between the invoices for any year and the costs included in the service charge accounts for that year. However, since a significant number of the invoices in the earlier years were based on estimated meter readings, some lack of correlation might not be unexpected.

166 The breakdown is set out below –

	Total of invoices in service charge year	Sum included in service charge accounts for common parts	Sum included in service charge accounts for car park	Total sum included in service charge
2012	14810.07	8107.00	00.00	8107.00
2013	17130.75	19067.00	1000.00	20067.00
2014	10571.70	13578.00	1000.00	14578.00
2015	9191.60	7394.00	1000.00	8394.00
2016	10373.07	9356.00	1000.00	10356.00
2017	10385.39	9510.00	1000.00	10510.00
	<b>72462.58</b>	<b>68012.00</b>	<b>4000.00</b>	<b>72012.00</b>

- 167 Since the total sum included in the service charge during the period covered by the present application is less than the total of the invoices in that period, the Tribunal is satisfied that, subject to paragraphs 168-169 below, the sums included in the service charge accounts are not unreasonable.
- 168 The sum included in the service charge accounts for electricity costs in respect of the car parking area is necessarily a notional apportionment because there is no separate meter for that area. In the view of the Tribunal, the figure of £1000.00 per year is not unreasonable; but it should have been shown as a separate amount in 2012 as well as in the subsequent years.
- 169 In accordance with the Tribunal's determination that the Respondent is not liable for costs in respect of the car parking area, the Respondent only is liable for 0.73 per cent of the electricity costs relating to the common parts.
- 170 The consequences of those determinations are set out below -

	Electricity costs included in Respondent's service charge	Reduced cost to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	59.42	51.88	7.54
2013	147.09	139.19	7.90
2014	106.86	99.12	7.74
2015	61.53	53.98	7.55
2016	75.91	68.30	7.61
2017	77.04	69.42	7.62

#### Head of expenditure (7): Window cleaning

- 171 The costs for window cleaning included in the service charge accounts were as follows –
- 2012: £9,720.00  
2013: £8,100.00  
2014: £5,184.00  
2015: £7,300.00  
2016: £5,184.00  
2017: £5,004.00
- 172 The variation in costs from year to year appears to reflect the frequency of cleaning.
- 173 As noted above, in calculating the Respondent's proportion of the window cleaning costs, the Applicant applied a percentage of 0.733 from 2012 to 2014 and 0.6648 from 2015 to 2017.
- 174 The Respondent challenged the costs on the ground that the standard of the work was not of a satisfactory standard; but she provided no supporting evidence, except to assert that the standard of work had been the subject of complaints from leaseholders. Although the Applicant denied that any complaints had been received, page 399 of Bundle B is an invoice for the erection of 'permanent scaffolding in order to gain access to clean windows, *after complaints*' (emphasis added). However, since that invoice was dated 20 April 2012, the complaints referred to can only relate at most to the first three months of 2012 (and earlier years).

- 175 The Respondent also challenges the costs on the ground that some of the invoices do not specify the dates when any cleaning was carried out. While this again provides evidence of the prevalent lack of rigour in invoicing, the Tribunal is not persuaded that it demonstrates that the cleaning was not carried out.
- 176 Subject to a nominal reduction of 10 per cent of the 2012 costs (to reflect the acknowledged complaints), the Tribunal determines that the window cleaning costs included in the service charge cannot be regarded as unreasonable, although the proportion charged to the Respondent is limited to 0.73 per cent.
- 177 The consequences of those determinations are set out below –

	Window cleaning costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	71.25	63.86	7.39
2013	59.37	59.13	0.24
2014	38.00	37.84	0.16
2015	48.53	48.53	0.00
2016	34.46	34.46	0.00
2017	33.27	33.27	0.00

Head of expenditure (8): Fire risk assessment and health and safety risk assessment

- 178 The Applicant included in the service charge accounts the costs of an annual fire risk assessment and an annual health and safety risk assessment as follows –

	Cost of fire risk assessment included in service charge	Cost included in Respondent's service charge	Cost of health and safety risk assessment included in service charge	Cost included in Respondent's service charge
2012	656.00*	4.81	745.00*	5.46
2013	700.00	5.13	700.00	5.13
2014	700.00	5.13	700.00	5.13
2015	700.00	5.13	700.00	5.13
2016	700.00	5.13	700.00	5.13
2017	744.00	5.45	744.00	5.45

\* The invoices indicate that the figures for 2012 should be £700.00 and £700.00 respectively.

- 179 The Respondent questioned the need for such risk assessments to be carried out every year. She also noted that the annual assessment reports seemed to be very similar – including factual errors and typographical errors - from year to year.
- 180 On the first point, the Tribunal notes the relevant parts of the RICS Service Charge Residential Management Code (3rd edition). Paragraph 8.3 provides –

You should ensure that periodic risk assessments are carried out by competent persons at every scheme with common parts. The frequency of formal review should form part of the risk assessment process but should be carried out whenever there are significant changes at the scheme. ... First-tier Tribunals have been critical of some managers incurring costs on a regular basis by frequently procuring new risk assessments. Regular reviews do not necessarily entail producing a completely new risk assessment document. The extent of any review should be proportional to the risks identified and the complexity of the installations at each scheme.

- 181 The Tribunal determines that the circumstances at St Georges Mill are such that there is no necessity for annual risk assessments and that new assessments every third year would be more appropriate.
- 182 On the Respondent's second point, in the view of the Tribunal, the witness statement of Mr Dean Warren, Senior Risk Assessor at Blue Risk Management UK Ltd, satisfactorily addresses the substantive issues raised by the Respondent's challenge.
- 183 The Tribunal therefore determines that the costs for fire risk assessment and health and safety risk assessment included in the service charge accounts for 2012 and 2015 were reasonably incurred and that the Respondent is liable to pay 0.73 per cent of those costs. However, the Tribunal determines that the corresponding costs included in the service charge accounts for 2013, 2014, 2016 and 2017 were not reasonably incurred and are not payable by the Respondent.
- 184 The consequences of those determinations are set out below –

	Fire risk assessment costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	4.81	4.79	0.02
2013	5.13	00.00	5.13
2014	5.13	00.00	5.13
2015	5.13	5.11	0.02
2016	5.13	00.00	5.13
2017	5.45	00.00	5.45

	Health and safety risk assessment costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	5.46	5.44	0.02
2013	5.13	00.00	5.13
2014	5.13	00.00	5.13
2015	5.13	5.11	0.02
2016	5.13	00.00	5.13
2017	5.45	00.00	5.45



### Head of expenditure (9): Bank charges

185 Bank charges (including interest paid on overdrawn accounts) appeared under various headings in the service charge accounts. The sums included were as follows:

2012: £6.00  
2013: £347.00  
2014: £93.00  
2015: £78.00  
2016: £42.00  
2017: £37.00

186 The Respondent commented on bank charges in the earlier years but presents no compelling argument for disallowing the above bank charges. Banks make charges for operating business accounts and the Tribunal determines that the charges cannot be regarded as unreasonable. Indeed, the charges are in part set off by 'loyalty rewards'. The Tribunal determines that the Respondent is liable to pay 0.73 per cent of those costs.

187 The consequences of those determinations are set out below –

	Bank charges included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	0.04	0.04	0.00
2013	2.54	2.53	0.01
2014	0.68	0.68	0.00
2015	0.57	0.57	0.00
2016	0.31	0.31	0.00
2017	0.27	0.27	0.00

### Head of expenditure (10): Lift telephones/CCTV/Broadband

188 The costs of the telephones in the three lifts and CCTV/Broadband included in the service charge accounts were as follows –

	Lift telephones	CCTV	Total
2012	1,292.00	455.00	1,747.00
2013	999.00	475.00	1,474.00
2014	1,174.00	495.00	1,669.00
2015	1,159.00	405.00	1,564.00
2016	900.00	814.00	1,714.00
2017	1,012.00	966.00	1,978.00

189 It appears that there has been a lack of consistency in the allocation of invoices to heads of expenditure in the service charge accounts. There are three BT accounts: the first relates 'phone services' for the three lifts (EM24043821); the second relates to 'broadband services' (WM37896657); and the third relates 'phone services' for the CCTV (EM19877574). From 2012 to 2015, invoices for the first and third accounts were allocated to lift telephones, while invoices for the second account were allocated to CCTV. However, in 2016 and 2017, invoices for the first account only were

allocated to lift telephones, while invoices for the second and third accounts were allocated to CCTV.

- 190 The Respondent challenged the costs included in the service charge on two grounds. First, she challenged some invoices on the ground that they were addressed to Blenheim Developments Ltd. The Tribunal determines that this challenge is misconceived. Blenheim Developments Ltd was the original developer when St Georges Mill was converted into apartments. It is clear that these invoices relate to the same BT accounts as other invoices addressed to Blue Property and relate to services provided to St Georges Mill, including the subject property.
- 191 Second, the Respondent argued that, in the absence of a complete set of invoices, redacted bank statements showing direct debit payments do not provide evidence that the relevant costs were incurred; and that such sums cannot be included in the service charge accounts. While a complete set of invoices would clearly be preferable as supporting evidence, in the view of the Tribunal the absence of some invoices does not preclude a finding that the relevant costs were incurred. Where there is a clear pattern of payments under an on-going contract (such as a telephone account), entries on a bank statement that identify the relevant account number may permit the inference that payments were indeed made. The Tribunal therefore determines that the redacted bank statements showing payments to BT in relation to the three accounts identified above provide sufficient evidence that the costs included in the service charge were incurred.
- 192 However, it appears that in 2012 one invoice for £115.50 for broadband services was allocated both to lift telephones and to CCTV.
- 193 Subject to the correction of that error, the Tribunal determines that the combined costs for lift telephones and CCTV included in the service charge accounts are reasonable and that the Respondent is liable to pay 0.73 per cent of those costs.
- 194 The consequences of those determinations are set out below –

	Lift telephone and CCTV costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	12.81	11.93	0.88
2013	10.80	10.76	0.04
2014	12.24	12.18	0.06
2015	11.47	11.42	0.05
2016	12.57	12.51	0.06
2017	14.50	14.44	0.06

#### Head of expenditure (11): Lift maintenance

- 195 The Respondent did not challenge the costs for lift maintenance included in the service charge except for one invoice in 2013 (Bundle C, page 728). She questioned why the contractor applied a discount of only 25 per cent to the cost of replacing a failed component. The Respondent's argument is based on speculation as to whether the component was under full warranty, which

the Applicant denied. On balance, the Tribunal is not persuaded by the Respondent's argument.

196 The Tribunal therefore determines that all lift maintenance costs included in the service charge accounts were reasonable, although the Respondent is only liable to pay 0.73 per cent of those costs.

197 The consequences of those determinations are set out below –

	Lift maintenance costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	46.11	45.92	0.19
2013	44.07	43.89	0.18
2014	44.19	44.01	0.18
2015	43.86	43.68	0.18
2016	48.03	47.83	0.20
2017	15.54	15.48	0.06

Head of expenditure (12): Caretaker office rent

198 In 2012 and 2013, when there was a full-time caretaker service, the service charge accounts included, as a separate head of expenditure, notional rent of £7,200.00 and £6,000.00 for the caretaker's office.

199 The Respondent challenged these costs on the grounds, first, that the caretaker service was not available to phase 1 of the building, which contains the subject property. That argument has already been addressed above and dismissed: see paragraph 92 above.

200 The Respondent further argued that in any event the rental level was excessive. She stated that the annual rent for the subject property was approximately £6,000.00. However, since the caretaker's office is 60 per cent larger than the subject property, a notional rent of £7,200.00 (a fortiori £6,000.00) cannot be regarded as unreasonable.

201 The Tribunal determines that the Respondent is liable to pay 0.73 of the costs.

202 The consequences of those determinations are set out below –

	Caretaker office rent included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	52.78	52.56	0.22
2013	43.98	43.80	0.18

Head of expenditure (13): Insurance excess

203 The costs of excess payments under the buildings insurance policy included in the service charge accounts were as follows –

2012: £300.00  
2013: £1,000.00  
2014: £4,800.00  
2015: £6,419.00  
2016: £12,400.00  
2017: £8,500.00

204 The Respondent disputed her liability to contribute to many of the excess payments on a number of grounds –

- (i) that some payments relate to historic claims (for example all payments included in the 2012 service charge accounts relate to claims in 2008);
- (ii) that there are no supporting invoices or other supporting documentation for 2013;
- (iii) that some claims relate to the car parking area in respect of which the Respondent has no liability under the lease;
- (iv) that excess payments for claims relating to individual apartments should be charged back to the relevant leaseholder.

205 For reasons already explained, the Tribunal excludes from the 2012 service charge costs that were incurred in 2008.

206 Given the total absence of supporting documentation, the Tribunal excludes the costs included in the 2013 service charge accounts.

207 For reasons already explained, the Tribunal excludes payments in respect of claims relating to the car parking area.

208 For reasons already explained, the Tribunal excludes payments in respect of claims relating to individual apartments.

209 Applying those exclusions, the Tribunal determines that the excess payments that are properly included in the service charge accounts are as follows –

2012: £00.00  
2013: £00.00  
2014: £1,850.00  
2015: £1,850.00  
2016: £2,293.00  
2017: £500.00

210 The Tribunal determines that the Respondent is liable to pay 0.73 per cent of those costs.

211 The consequences of those determinations are set out below –

	Insurance excess costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2012	2.20	00.00	2.20
2013	7.33	00.00	7.33
2014	35.18	13.51	21.67
2015	47.05	13.51	33.54
2016	90.89	16.74	74.15
2017	56.51	3.65	52.86

Head of expenditure (14): Ground maintenance

212 The Respondent does not challenge the costs for ground maintenance included in the service charge accounts.

213 However, the Tribunal determines that she is liable to pay only 0.73 per cent of those costs.

214 The consequences of that determination are set out below –

	Ground maintenance costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2013	4.05	4.03	0.02
2014	32.89	32.76	0.13

Head of expenditure (15): Lift insurance

215 The Respondent does not challenge the costs for lift insurance included in the service charge accounts.

216 However, the Tribunal determines that she is liable to pay only 0.73 per cent of those costs.

217 The consequences of that determination are set out below –

	Lift insurance costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2013	3.86	3.84	0.02
2014	3.92	3.91	0.01
2015	4.20	4.18	0.02
2016	4.23	4.21	0.02
2017	4.10	4.09	0.01

Head of expenditure (16): Alarms and emergency lighting

- 218 The Respondent does not challenge the costs for alarms and emergency lighting included in the service charge accounts.
- 219 However, the Tribunal determines that she is liable to pay only 0.73 per cent of those costs. The consequences of that determination are set out below –

	Alarms and emergency lighting costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2013	20.59	20.51	0.08
2014	18.05	17.97	0.08
2015	30.21	30.09	0.12
2016	21.11	21.02	0.09
2017	21.11	21.02	0.09

Head of expenditure (17): Car park maintenance/ventilation testing

- 220 It has been explained above that the Tribunal determines that the Respondent is not liable to contribute to costs incurred in respect of the car parking area.
- 221 It follows that the Respondent is not liable for any of the costs allocated to the separate car park maintenance and car park ventilation testing heads of expenditure.
- 222 The consequences of that determination are set out below –

	Car park maintenance costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2013	4.47	00.00	4.47
2014	2.26	00.00	2.26

	Car park ventilation testing costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2016	0.62	00.00	0.62
2017	1.08	00.00	1.08

#### Head of expenditure (18): Legal/professional fees

223 Legal/professional fees included in the service charge accounts were as follows –

2013: £1,500.00

2014: £732.00

2017: £575.00

224 The Respondent challenged the inclusion of costs for providing electronic drawings (£600.00) and litigation advice (£900.00) in 2013; litigation costs (£732.00) in 2014; and survey costs (£575.00) in 2017.

225 In the view of the Tribunal none of the above costs can be regarded as unreasonably incurred; but the Tribunal determines that the Respondent is liable for only 0.73 per cent of the costs.

226 The consequences of those determinations are set out below -

	Legal/professional fees included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2013	11.00	10.95	0.05
2014	5.37	5.34	0.03
2017	4.21	4.20	0.01

#### Head of expenditure (19): Land registry fees

227 The Applicant included in the service charge account land registry fees of £18.00 in 2015, £30.00 in 2016 and £15.00 in 2017.

228 The Tribunal is not persuaded by the Respondent's challenge to these costs, which in the view of the Tribunal were reasonably incurred, save that there appear to be two instances of double billing in 2016, resulting in an overcharge of £12.00, which the Tribunal disallows.

229 Subject to that adjustment, the Tribunal determines that the Respondent is liable to pay 0.73 per cent of the costs in each of the relevant years.

230 The consequences of those determinations are set out below -

	Land Registry fees included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2015	0.13	0.13	0.00
2016	0.22	0.13	0.09
2017	0.11	0.11	0.00

#### Head of expenditure (20): Fire alarm maintenance

231 The costs of fire alarm maintenance included in the service charge accounts were as follows –

2016: £4,086.00

2017: £1,152.00

232 The Respondent did not challenge the total costs but the Tribunal determines that she is liable to contribute only 0.73 per cent to those costs.

233 The consequences of that determination are set out below -

	Fire alarm maintenance costs included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2016	29.95	29.83	0.12
2017	8.44	8.41	0.03

#### Head of expenditure (21): Reserves

234 The Applicant included 'reserves' for carpet replacement (£10,000.00) in the 2015 service charge and for painting (£10,000.00) in the 2017 service charge.

235 The Respondent recognised that such provision for future major expenditure is good management; and, subject to the adjustment of her percentage contribution, she did not challenge these costs.

236 However, the Tribunal endorses the Respondent's concern that the relevant sums should remain earmarked and should not be treated as part of the general service charge account.

237 The Tribunal therefore determines the Respondent's reasonable contributions to the reserves as follows –

	Carpet/painting reserves included in Respondent's service charge	Reduced costs to be included in Respondent's service charge	Sum to be deducted from Respondent's service charge
2015	73.30	73.00	0.30
2017	73.30	73.00	0.30

#### Interim payment for 2018

238 The Applicant's claim also included the interim service charge for 2018 of £1391.00.

239 In the absence of the final accounts for that year, a similar analysis to that applied to the years 2012 to 2017 is obviously not possible; and there may be a demand for a balancing payment for 2018.

240 However, there is a clear pattern in the deductions made in relation to the earlier years and in the view of the Tribunal similar deductions are likely to apply to 2018. The Tribunal therefore determines that the interim demand of £1391.00 should be reduced by £200.00 to £1191.00.



### Service charges: summary

241 The sums to be deducted from the service charge demands detailed in paragraph 28 above are set out in the following two tables –

#### *Deductions by head of expenditure and service charge year*

Head of expenditure	2012	2013	2014	2015	2016	2017
Buildings insurance	1.49	1.58	0.00	64.54	0.00	0.00
Accountancy fees	4.57	3.31	2.26	0.72	0.72	0.91
Cleaning	0.19	0.19	0.19	0.17	0.10	0.12
Caretaker/concierge	0.56	0.53	0.25	0.19	0.23	0.22
Management charges	101.59	101.59	101.59	101.59	101.59	101.59
Repairs and maintenance	157.36	71.34	73.26	67.98	58.67	37.85
Electricity	7.54	7.90	7.74	7.55	7.61	7.62
Window cleaning	7.39	0.24	0.16	0.00	0.00	0.00
Fire risk assessment	0.02	5.13	5.13	0.02	5.13	5.45
Health and safety risk assessment	0.02	5.13	5.13	0.02	5.13	5.45
Bank charges and interest	0.00	0.01	0.00	0.00	0.00	0.00
Lift telephone/CCTV/Broadband	0.88	0.04	0.06	0.05	0.06	0.06
Lift maintenance	0.19	0.18	0.18	0.18	0.20	0.06
Caretaker office rent	0.22	0.18	-	-	-	-
Insurance excess	2.20	7.33	21.67	33.54	74.15	52.86
Grounds maintenance	-	0.02	0.13	-	-	-
Lift insurance	-	0.02	0.01	0.02	0.02	0.01
Alarms and emergency lighting	-	0.08	0.08	0.12	0.09	0.09
Car park maintenance	-	4.47	2.26	-	-	-
Car park ventilation	-	-	-	-	0.62	1.08
Legal/professional fees	-	0.05	0.03	-	-	0.01
Land Registry fees	-	-	-	0.00	0.09	0.00
Fire alarm maintenance	-	-	-	-	0.12	0.03
Reserves	-	-	-	0.30	-	0.30
	284.22	209.32	220.13	276.99	254.53	213.71

#### *Total deductions by year*

	Respondent's total service charge demanded by Applicant	Sum determined by Tribunal to be deducted from Respondent's total service charge	Reasonable service charge payable by Respondent
2012	436.64	284.22	152.42
2013	1427.31	209.32	1217.99
2014	1227.15	220.13	1007.02
2015	1364.00	276.99	1087.01
2016	1266.26	254.53	1011.73
2017	1458.99	213.71	1245.28
2018	1391.00	200.00	1191.00
			<b>6912.45</b>

242 The Tribunal therefore determines that the reasonable service charges which the Respondent is liable to pay for the service charge years 2012 to 2017 and the reasonable interim service charge which the Respondent is liable to pay for the service charge year 2018 are £6912.45.

## **Administration charges**

### Statutory framework

243 Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), so far as material, provides –

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—

...

(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.

...

(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.

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

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.

244 Prior to commencing legal action, Blue Property Management UK Limited, on behalf of the Applicant, wrote formally to the Respondent to demand the alleged unpaid services charges. The recovery of those charges was then referred to Leasehold Debt Recovery, who wrote to the Respondent on seven occasions during the period November 2017 to February 2018.

245 Pursuant to clause 5 of, and paragraph 3(a) of the Fourth Schedule to, the lease, the Applicant claims by way of administration charges the costs incurred by Blue Property Management UK Limited (£100.00) and the fees that the Applicant was charged by Leasehold Debt Recovery (£882.00). The schedule of administration charges lists the individual charges and fees.

246 The Respondent challenged the claim for these costs/fees on a number of grounds.

247 First, the Respondent argued that they were not administration charges 'in the traditional sense'. However, for present purposes the question is whether they are administration charges within the meaning of Schedule 11 to 2002 Act; and the Tribunal determines that they are clearly within the definition in paragraph 1(1).

248 Second, although the issue was not explicitly raised by the Respondent, the charges are in principle recoverable under clause 5 of, and paragraph 3(a) of the Fourth Schedule to, the lease. It was made clear in a number of documents (including correspondence from Leasehold Debt Recovery to the

Respondent and the County Court claim form) that the Applicant was contemplating the preparation and service of a notice under section 146(1) of the Law of Property Act 1925.

249 Third, the Respondent argued that it was unreasonable for the Applicant to incur the costs/fees because the Applicant had failed to engage with the Respondent to discuss her concerns in respect of the service charges. The Tribunal accepts that the Applicant failed to respond to many of the Respondent's queries; and that lack of engagement is reflected in the reduction of the management fees: see paragraph 102 above. However, having paid the interim service charge demand for the service charge year 2012, as a necessary pre-condition of acquiring the lease of the subject property, the Respondent has made no further interim or balancing service charge payments. Yet at no time has she suggested that she is not liable to pay any part of those demands. She could have paid the unchallenged costs or the full amount and reserved her right to question the costs in an application to the Tribunal. In the circumstances it was not unreasonable for the Applicant to take formal action to recover (some of) the costs that they had incurred.

250 Fourth, the Respondent argued that the costs/fees were excessive and unreasonable. The Tribunal accepts this final argument. The costs claimed by both Blue Property Management UK Limited and Leasehold Debt Recovery are arbitrary figures, which are doubtless designed to encourage debtors to pay their debts but which seem to bear no relation to the actual costs incurred. Repeated charges are made for repeated letters and for responding to emails from the Respondent; a charge is made for dealing with returned post sent to an incorrect address; and a charge of £204.00 is imposed for drafting a court claim that would have taken a competent person no more than 15 minutes.

251 The Tribunal therefore determines that a reasonable figure for administration charges (including Land Registry fees) payable by the Respondent to the Applicant would be no more than £300.00.

### **Counterclaim**

252 The Respondent seeks to make a counterclaim against the Applicant.

253 The counterclaim comprises four items. First, in an unsuccessful attempt to start a dialogue with the Applicant in 2014 she engaged a solicitor and incurred costs of £1,319.98. Second, she seeks to recover £135.00 for the cost of replacing a light outside her apartment. Third, she seeks to recover the cost of using the Royal Mail Special Delivery Service to track letters sent to the Applicant. Fourth, she claims loss of (potential) earnings when she travelled to Leicester to meet with representatives of the Applicant, who failed to attend. In total the counterclaim amounted to £3,175.47.

254 The Court determines that the Respondent has shown no cause of action and dismisses the counterclaim.

### **Interest on unpaid ground rent**

255 The Applicant claimed interest totalling £19.62 on late payment of ground rent for 2013 and 2014.

- 256 The Respondent argued that, since she received no invoice for the ground rent for 2013, no interest on late payment is payable. However, clause 4(1)(a) of the lease provides for the payment of ground rent on 1 January in each year; and paragraph 4 of the Fourth Schedule to the lease provides for the payment of interest on unpaid interest *whether legally demanded or not*.
- 257 The Respondent claimed that she arranged for the payment of the ground rent for 2014 and that, when notified that no payment had been received, she made another payment. However, she was unable to provide any documentary evidence to support her claim.
- 258 The Court determines that the interest of £19.62 is payable by the Respondent.

### **Interest on unpaid service charges**

- 259 The Applicant claimed interest totalling £873.31 on unpaid service charges (to 17 December 2017).
- 260 In accordance with paragraph 4 of the Fourth Schedule to the lease, the Applicant is entitled to interest (at 4 per cent above the base rate) on unpaid service charges.
- 261 The unpaid serviced charges are those charges determined by the Tribunal to be reasonable as set out in paragraph 241. In respect of each service charge year, the deduction made by the Tribunal has been applied first to the balancing charge and then to the interim payment. Accordingly, interest is payable on the following unpaid sums –
- 2013 interim payment: £1,128.00 from 4 January 2013
  - 2012 balancing charge: £152.42 from 4 November 2013
  - 2014 interim payment: £1,001.00 from 11 January 2014
  - 2013 balancing charge: £89.99 from 12 July 2014
  - 2015 interim payment: £1,087.01 from 12 January 2015
  - 2014 balancing charge: £6.02 from 27 May 2015
  - 2016 interim payment: £1,011.73 from 4 January 2016
  - 2017 interim payment: £1,245.28 from 4 January 2017
  - 2018 interim payment: £1,191.00 from 4 January 2018
- 262 The Court has recalculated the interest to the date of judgment (31 January 2019), applying the following rates –
- 4 January 2013 to 3 August 2016: 4.50 per cent
  - 4 August 2016 to 1 November 2017: 4.25 per cent
  - 2 November 2017 to 1 August 2018: 4.50 per cent
  - 2 August 2018 to 31 January 2019: 4.75 per cent.
- 263 The Court determines that total interest of £1095.51 is payable by the Respondent.

### **Contractual costs**

- 264 The Applicants' County Court claim included a claim for the court fee of £522.31.
- 265 Prior to the hearing the Applicant submitted a schedule of post-issue costs (incurred and estimated) and disbursements in Form N260. The costs set out there amounted to £10,738.64.

- 266 It was not disputed that clause 5 of, and paragraph 3(a) of the Fourth Schedule to, the lease prima facie provide for the recovery of the Applicant's litigation costs in the present case: see paragraph 248 above. Moreover, Mr Beaumont, on behalf of the Applicant, accepted that those provisions provide for the recovery of costs on the standard basis.
- 267 However, the Applicant appears to have misunderstood which costs are properly included in Form N260, which is limited to costs for legal work carried out by legally qualified persons. It follows that the costs claimed for work carried out by Blue Property personnel should not have been included. Those costs are undemanded administration charges and are considered below: see paragraphs 272-279 below.
- 268 In relation to the costs properly included in Form N260, section 51(1)(c) of the Superior Courts Act 1981 provides that 'the costs of and incidental to all proceedings in ... the county court shall be in the discretion of the court'. The Civil Procedure Rules ('CPR') apply to all proceedings in the civil courts including the County Court. CPR 44 contains the general rules about costs. CPR 44.3 governs the basis of assessment and distinguishes between assessment on the standard and the indemnity bases. In either case the court will not allow costs which have been unreasonably incurred or are unreasonable in amount (CPR 44.3(1)). On a standard basis assessment, by CPR 44.3(2) the court will only allow costs which are proportionate in amount and will resolve any doubt about whether costs were reasonable and proportionately incurred, or were reasonable and proportionate in amount, in favour of the paying party. On an indemnity basis assessment, the 'proportionality' test does not apply, and the court will resolve any doubt as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party (CPR 44.3(3)). CPR 44.4 identifies the factors to be taken into account in deciding the amount of costs, and requires the court in all cases to have regard to all the circumstances. CPR 44.4(3) identifies particular matters to which the court will have regard in assessing costs on the two alternative bases. These include (a) the conduct of all the parties, (b) the amount or value of any money or property involved, (c) the importance of the matter to all the parties, (d) the particular complexity of the matter or the difficulty or novelty of the questions raised, (e) the skill, effort, specialised knowledge and responsibility involved, and (f) the time spent on the case. CPR 44.5 deals with the amount of costs where they are payable under a contract and introduces a rebuttable presumption that they are presumed to have been reasonably incurred and are reasonable in amount, unless the contract expressly provides otherwise.
- 269 The Court allows the County Court fee (£522.31) and the Tribunal hearing fee (£200.00).
- 270 Although it was not unreasonable to instruct Counsel, in the view of the Court it was not necessary to instruct Counsel of the seniority of Mr Beaumont and to incur the corresponding costs. The Court therefore allows fees of £2000.00, excluding VAT.
- 271 In summary, the court allows costs of £722.31 in respect of court fees and tribunal hearing fees and £2000.00 (excluding VAT) in respect of Counsel's fees – a total of £2722.31.

## **Undemanded administration charges in respect of litigation costs**

272 As indicated above, the costs for work carried out by Blue Property personnel in connection with the present application are properly characterised as administration charges in respect of litigation costs.

273 However, as such those charges would have to be formally demanded from the Respondent.

274 In anticipation of such a demand, the Respondent made an application under paragraph 5A of Schedule 11 to the 2002 Act, which, so far as material, provides –

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.

275 The Respondent argued (i) that the costs claimed by the Applicant are disproportionate; (ii) that the Applicant refused to engage with the Respondent in her attempts to settle the dispute without litigation; (iii) that the Applicant incurred unnecessary costs by including unnecessary documents in the hearing bundles; and (iv) that it would therefore be just and equitable for the court to make an order reducing or extinguishing her liability to pay those costs.

276 First, the Court considered the costs claimed for work done on documents by Blue Property personnel. According to the schedule in Form N260, four persons spent a total of 60 hours on responding to the Scott Schedule, for which costs of £1,970.00 are claimed; two persons spent a total of 42.5 hours on preparing the hearing bundle, for which costs of £1,005.00 are claimed (as well as costs of £965.64 for photocopying and postage); and three persons spent six hours meeting with Counsel, for which costs of £188.00 are claimed.

277 Many of the Applicant's responses on the Scott Schedule failed to address the issues raised by the Respondent. Time spent on gathering documents is regarded as a cost that all litigants must bear to prove their own case. It was not clear at the hearing that Counsel benefitted from his meeting with the Blue Property personnel.

278 Second, the Court considered the costs claimed for the attendance of Blue Property personnel at the inspection and the hearing (£1,410.00). The Blue Property personnel provided very limited assistance to the Tribunal/Court: they were unable to provide answers to numerous questions that were clearly raised by the Scott Schedule and of which they therefore had advance notice; and they were unable to provide explanations of numerous issues relating to Blue Property procedures and practices raised by the Tribunal/Court.

279 Exercising its discretion under paragraph 5A, and applying the criteria of what is just and equitable, the Court orders that the liability of the Respondent to pay an administration charge in respect of the Applicant's litigation costs (if demanded) would be limited to £1,000.00.

280 The Court recognises that this order effects an alteration in the parties' contractual position; but, as Holgate J commented in *Avon Ground Rents*

*Limited v Child* [2018] UKUT 0204 (at paragraph 58), that is the very purpose of the paragraph 5A jurisdiction.

### **Section 20C application**

281 Section 20C of the 1985 Act (so far as material) provides –

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

...

(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.

282 The Respondent argued (i) that the costs claimed by the Applicant are disproportionate; (ii) that the Applicant refused to engage with the Respondent in her attempts to settle the dispute without litigation; and (iii) that the Applicant incurred unnecessary costs by including unnecessary documents in the hearing bundles.

283 As will be apparent from comments at various points in this decision, neither party to the present applications can claim to have emerged from the process without criticism of their conduct, which tended to polarise the parties.

284 In *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0592 the Upper Tribunal underlined the importance of considering the overall financial consequences of any order. In the light of the decisions of the Court on the issues of contractual costs and undemanded administration charges in respect of litigation costs, the Court is of the view that it would not be just and equitable if the Applicant sought to recover through the service charge costs that it failed to recover in its claim for contractual costs and any claim for administration charges in respect of litigation costs.

285 In order to give effect to that view, the Court makes an order under section 20C that the costs incurred by the Applicant in connection with the present proceedings shall not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent and/or the leaseholders of other apartments in the St Georges Mill building.

### **Decision**

286 The Respondent shall within 28 days pay to the Applicant the sum of £6,912.45 in respect of unpaid service charges.

287 The Respondent shall within 28 days pay to the Applicant the sum of £300.00 in respect of unpaid administration charges.

288 The Respondent's counterclaim is dismissed.

289 The Respondent shall within 28 days pay to the Applicant the sum of £19.62 in respect of interest on late payment of ground rent.

290 The Respondent shall within 28 days pay to the Applicant the sum of £1095.51 in respect of interest on unpaid service charges.

- 291 The Respondent shall within 28 days pay to the Applicant the sum of £2,722.31 (exclusive of VAT) in respect of court fees, tribunal hearing fees and Counsel's fees.
- 292 The Court orders that the liability of the Respondent to pay an administration charge in respect of the Applicant's litigation costs (other than those referred to in paragraph 291 above) is limited to £1,000.00.
- 293 The Court orders that the costs incurred by the Applicant in connection with the present proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent and/or the leaseholders of other apartments in the St Georges Mill building.
- 294 The Order giving effect to this Decision, a copy of which is annexed to this Decision, has been sent to the County Court for sealing.

## **Appeal**

- 295 Different routes of appeal apply to decisions made by the First-tier Tribunal and by the Judge sitting as a County Court Judge.

### Appeal against the decisions of the First-tier Tribunal

- 296 If a party wishes to appeal the decision(s) made by the First-tier Tribunal, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 297 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.
- 298 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 299 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

### Appeal against the decisions of the Judge sitting as a Judge of the County Court

- 300 If a party wishes to appeal the decision made by the Judge, that appeal must be made to the relevant Appeal Centre of the County Court. The party wishing to appeal must either (i) make a written application for permission to appeal to the Judge at the Regional office of the First-tier Tribunal which has been dealing with the case or (ii) include an application for permission to appeal in any appeal application made directly to the County Court Appeal Centre.
- 301 In any event, regardless of whether an application for permission to appeal has been made to the Judge at the First-tier Tribunal, any Appeal Notice must be lodged at the County Court Appeal Centre not later than 21 days from the date of the decision being appealed against.



31 January 2019

Professor Nigel P Gravells  
Deputy Regional Judge of the First-tier Tribunal